

Topic Paper

D. OPR – Environmental Protection Topic Paper

Subtopic 1: Duty to report and manage contamination

Objectives for Improvement

The objectives of new requirements will be to help ensure that companies:

- report contamination to the CER for the full lifecycle of the pipeline; and
- manage contamination and any potential risks in a manner that is timely and protects human health, property, and the environment.

Proposed Option

To meet the objectives outlined above, the CER is considering adding the following requirements to the OPR:

- if, at any time, a company becomes aware of contamination or potential contamination relating to the lifecycle operation of its pipeline, the company must:
 - as soon as practicable, confirm contamination with analytical testing; and
 - immediately report the details of the contamination to the Regulator;
- if contamination has migrated off the right-of-way or company owned or leased lands, a company must notify the Regulator immediately; and
- throughout the lifecycle of the pipeline, a company must manage contamination and any potential risks in a manner that is timely and protects human health, property, and the environment.

Response

D1. What is your feedback on the proposed requirements above?

The proposed requirements focus on prompt reporting and management of contamination, supporting protection of the environment and public. However, we are concerned regarding the lack of definition of "potential contamination" and whether the obligation to report immediately upon confirmation could result in excessive administrative demands. Kingston suggests establishing clear, risk-based thresholds or criteria to determine when contamination must be reported.

Commented [CW1]: o Assume "potential contamination" is specifically related to contamination that is physically discovered (e.g., integrity dig) and does not include minor surficial staining on graveled "on-lease" facility locations.
☒ CER needs to define "potential contamination"

Subtopic 2: Section 21 of the OPR: Reclamation, Vegetation Management and Restoration

Objectives for Improvement

The objectives of new requirements will be to help ensure that:

- the CER's expectations for reclamation, vegetation management and restoration are clear; and
- companies incorporate environmental protection into the relevant processes and procedures to monitor and patrol the right-of-way.

Proposed Options

To meet the objectives outlined above, the CER is considering building on the requirements in section 21 with further guidance to be developed. These requirements would incorporate the following concepts:

- After a disturbance, the rights-of-way and temporary work areas (including temporary access) associated with the pipeline must undergo reclamation in a timely manner.
 - Reclamation means the process of re-establishing a site affected by company activities to a productive use that prevents or minimizes any adverse effects on the environment, people, property, sites of cultural and historical significance and use of the land.
 - Reclamation includes the stabilization and contouring of the surface of land, maintenance of soil, management of invasive species and weeds, revegetation, and return of the water regime to a pre-disturbance state.
- During operations, disturbance to vegetation must be minimized except as necessary to enable pipeline surveillance and monitoring, and ready access for maintenance activities and emergency response.
 - Vegetation must be managed in a manner that supports activities required to maintain the safe operation of the infrastructure, but also encourages revegetation in sensitive areas and allows for restoration upon abandonment.
- As part of the abandonment activities, the right-of-way must be restored to a condition similar to the surrounding environment and consistent with pre-disturbance land use, where feasible.
 - These goals must be established in consultation with potentially impacted parties, including landowners and Indigenous Peoples (see subtopic 3 of the Rights and Interests of Indigenous Peoples, Socio-economic Effects, and

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Engagement paper for further information about the CER's proposal for engagement requirements).

Response

D2. Do these requirements enhance environmental protection and clarify CER expectations in the areas of reclamation and vegetation management?

Yes, these requirements enhance environmental protection by setting clear expectations for reclamation, emphasizing the importance of minimizing environmental impact and restoring land after disturbances. However, any specifics or detailed requirements should be addressed through Guidance documents rather than being embedded in the OPR regulation itself, ensuring flexibility to adapt to various scenarios.

D3. The requirement proposed in the third bullet above states that the goals of restoration are to restore the land to a condition similar to the surrounding environment and consistent with the predisturbance land use. Are these appropriate goals for restoration? If not, what should be the goals for restoration?

The goals are appropriate as they align with sustainable land use practices and environmental stewardship. However, specific details or standards for restoration should be outlined in Guidance documents to maintain adaptability and ensure that they remain practical and relevant across diverse circumstances. Flexibility will need to be considered as it relates to restoring land to predisturbance land use, as this may not always be feasible or appropriate when considering existing surrounding environment.

D4. What is your feedback on establishing restoration goals in consultation with potentially impacted parties?

Consulting with potentially impacted parties is essential to promote transparency, build trust, and incorporate diverse perspectives, including those of landowners and Indigenous Peoples. However, we recognize that various landowners and Indigenous Peoples may have differing views and priorities regarding restoration goals and defining predisturbance, which could lead to challenges in achieving consensus. Additionally, this process could be administratively challenging for small abandonment projects, where resources and time may be more limited.

Subtopic 3: Section 21 of the OPR – Participation in development of environmental monitoring by Indigenous Peoples

Objectives for Improvement

Commented [CW2]: • Nolan's comment on DP
o "Basically, what we're doing now"
• Sort of... need to confirm what the "explicit requirements for engagement related objectives" will be (per Sub-topic 3: Engaging with Potentially Affected People and Communities), and how involved the Indigenous People will be in activities.

