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Bonaparte First Nation comments on the OPR/CER Discussion Paper

Submitted By

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Section 1. OPR – Lessons Learned

The OPR requires regulated companies to establish, implement and maintain management systems and protection programs in order to anticipate, prevent, manage and mitigate conditions that may adversely affect the safety and security of the company's pipelines, employees, the public, as well as property and the environment. A management system is a systematic approach designed to effectively manage and reduce risk.

The OPR requires that a management system:

- be clear;

- have good documentation and be understood by all employees, at all levels;

- apply to all areas of work and include every regulated activity conducted by the company; and

- be proactive, able to anticipate issues and adjust course.

With this performance-based approach, the goal is for companies to strive to do better than a minimum requirement. A carefully designed and well-implemented management system supports a strong culture of safety, and is fundamental to keeping people safe and protecting the environment.

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

The OPR appear to use a generic approach across Canada that doesn't always the meet the expected standards of Indigenous Nations in British Columbia. Given the severity of wildfires, floods and climate change in the West, we believe that a generic approach for pipeline integrity should be discontinued and regulations be custom performed to various environmental conditions. Often, particular companies are aware that work need to be done at regular intervals. However, the work plan is not clear and not disclosed in any timely manner and companies still use "Emergency measures" as a means to push work plans forward without adequate engagement and due consideration to environmental factors and ecology impacts especially impacts to fish and fish habitat.

Section 2. Reconciliation with Indigenous Peoples

The Preamble of the CER Act states that the Government of Canada is committed to achieving Reconciliation with First Nations, the Métis and the Inuit through renewed nation-to-nation, government-to-government and Inuit-Crown relationships based on recognition of rights, respect, cooperation, and partnership. The CER is committed to advancing Reconciliation with Indigenous peoples in a manner that is consistent with the United Nations Declaration on the Rights of Indigenous Peoples. The CER, working alongside its Indigenous Advisory Committee, is in the early stages of working through how to implement Canada's United Nations Declaration on the Rights of Indigenous Peoples Act. The CER's development of regulatory tools responsive to issues raised during engagement with Indigenous peoples represents a part of this work.

Reconciliation is a strategic priority for the CER with a focus on enhancing involvement of Indigenous peoples in decisions and oversight; enhancing relationships; building CER cultural competency and humility; and driving meaningful change in the CER's requirements and expectations of regulated industry. The CER is also committed to advancing the Truth and Reconciliation Commission of Canada's Calls to Action. Calls to Action 43, 44 and 92 call the government and business sector of Canada to adopt the United Nations Declaration on the Rights of Indigenous Peoples as a reconciliation framework and to

apply its principles, norms, and standards to policy and core operational activities involving Indigenous peoples and their lands and resources.

Working Differently

The CER is working toward enhancing the involvement of Indigenous peoples in how it implements its mandate recognizing their unique cultures, knowledge and histories. For example, the CER has worked with Indigenous Advisory and Monitoring Committees (IAMCs) since 2017 to develop an Indigenous Monitoring Program, and is in the process of further developing the involvement of Indigenous peoples in pipeline oversight. This provides a more holistic approach to regulation, enhancing awareness and understanding of the diversity of Indigenous peoples, while at the same time keeping energy infrastructure safe and protecting people and the environment.

The CER has an Indigenous Advisory Committee which advises the CER on how to build a new relationship with Indigenous peoples and how best to enhance the involvement of Indigenous peoples and organizations with respect to CER-regulated infrastructure. The Indigenous Advisory Committee facilitates the integration of Indigenous perspectives, knowledge, teachings, values, use of air, land and water, oral traditions, and world views to enhance the involvement of Indigenous peoples in regulation of CER-regulated energy infrastructure. The Indigenous Advisory Committee has highlighted the importance of early and inclusive involvement of Indigenous peoples as the work to transform the OPR commences, and in Canada's energy transition more broadly.

The current OPR is focused on company management systems and safety, security and environmental protection outcomes. The CER aims to make meaningful change in the CER's requirements and expectations of regulated industry to advance Reconciliation. The CER expects regulated companies to work differently to support Reconciliation with Indigenous peoples.

