

June 30, 2022

Sent via email: opr-rpt@cer-rec.gc.ca

Onshore Pipeline Regulations Review
Canada Energy Regulator
210 – 517 10th Ave SW
Calgary, Alberta
T2R 0A8

RE: Onshore Pipeline Regulations Review (January 12, 2022)

Trans-Northern Pipelines Inc. (TNPI) is hereby providing input into the Onshore Pipeline Regulations (OPR) Review. TNPI is supportive of a regulation that upholds the highest level of safety, security and environmental protection, and that addresses inclusive participation and oversight in Canada.

These regulations directly impact the safe operation of federally regulated pipelines, and it's important that industry operators have an opportunity to provide their insights and experiences to the discussion. All of the topics raised within the OPR Review are extremely important to TNPI. And while some arguments may be made as to whether inclusion in the OPR is the proper way to address these topics, it does not negate the importance of addressing those areas in some fashion.

Section 1. OPR Lessons Learned

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

Performance-based approaches to the regulations enable Operators to focus their resources on areas that pose a threat to the safety of the pipeline. This approach serves the objective of safety (both of environment and people) as well as competitiveness. It also enables and requires operators to determine the threats to their individual pipeline systems and focus their efforts to mitigation and prevention.

The OPR currently leverages the work completed through organizations such as Canadian Standards Association (CSA) an organization that maintains technical workgroups to evaluate the evolution and need of the industry. Avoiding duplication of requirements in the OPR by referencing the technical standard and documents ensures the OPR remains up-to-date and relevant.

With regards to improvements, there are two main areas TNPI would like to comment on.

Firstly, regulatory clarity is important to ensure compliance is achieved. Where there is duplication or overlap with existing regulations or standards, those should be removed from the

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OPR; as an example, OPR in service Welding S.38 and references within CSAZ662 Clause 7.17.

Secondly, the creation of a Guidance Document or Memorandum of Understanding between CER and other Provincial or Federal agencies to assist companies navigating the different requirements and expectations from different regulators (overlapping jurisdictions) Example: contaminated sites.

Section 2. Reconciliation with Indigenous Peoples

Working Differently

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

Reconciliation with Indigenous Peoples is extremely important for the Government of Canada and is referenced in the CER Act. The CER has established and implemented the Indigenous Advisory Committee and has involved indigenous monitors routinely in field activities. However, we feel there are mechanisms better suited than the OPR to ensure a consistent, focused, and cohesive approach for Canada to advance Reconciliation.

Today, the OPR outlines expectations for companies to engage with all stakeholders, as part of the management system framework, throughout the full lifecycle of the pipeline. We respectfully submit that the OPR is and should continue to be focused on the safety and security of people and the environment through the lifecycle of a pipeline, while Reconciliation with Indigenous Peoples is best guided with a consistent approach under other mechanisms such as the UNDRIP Act to ensure national advancement of Reconciliation rather than a potentially disconnected approach limited to the pipeline industry.

There is a risk to regulating the interactions between Indigenous Communities and industry that can result in the slowing down the development and construction of projects from both the industry and Indigenous perspective.

Heritage Resources

- 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?*

Canada's heritage resources should be protected. The development of a guidance document in consultation with all stakeholders to support the preservation and protection of sites of significance and traditional lands while supporting the maintenance and future development of infrastructure is required.

It is our view that the guidance should be under the Heritage Resources Act to ensure consistency among all industries, not just the pipeline industry.

Traditional Land and Resource Use, and Sites of Significance for Indigenous Peoples

- 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?*

It is our view that construction of new pipeline systems should be contemplated separately from operations and maintenance activities of existing pipeline infrastructure as it relates to this area. The OPR's existing engagement requirements are, we believe, sufficient to address the operation and maintenance activities required by Operators to continue to safely operate their

pipelines. Regulations outside of the OPR exist to achieve the goal of protecting traditional land and resource use, and sites of significance for Indigenous Peoples.

Indigenous Knowledge

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

We believe that Indigenous “knowledge” is not something that can be or should be put into regulation. Existing OPR programs and guidance notes support engagement in the lifecycle of the pipeline.

Involvement of Indigenous Peoples in Pipeline Oversight

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

Careful consideration must be taken in regard to Indigenous oversight for operations and maintenance activities. The CER is positioned as the expert in current pipeline operations and oversight, while Indigenous Peoples and communities are not. In addition, the inherent overlap of Indigenous communities can lead to pipeline operators attempting to treat multiple communities with differing views fairly and equally in pipeline operations’ oversight, placing additional burden on the economic competitiveness of pipelines and creating unintentional tensions within Indigenous communities, and within their working relationships with operators.

