



Kahkewistahaw First Nation

## Onshore Pipeline Regulations Review – Phase II Engagement Report

Kahkewistahaw Held a two-day OPR Engagement in Saskatoon which included the Lands Department, Lands Committee and a select group of elders to consult on the Onshore Pipeline Regulation papers. We had addressed discussion papers A, D, H, I, and M, as these were expected to be the most relevant to our knowledge and interests.

### Engagement Group Composition:

The engagement group was comprised of a member of Council who holds the Lands portfolio, as well as the Kahkewistahaw Lands Department Staff, Committee, and a group of elders that were recommended due to their outspokenness and willingness to engage with new ideas. Our group had no expert knowledge regarding pipeline construction, safety measures, existing regulations – except for one member who did some welding work in the 1980s and was able to provide some knowledge of some of the safety and monitoring practices from his time working on pipelines.

### OPR Engagement Methodology:

The engagement was held over two days at the Wanuskewin Heritage Park in Saskatoon. We believed the location was best suited to put us in the ideal mindset to perform the consultation event.

The engagement group received an orientation about the purpose and mission of the Canada Energy Regulator, as well as the Onshore Pipeline Regulations. The group then went through each of the selected papers, in full, reading briefings and discussing each question. Participants tried to answer the questions to the best of their ability, however questions may have been skipped in cases where knowledge was lacking (e.g. regulatory knowledge, such as references to external acts, policies and manuals), or questions which were intended for a different target audience (such as proponents or industry specialists). In cases where a question referred to a lengthy regulatory document or other supplemental information that wasn't provided, we tended to skip these attachments, as such detailed reviews weren't within the scope of the agenda.

In some cases, a question raised feedback, or other questions or concerns which were not specifically asked for in the discussion papers. These may indicate gaps in the content of the discussion papers, however I am including them here anyways.

## Contents

Engagement Group Composition: .....	1
OPR Engagement Methodology: .....	1
Contents .....	2
OPR Discussion Paper A – Damage Prevention.....	3
OPR Discussion Paper D – Environmental Protection.....	4
OPR Discussion Paper H – Reporting Harm.....	7
OPR Discussion Paper I – Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement .....	10
OPR Discussion Paper M – Rights and Interests of Indigenous Peoples .....	12
Closing Comments: .....	14

## OPR Discussion Paper A – Damage Prevention

### *Review of Materials:*

Our group found that the materials were not as relevant to us after all, as the information related to minimum requirements is best approached from the perspective of those with technical knowledge or statistical information. Still the group was able to provide some feedback.

### *Feedback provided:*

The engagement group provided the following feedback:

- Are the pipelines inspected periodically enough?
- We have observed some natural gas pipelines on our First Nation, which are located in areas that might be prone to shifting due to weather conditions (groundwater freeze and unfreeze cycles) that are more concerning to us.
  - o For example there is a winter spring near the hills in our community that frequently flows water into the valley . One member of the group had expressed that the ground conditions around that spring would pose a greater threat to a nearby natural gas pipeline because the participant believes that the greater differences in nearby ground conditions would cause a lot more ground movement.
  - o Are variations in ground conditions a factor when it comes to pipeline breaks, and if so, are they accounted for properly when it comes to inspection intervals or pipeline design?
- Members of the group wanted to make sure that pipelines were protected by scaffolding, sheathing, or otherwise another outer pipe if ground conditions warranted the extra protection.
- Members of the group had wanted to make sure that the definitions of ground disturbance was clearly explained in the regulatory materials.

## OPR Discussion Paper D – Environmental Protection

### *Review of Materials*

This paper stimulated lively discussion. The group had shown engagement on materials related to monitoring and the importance of environmental protection.

### *Feedback Provided*

#### Duty to Report and Manage Contamination

- In response to question D1 (feedback on proposed requirements). The group had provided feedback that:
  - Air pollution should be accounted for, where relevant
  - There is prompt response with appropriate penalties for delay
  - And that such penalties be clearly defined in the regulatory materials

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

- In response to question D2. The group had provided feedback that:
  - Appropriate information gathering was necessary to bring the site as close as possible to a “pre-disturbance state”. Including:
    - An inventory of species (plant and animal) and habitats in the area.
    - Pictures with appropriate geo-tagging and other information that can be used to re-create pre-disturbance conditions.
    - Soil quality assessments.
    - Restoration is an inherently flawed process. Some native plant species (for example those used for medicines) cannot simply be moved. Therefore any additional help with improving the local environment should be considered.
  - Ensure that “appropriate indigenous people” are performing a site inspection, with the following qualifications:
    - Vetted by indigenous groups and have:
    - Knowledge of native plants and other species.
    - Cultural knowledge to identify culturally significant areas, where relevant.
    - Local historical knowledge, where relevant.
- In response to D3 (pre-disturbance land use), the group felt that the goals were adequate but provided the following feedback:
  - Look for ways to improve restoration.
  - Restoration methods should be explained in great detail by the proponent.
  - Regulations need to make sure that the proponent follows their plans.