Commented [CW3]: • Could likely remove "and consistent with the predisturbance land use", as the current surrounding environment land conditions may have changed compared to the predisturbance conditions. The current landowner may also request the restored land look different than the predisturbance land use.

Commented [CW4]: • Kingston is already consulting with potentially impacted parties as part of abandonment activities.
o Need to confirm what Indigenous Peoples involvement would look like for establishing restoration goals if the restoration is taking place in an area not directly associated with Indigenous Peoples lands.

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The objective of new requirements will be to help ensure that companies include Indigenous Peoples in the development, implementation, and monitoring of reclamation activities.

Response

D5. What does involvement by Indigenous Peoples in monitoring over the lifecycle of the pipeline look like to you? Please provide any applicable examples or best practices. |

Involvement by Indigenous Peoples could include co-developing monitoring protocols, providing training opportunities, and establishing joint monitoring teams. However, engaging groups consistently throughout the entire project lifecycle is very challenging. These challenges are particularly pronounced for operations, abandonment, and smaller projects, where resource constraints and the reduced scale of activities may limit the feasibility of extensive engagement. A flexible, scalable approach outlined in Guidance documents could help address these challenges by aligning engagement efforts with the size and phase of the project while maintaining the principles of collaboration and respect.

Additionally, there are often many groups we are required to engage with, raising the question of how to select the appropriate monitors. This selection process could be perceived as favoring certain groups or individuals over others, potentially leading to concerns about fairness and equitable distribution of work. Guidance documents on equitable selection would benefit all stakeholders.

D6. In the context of the CER's expectations of regulated companies, how could more independent monitoring and reporting by Indigenous Peoples be effectively and safely achieved? What challenges might be involved? Please provide any applicable examples or best practices. |

Independent monitoring can be achieved through funding agreements, clear access provisions, and establishing communication channels. While this level of involvement may be well-suited for large-scale projects, it could pose significant challenges for the majority of work conducted by Kingston, where the scale and scope of activities may not justify such extensive involvement.

Additionally, there are often many groups we are required to engage with, raising the question of how to select the appropriate monitors. This selection process could be perceived as favoring certain groups or individuals over others, potentially leading to concerns about fairness and equitable distribution of work, in particular, for smaller projects in scope.

D7. Would the proposed processes in Subtopic 1 of the Rights and Interests, Socio-Economic Effects, and Engagement Topic Paper help ensure that Indigenous Peoples are included in the

Commented [CW5]: •Kingston currently doesn't have any CER-regulated assets near Indigenous Peoples lands, just Traditional Territory lands. If there was a mutually beneficial opportunity for Kingston and Indigenous Peoples to work together in the development, implementation, and monitoring of reclamation activities, Kingston would likely consider this.

•Need to confirm if this applies to Traditional Territory lands, or just the lands that directly affect Indigenous Peoples (e.g., reserves, Crown lands)
•Shivi comment: *Do we need to establish a certification process or authorization level so we can drive some level of consistency from Indigenous Peoples in their monitoring approach? Guidelines so that there is transparency in what is in scope and out of scope? This would include a process to collaborate for understanding and conflict resolution if warranted*

Commented [CW6]: •Kingston currently doesn't have any CER-regulated assets near Indigenous Peoples lands, just Traditional Territory lands. If there was a mutually beneficial opportunity for Kingston and Indigenous Peoples to work together in the development, implementation, and monitoring of reclamation activities, Kingston would likely consider this.

•Need to confirm if this applies to Traditional Territory lands, or just the lands that directly affect Indigenous Peoples (e.g., reserves, Crown lands)

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development and implementation of environmental monitoring activities, or are additional requirements or guidance required specific to monitoring?

Any requirements for involving Indigenous Peoples in monitoring activities should be flexible, fit for purpose, and included within Guidance documents rather than the OPR, recognizing that some companies may face challenges in having Indigenous Peoples with appropriate technical capabilities engage in environmental monitoring activities due to varying levels of interest, capacity, or availability. Our monitoring activities tend to be associated with smaller, short duration projects. We typically are not involved with long-term construction projects that require multiple environmental monitors.

Subtopic 4: Environmental Protection Plan required for Construction and Operation and Maintenance Activities

Objectives for Improvement

The objective of new requirements will be to help ensure that companies have an environmental protection plan in place for all work and activities, scalable to the scope of the work, including operations and maintenance activities.

Proposed Options

The CER is considering the following options to meet the objectives outlined above:

- EP Plans will be developed and implemented for:
 - all construction projects; and
 - all operations and maintenance activities;
- EP Plans would only need to be submitted to the CER through a condition requirement or by request; and
- EP Plans would be scalable to the size and scope of the work; for projects that have few or no environment interactions, the EPP could simply state there are no interactions.

Response

D8. What are the costs or benefits of adding a requirement to develop an EP Plan that is scalable to the scope of the work for all construction, operations and maintenance activities?

Benefits include tailored environmental protection measures and enhanced regulatory compliance. A corporate Environmental Protection Plan (EPP) could be considered sufficient for many activities, reducing the need to develop site-specific EPPs for each individual activity, particularly for smaller projects. This approach would limit the administrative and financial burden of developing site specific EPPs while maintaining environmental protection standards.