In summary there are other regulations in place that address reconciliation with Indigenous Peoples. The regulatory regime for pipelines in Canada requires a simplification for companies to remain competitive. By adding additional layers where there are existing regulations to serve the purpose, we are complicating the process and the potential to introduce more delays in projects and construction activities that already have very long lead times.

TNPI encourages more discussion in this area and looks forward to the input from Indigenous Peoples to ensure a collaborative approach to regulation in the right place and for the right reason. Neither pipeline companies nor Indigenous communities should be adversely affected by the lifecycle of a pipeline that fulfills a current need to all Canadians.

Section 3. Engagement and Inclusive Participation

Planning for Pipelines and Related Company Activities

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

In the context of specific engagement with individuals impacted by pipeline operations, TNPI believes that the existing OPR MS 6.5 (1) m. communication and section 55 requirements address the needs by requiring companies to communicate with landowners and impacted stakeholders and exchanging information through the lifecycle of the pipeline.

Proactive Communication and Engagement

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

In addition to the remarks provided in #7 an improvement would be to drive consistency and clarity of the requirements for communication and engagement across all programs (Emergency Management and Damage Prevention). An example is the Public Awareness Program is contained outside the OPR. Communication and engagement should be a shared responsibility between Industry and Government.

Trust and Confidence

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

Increased trust can be gained through clear and concise language for the regulation and the regulatory framework under which Operators maintain their pipelines. Clarification of the intent for existing communication and engagement requirements would be helpful to mitigate the opportunity for misinterpretation or unilateral interpretation of regulations.

As it relates to public confidence in the CER, its OPR regulations, and the Canadian pipeline industry, it is our view that to achieve transparency, context and summarized information is often more valuable than simply having all information available to the public via the website, for example. Much of that available information requires significant context and a specific understanding of the pipeline industry and pipeline operations to avoid misinterpretation or misunderstanding of its content and meaning. It is TNPI's view that transparency can be improved by providing summarized information with context to ensure it is accessible and understandable by all stakeholders and the public.

Gender-based Analysis Plus (GBA Plus)

10. *Gender and other intersecting identity factors may influence how people experience policies and initiatives. What should the CER consider with respect to:*
 - a. *those people implementing the OPR; or*
 - b. *those people who are impacted by the operational activities addressed in the OPR?*

Similar to comments made under the section of Reconciliation, TNPI is of the view that there are existing regulations in place and being introduced by the Federal government that require

companies to increase diversity and approaches that support inclusive environments within their organizations and should be leveraged to ensure consistent and meaningful application. Therefore, introduction of this within the OPR would be redundant and could dilute the consistent application of federal initiatives in this area.

Section 4 Global Competitiveness

Predictable and Timely Regulatory Oversight

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

When standards, requirements and regulations already exist outside the OPR, it is important to avoid duplication or even contradictory language within the OPR. Avoiding duplication of requirements in the OPR by referencing the latest version of technical standards ensures the OPR remains up-to-date and relevant.

For any regulatory changes, a phase-in period or grandfathering should continue to be provided with implementation expectations; for example, if changes are retroactive.

Provide more streamlined application requirements by providing details by the type of application required and specifics on the content and format, consolidate sections of the Filing Manual and improve the administration of the application submission requirements to be fully digital. Setting clear expectations eliminates guesswork and potentially rework when preparing an application.

Innovation and Flexibility

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

Introducing innovation into Engineering and Integrity practices requires investment in tools and people resources, and in some cases, can take years before tangible results are gained from these initiatives. In our view, this is not something that would be contemplated as being part of the OPR, but rather, as a Regulator initiative. For example, some operators have invested in developing digital twins of their operating assets or utilizing data science / machine learning to improve their assessments. Introducing some incentives to support such initiatives would encourage operating companies to dedicate budget and people resources for such initiatives.

Data and Digital Innovation

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

Currently the OPR requests the development of goals, objectives, and targets for their system as well as requiring a continual improvement process is effective because the metrics require an organization to show trends and be accountable for improving their own performance.

Metrics comparison within an industry can be misleading, misinterpreted, and misrepresented without the sufficient background, history, and knowledge of the operation. Additionally, determining a baseline across the many operators regulated under the OPR to be able to compare operators of one km in length, to those that stretch over multiple provinces may further the misunderstanding of the metrics for a single organization.

CER performance measures such as the Pipeline Performance Measures are undergoing enhancements and should be continue. Any additional requirements should all be based on industry standard metrics and not creating new industry metrics within the OPR. Standards widely adopted by industry CSA Z260:19 is an option.

Data and Digital Innovation

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?

Please refer to comments provided under OPR transparency # 9 and performance metrics #13.