- In response to D4 (establishing shared restoration goals), the group provided this feedback:
  - The goals and mitigation strategies should be shared with “interested parties” as soon as feasible.
    - Interested parties include any monitoring/oversight groups such as indigenous monitoring groups and impacted First Nations.
  - Proponent, while doing their own research on soil quality, should identify any potential third-party sources of contamination that may affect the project area and which may or may not interfere with restoration goals.

#### Section 21 of the OPR – Participation in the development of environmental monitoring by Indigenous Peoples

- In response to D5 (Effective and safe involvement of Indigenous Peoples in monitoring), the group provided the following feedback:
  - It’s important to get the knowledge as early as possible.
  - If any changes to the intended path of the pipeline needs to be made, early involvement prevents sunk costs (e.g. site preparation costs) or other delays from becoming further problems in case the site area needs to be moved.
- In response to D6 (more independent indigenous monitoring, challenges and best practices), the group has provided the following feedback:
  - Involvement during the full lifecycle. Including access to:
    - Regulatory checklists
    - Mitigation plans
    - Other relevant documentation

#### Environmental Protection Plan required for Construction and Operation and Maintenance Activities

- In response to D8 (Costs and benefits to developing a scalable EP Plan), the group provided this feedback:
  - Cutting costs is not as important as ensuring that the work is done diligently.
- In response to D9 (Possible alternatives to an EP Plan), the group provided the following response:
  - Specific dates and activities implemented in monitoring plans.
    - Improves compliance. Gives monitoring parties means to enforce.
  - Ensure results (e.g. progress reports) are shared with monitoring groups.

### Construction to Operations and Sale or Transfer of Assets Transition Plans

- In response to D11 (Existing mechanisms used for transferring groundwork information to operations personnel). The group had felt that they didn't have enough information to answer this question.
- In response to D12 (Costs and Benefits of requirement stating that a transition plan is required), the group had responded as such:
  - o The plan needs to be done. Environmental protection is of utmost importance.
  - o It could save the cost of fixing problems later in the lifecycle.
    - "Measure twice, cut once".

### Climate Resiliency

- In response to D13 (assessment of climate-related events as it affects the project), the group had the following feedback:
  - o A member of the group had brought up a mudslide in BC, that had washed out a busy highway. Protections could have been put in place to mitigate the effects of potential mudslides caused by climate events, and had made the conclusion that anticipating problems is better than doing a post-disaster cleanup.
- In response to D14 (other options to anticipate hazardous events), the group had provided the following feedback:
  - o Current sources of information exist, such as the CEAA Impact Registry.
  - o What other relevant sources of information should be used as best-practices to predict potential hazards?
  - o Are regulated companies using this information in their own plans?
  - o A best-practice guide may help monitoring groups to identify potential hazards and ensure that they are planned for.
- In response to D15 and D16 (regarding incorporating elements of the ISO 14001 standard), the group had felt that the information provided was insufficient for them to make an analysis in the time allotted to them.

## OPR Discussion Paper H – Reporting Harm

### *Review of Materials*

There were a number of questions in this paper that referred to existing practices, which our group did not have a sufficient background on. One member of our group had some background on safety practices, having worked at a pipeline site for a few months, but there were still a number of gaps in the knowledge. As such we have provided feedback to the best of our ability.

### *Feedback Provided:*

#### Definition of an Incident – General

- In response to H1 (challenges and limitations applying the OPR definition of incident), the group had the following feedback:
  - o There was a question about what constitutes a significant event.
  - o Direction from our group had indicated that even minor events should be closely scrutinized if they have the potential to reveal faults that may become significant.
  - o LVP and HVP hydrocarbons were identified as hazardous gases that could be released as a result of an incident. The group wanted to make sure that there were no other air contaminants that were missed which could be environmentally hazardous, or hazardous to the health and safety of people near the incident.