Commented [CW7]: •Kingston currently develops EP Plans (Environmental Clearances) for environmentally sensitive construction, operations and maintenance activities. Kingston defaults to the ENV (Environmental Management Program) processes, procedures, manuals etc. for any non-environmentally sensitive projects.

•Environmental concerns are communicated during pre-job meetings, tailgate meetings etc.

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Any required changes or enhancements should be addressed through Guidance rather than within the OPR to ensure flexibility and practicality.

D9. Are there alternative means to an EP Plan, that would help ensure that environmental protection is being considered and communicated during construction, operations and maintenance activities?

Alternatives might include expanding the use of existing Environmental Management Program and its processes.

D10. Would the proposed requirements in Subtopics 1 and 3 of the Rights and Interests, SocioEconomic Effects and Engagement Topic Paper help ensure that EP Plans and the Environmental Protection Programs incorporate measures to prevent and address impacts to the Rights and Interests of Indigenous Peoples?

Subtopic 5: Construction to Operations and Sale or Transfer of Assets Transition Plans

Objectives for Improvement

The objective of new requirements will be to help ensure that companies avoid gaps in transferring environmental information between the construction and operations phase of the pipeline and upon the sale or transfer of an asset.

Proposed Option

To meet the objective outlined above, the CER is considering adding a requirement to establish and implement a process for the transfer of relevant information between employees and other persons working with or on behalf of the company, from the design and construction stages to the operations stage, and upon sale or transfer of an asset.

Response

D11. What mechanisms are companies currently using to ensure that all the information gathered, commitments made, and input received during the hearing is transferred to operational personnel for the lifecycle of the project?

The scale of our projects with the CER are small and for any transfer from the design and construction stages to operations we would rely on our management system, handover documentation (Commissioning Handover Form), and training sessions to transfer project-specific information to operational teams.

D12. If a mechanism already exists, what are the benefits and costs of a requirement stating that a construction to operations transition plan is required?

Commented [CW8]: •Kingston currently develops EP Plans (Environmental Clearances) for environmentally sensitive construction, operations and maintenance activities. Kingston defaults to the ENV (Environmental Management Program) processes, procedures, manuals etc. for any non-environmentally sensitive projects.

•Environmental concerns are communicated during pre-job meetings, tailgate meetings etc.

Commented [CW9]: •Operations has access to project files. CAPAs within SharePoint (i.e., Dartene's spreadsheet)? Emails?

•Possibly need a new mechanism.. Nimonik?

Commented [CW10]: •Kingston currently uses a commissioning handover form.

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A construction to operations transition plan could be suitable for larger construction projects and the requirement should be communicated through Guidance. However, for the activities conducted at Kingston this would be inappropriate and would increase cost and administrative burden for our smaller activities.

Subtopic 6: Climate resiliency

Objectives for Improvement

The objective of new requirements will be to help ensure that companies can anticipate, prepare, and respond to the impacts of hazardous events, trends, or disturbances related to climate.

Proposed Option

To meet the objective outlined above, the CER is considering adding a requirement that companies must incorporate climate resiliency into their evaluation of risks and risk mitigation.

Discussion Questions

D13. While events such as floods and forest fires could be considered hazards under OPR paragraph 6.5(1)(c), due to the increasing frequency of climate related events and the potential impact on all Canadians, the CER is considering a requirement that companies assess these climate related risks on a continual basis, and that infrastructure be resilient to these risks. What are the benefits and costs of a requirement related to continual assessment of climate risks and the implementation of a process to manage and mitigate these risks?

The benefits of requiring continual assessment of climate-related risks include fostering proactive measures to ensure infrastructure resilience and addressing the increasing frequency and severity of climate-related events. However, the proposed requirement raises significant concerns, particularly regarding the lack of a clear definition of "climate-related risk" and what companies are specifically expected to mitigate. Without clear parameters, there is a risk of inconsistent interpretation and implementation, which could lead to inefficiencies or redundant processes.

For companies already effectively implementing comprehensive risk management plans, such as addressing extreme weather events (e.g., tornadoes, floods, or wildfires), this requirement may be redundant. Current risk management frameworks already consider and address these hazards, aligning with industry best practices. Adding this requirement could impose unnecessary administrative and operational burdens without delivering additional value in terms of safety or environmental protection.

Commented [CW11]: •Hazard and Risk registry used to assess risks on a regular basis
•Currently no PE&I document used to assess climate-related risks
•Shivi comment: Need criteria for low, medium, high and very high climate risk and then guidelines on how to acceptably lower risk per CER

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To address these concerns, it would be more effective to incorporate climate-related risk considerations into existing risk management processes rather than creating separate requirements. Any new guidance should clearly define what constitutes a "climate-related risk" and specify the objectives for mitigation to ensure alignment with established risk management practices and avoid duplication of efforts. This approach would allow for consistency and practicality while maintaining a focus on resilience and preparedness.

D14. Are there other options that may achieve the objective in a more effective manner? If so, please explain.

Ensuring inclusion of climate related risks into risk management system process. This could be addressed through ongoing CER compliance assessments.