Change in Pipeline Use and Status

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

Provide more streamlined application requirements by providing details by the type of application required and be specific on the content and format, consolidate sections of the filing manual and improve the administration of the application submission requirements to be fully digital. Include clear direction around the type of environmental and stakeholder information that would be required for each application. For example, requirement for a standard Phase I environmental assessment

Section 5 Safety and Environmental Protection

Management Systems

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?*

The management system elements, requirements are clear. There are, however, sections of the OPR that thru the regulatory update process appear to be overlapping; for example Section 15 Quality Assurance Program, S. 40 and S55 linking to Management System requirements 6.5. 1(w) requirement of a quality assurance program

Human and Organizational Factors

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?*

The OPR already requires that existing safety management programs (section 47) must include processes for identification of hazards and for developing and implementing practices to control their associated risk (section 6.5 (1) (c – f)). CSA Annex A also provides guidance on human and organizational factors.

Guidance documents can be used to supplement the existing requirements.

Programs and Plans for Safety

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

The OPR can improve by removing specific requirement of manuals and allow for flexibility in the format of a “manual.” The requirement should be focused on ensuring documentation is in place, as required by the Safety Management Program, and is easily accessible. The move to digital access to the right documents required to safely execute on the work provides advantages for ensuring accurate, updated information as opposed to managing paper copies of manuals.

Respect and Workplace Safety

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

All federally regulated companies are required to have Violence and Harassment in the Workplace program. Assurance is thru oversight of regulated companies.

Contractor Management

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

There is no need to be more explicit about the requirements; in our view, they are clear under the Safety Management Program and the Management System requirements of the OPR.

Process Safety

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

The requirements laid out within the current OPR require the company to "establish and implement a process for identifying and analyzing all hazards and potential hazards." This is clear, from a process safety perspective, that all hazards include potential impacts to environment, community, and personnel safety.

Process safety-related hazards and risks are already included in the section 47 Safety Management Program using the MS process requirements described in OPR sections 6.5 (1) (c) through (f).

Programs and Plans for Environmental Protection

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

The existing regulatory requirements are sufficient to drive improvement of environmental performance in regulated companies.

Programs and Plans for Environmental Protection

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

Environmental Protection "Plans" are temporary in support of specific activities, such as construction, and O&M and would be triggered by application processes or "Program" requirements. A "Program" is required under Section 48.

Any improvements should be in the form of guidance notes.

Management of Contaminated Sites

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

The improvements and clarity were provided in the October 2020 Remediation Process Guide to better assure compliance and environmental protection over contaminated sites. The guide, however, did introduce additional filing requirements for third-party contamination which causes additional oversight by the regulator and removes resources from managing controllable events.

The requirement for notice of contamination to be posted on a public website can create unnecessary impacts to property owners and risks owner privacy. Further discussion or review of this approach should be contemplated by the CER, and should not be added to the OPR.

CER already requires that company's address contaminated sites through the management system and section 55 Environmental Protection Program requirements.

Emergency Management Program

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?

This area does not require any action at this time.

Quality Assurance for Pipeline Materials

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

Existing CSA Z662 standard and the management system requirements for a Quality Assurance Program should be referenced and supported by the use of Technical Papers and guidance documents as required. Please also refer to comments in question #16.

Strength of Steel Pipe Relative to Welds

27. How can the OPR incorporate the key issues identified in the Safety Advisory regarding the strength of steel and the relative strength of the weld area?

The use of Technical Papers and guidance can be used to supplement the current approach to the regulation so that Operators can determine the level of exposure given the knowledge of the potential failure mechanism.

Section 6 Implementation Objectives

Provide Compliance Promotion Function

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

The promotion of compliance requires more than documented expectations; it requires the active and proactive engagement of both the regulator and the regulated companies, and open and transparent dialogue with the regulator without fear of reprisal. Clarity of expectations is also key in ensuring operators are well-positioned to achieve compliance. Industry inspections should be leveraged to provide education and promotion of compliance.

Support the Regulations with Technical Guidance

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

TNPI would appreciate the opportunity to continue to be engaged in the full process of the review – including the development of technical guidance. Examples could include engagement sessions focused on the area, technical sessions, and training sessions with examples.

In closing, TNPI appreciates the opportunity to provide input as an industry operator into the OPR Review and is looking forward to participating in the next phases of review and implementation of any changes.

We believe the regulations are in place to protect the people, the environment, and the industry that plays a vital role in the everyday lives of Canadians. It is important to ensure that all regulations are governed by the Regulator with the best subject-matter expertise and resources to ensure consistent and meaningful application and compliance by all stakeholders. So while some areas we have identified as best-positioned outside of the OPR, we do not believe they are outside of our responsibility, as a responsible Canadian pipeline operator, to comply with.

Should you have any questions please do not hesitate to contact the undersigned at

[REDACTED]

Sincerely,

[REDACTED]

[REDACTED]

Manager Regulatory & External Affairs