#### Environmental Effects

- In response to H4 (regarding best practices for reporting), the group provided this feedback:
  - o That potential incidents and warning signs be communicated to all interested parties (e.g. proponent, monitoring bodies, regulatory bodies)
- In response to H5 (incidents, not involving chemical releases, that may have adverse environmental effects, for which the CER should be notified), the group provided the following feedback:
  - o Unintended habitat or plant destruction during the construction, as well as O&M phase should be reported.
    - For example, an area may have provided sufficient sheltering for wildlife against predator species, and nearby human activity may cause one species to stop using that area.
    - Effects that can cause a chain of other effects (e.g. change or utilization of the area by other affected species) should be accounted for.

### Definition of Incident – Loss of Operational View or Control of a Pipeline

- In response to H7 (definition of “loss of operational view or operation control of a pipeline”) the engagement group wanted to define this phrase as follows:
  - o Any unintended behavior of a pipeline, or any reduction in the ability to bring the pipeline into its intended state.
- In response to H8 (reporting a deviation in pipeline behavior), the group had provided the following feedback:
  - o Ensure deviation of monitoring parameters are reported to interested parties.

### Definition of Incident – Release of Substance Thresholds

- In response to H10 (Criteria of greatest importance when assessing risk), the group had the following feedback:
  - o Ensure that the definition of “proximity” is enough to address any relevant factors (e.g. safety, affected area, etc) of an incident.
  - o When assessments are made regarding impacts or potential impacts, that permanence of effect is factored in.

### Reporting – High-potential Near Misses

- Questions H11 to H13, all related to “High-potential Near Misses” were discussed at once, and the engagement group provided the following feedback:
  - o Why are we differentiating between “regular” near misses and “high-potential” near misses?
  - o The group wanted to make sure that corners were not cut in regards to procedures and monitoring, that would result in an increased likelihood of incidents occurring.

### Reporting – Information Sharing

- Question H14 and H15 (describing information sharing that would support improvement to reporting and addressing near misses), the group had provided the following feedback:
  - o Regulated companies and other interested parties (e.g. monitors) should have access to information and analysis of these incidents by means such as:
    - Incident Registries
    - Bulletins
    - Newsletters

### Reporting – Sites of Historic and Cultural Significance

- Question H16 (best practices in historic or cultural site hazard identification), our group had the following to say:
  - o One member wanted to know why we are even making this information confidential.
    - To add some context to this, members of the group had some concerns about important historical information being lost, or being unavailable at a critical time such as when doing site assessments.
  - o The group wanted to ensure that companies are not using confidentiality to obscure or hide incidents that others should be aware of.

## OPR Discussion Paper I – Rights and Interests of Indigenous Peoples, Socio-economic Effects, and Engagement

### *Review of Materials*

The paper seemed to reference existing practices regarding the subject matter. Due to our unfamiliarity with these practices and processes, the group had to make a number of assumptions on what these practices and processes might be.

### *Feedback Provided:*

#### Preventing and Addressing Impacts to the Rights and Interests of Indigenous People

- In response to I1 (Feedback on CER’s objectives for improvement), the group provided the following feedback:
  - o Confidential information is mentioned. What kind of information is considered confidential? Why is it confidential?
    - There was general distrust towards the making of information confidential. This includes indigenous knowledge.
- In response to I2 (Proposed options to meet regulatory objectives), the group had suggested that the protection program include:
  - o Management system that integrates indigenous knowledge, laws, practices, etc.
  - o Cultural competency training, which might include sit downs with elders and other knowledge keepers.
- In response to I3 (implementation and compliance verification feedback), the group provided the following feedback:
  - o Ensure that regulated companies know and can practice the protocols.
- In response to I4 (potential challenges to the proposals)
  - o Plans should be specific to nations and cultures, as each First Nation possesses both shared, and unique cultures. But most importantly its own unique values and approaches to various aspects related to matters touched upon by the OPR.
  - o Continuity is important. The group had suggested that more integration (e.g. more than one person from the proponent party) participate in cultural orientation processes. This is to ensure a greater retention of knowledge, and closer ties with First Nations groups, which allows the building and continuation of beneficial relations.
  - o The group had indicated that consequences for (general) non-compliance should be specific and defined early

### Managing Socio Economic Effects

- In response to I7 (Feedback on CER’s objectives for improvement), the engagement group has provided the following feedback:
  - o The objectives are adequate, but the resulting plan needs to be measurable with criteria that companies can be held to.
- In response to I8 (Proposed options to meet regulatory objectives), the group has suggested that both options be implemented separately.
- In response to I9 (Measures to verify compliance), the group has provided the following feedback:
  - o It’s good for things to be measurable. Checklists are helpful.
  - o “We would like to see what’s in these agreements”
    - This might suggest lack of familiarity with existing or proposed measures and things written into the agreements.
  - o Interested parties should be able to see the reports.
- In response to I10 (Potential challenges associated with the proposals), the group had indicated its unfamiliarity with the compliance and enforcement mechanisms and had asked what they were.
- In response to I11 (Guidance to enhance understanding of CER expectations related to managing Socio-economic effects), the group had provided this feedback:
  - o Sharing of agreements to relevant parties is helpful. Agreements should be easy to understand.

### Engaging with Potentially Affected People and Communities

- In response to I12 (objectives for improvement), I13 (proposed options), and I14 (implementation), the group had provided the following feedback:
  - o Consultation checklists and performance report to be provided to interested parties. The interested parties have to ensure that the regulated company is consulting properly, with due-diligence.

## OPR Discussion Paper M – Rights and Interests of Indigenous Peoples

### *Review of Materials*

The engagement group was not prepared for all the potential supplemental materials regarding this matter, and due to time constraints, the group was not able to finish addressing all of the matters in this paper. The group had suggested to have a second session to discuss this matter specifically, with supplemental materials prepared. The feedback on this paper is thus incomplete.

### *Feedback Provided:*

#### Restructuring the Filing Manual

- In response to M1 (proposed split of amended ESA section, and a new “Rights and Interests of Indigenous Peoples” section), the group had provided the following feedback:
  - o Why not do both?
    - Create a “Rights and Interests...” section in the Regulations
    - In the other parts of the regulations, refer to specific parts of the “Rights and Interests...” of the Regulation.
- In response to M2 (topics to highlight in the ESA and “Rights and Interests...”), the group had provided the following feedback:
  - o What are the clear definitions of rights and interests? According to the treaties, UNDRIP, etc. – Clearly define them.
  - o Turn these into directives.
- In response to M3 (Other restructuring of “Rights and Interests...”)
  - o The group could not adequately respond to this, as they did not have a clear vision of what this section contained.

#### Rights and Interests of Indigenous Peoples

- In response to M4 (separating relevant Indigenous VCs from biophysical and socio-economics VCs, and its effects on clarity of understanding), the group had provided the following feedback.
  - o The group believed that this separation would improve clarity
- In response to M5 (how the above mentioned split would impact assessment of the VCs), the group had provided the following feedback:
  - o We believe it would clarify the distinctions:
    - Jobs provide a net socio-economic benefit, however do not always last a long time
    - What are the lasting socio-economic impacts after the proponent leaves?

- Our ways were based on establishing lasting relationships of respect and understanding.
- In response to M6 (VCs to be included in “Rights and interests...” section, as well as VCs to stay in the ESA section), the group had provided the following feedback:
  - What is currently included?
    - We did not have enough time to review supplemental materials.
- In response to M7 (Best way to document, monitor, manage, and report on protection/enhancement measures for VCs focused on “Rights and Interests...”), the group had provided the following feedback:
  - Continuous monitoring w/ defined intervals
  - Continuous updates to interested parties
- In response to M8 (How to ensure that relevant information and commitments are documented, maintained and implemented) the group had the following comments.
  - Document and transcribe verbal communications. Such as face-to-face conversations and interviews.
  - Verification is important when commitments are made, or follow up to those commitments is required.

#### Integrating the applicant’s assessment and Indigenous-led assessments and studies

- In response to M9 (Opportunities and challenges of Indigenous-led assessments), the group had provided the following feedback.
  - First Nations have variable levels of capacity to address consultation issues,
  - Sometimes important factors in performing the assessments can be overlooked initially because a First Nation may not have done the assessments before
  - The use of resources, suggested best practices, etc would assist First Nation organizations – to ensure that a factor that’s initially overlooked does not become an issue later on.
    - Perhaps a resource center, funded as a quasi-independent entity, perhaps attached to the IMARs process – or to provide capacity to an existing resource center to assist FN organizations with navigating the consultation process.