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

The OPR must stop working as a "SILO" and use a more integrated approach with all regulatory and indigenous stakeholders. For example, CER is still working from an old 2013 fishery MOU even though the federal fishery act has changed since then. In BC, Oil and Gas Companies are using a Canada wide generic approach to pipeline upgrades, maintenance and repairs which don't meet the needs of BC given the impacts from natural disasters and climate change in the last 5 years. Companies aren't disclosing the full scope of work to the bands or to the BCOGC. This is especially true of Section 11 referrals. Companies will seek permits from the BCOGC in a tight time frame and not inform DFO, and when tasked with following due diligence, the companies will then call their work plans an emergency to public safety. DFO likewise are not required to consult with Indigenous bodies under a letter of review and so concerns expressed by Indigenous bodies don't get addressed. Management plans would, or should state when maintenance is required and there should be no referrals coming from the Companies to the BCOGC as an emergency unless an actual emergency exist.

Likewise, we have companies with the TMX Expansion pipeline that has failed to have any meaningful relationship with Indigenous groups. For bands without TMX agreements, those referrals come through as generic technical letters from the BCOGC and the proponent, and there is absolutely no Indigenous oversight by the bands without agreements because the bands can't afford to cover the cost of those referrals. The company has no desire to build any type of indigenous relationships with some of the 129

impacted communities and I would personally like to have further discussion with the CER on this area of concern and TMX's disregard for Indigenous rights and reconciliation.

The OPR must do more to not only regulate onshore pipelines but broaden its regulations to include the expectations of engagement of Oil and Gas companies when engaging with Indigenous groups. Reconciliation is about acknowledging past wrongs and in keeping with the principles and expectations of UNDRIP and DRIPA the OPR must have stronger regulations to include compensation and economic benefits for indigenous people impacted by onshore pipelines. If this isn't regulated then Reconciliation isn't obtainable.

Heritage Resources

The CER's Filing Manual sets out information requirements and guidance for applicants regarding the potential impacts a project or regulated activity may have on heritage resources, as well as the CER's expectations for engagement with Indigenous peoples regarding any potential impacts. Heritage resources include cultural materials (such as archaeological sites and materials); cultural sites (such as burial sites, ceremonial sites, cultural landscapes); and historical places and structures. The company is expected to identify mitigation approaches and must develop heritage resource discovery contingency plans for the possible discovery of heritage resources once construction is underway. Companies must follow applicable federal, provincial or territorial requirements when their activities can impact heritage resources.

Indigenous peoples have expressed concern about potential impacts to heritage resources when companies construct pipelines, or conduct operations and maintenance activities on the pipeline right-of-way. The CER has received feedback from Indigenous peoples that the CER should improve its oversight of actions taken by companies to identify and protect potential heritage resources of Indigenous peoples during construction, and during operations and maintenance activities.

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?

Cultural heritage can't be protected. BC Arch branch doesn't even bother to record all sites or activities and the RADD is not updated on a regular basis. If BC and Canada, CER and the BCOGC is going to push through new pipelines and expand existing lines then accommodation and compensation for those impacts must be regulated and outlines in the OPR.

The BC Crown looks at cultural heritage strictly in terms of archaeology only. But, Cultural heritage is both tangible and intangible and includes old hunting grounds, spiritual sites, social areas, old villages etch. So how can the OPR contribute to the protection of cultural heritage when there are no provincial regulations in place to recognize or accept cultural heritage.? This again is another example of all the various components working in silos' (BC, Canada, Companies and regulators). Companies should be required to accommodate and compensate for infringement.

In 1997, the Supreme Court of Canada, in the *Delgamuukw* decision, clarified the law respecting the rights of Aboriginal people in British Columbia, establishing the following legal principles:
- Aboriginal title is not extinguished, and the BC Crown cannot and never could extinguish aboriginal title or rights,
- Aboriginal title is protected by section 35 of the Constitution Act, 1982,
- Aboriginal title is a property interest,
- Governments must justify any infringements of aboriginal title, and

- Lands held pursuant to the aboriginal title have an inescapable economic component.

Most Indigenous Nations continued to occupy their land for social, cultural and economic purposes.. In onshore pipeline areas, that hold intangible heritage, Indigenous people must have access to the area for cultural and social ceremonies and to be prevented from doing so is an infringement of Indigenous spiritual and religious rights as protected under the Canadian Charter of Rights and Freedoms.

If the CER is committed to reconciliation, UNDRIP and DRIPA then it has to look at compensation and accommodation within the OPR. Otherwise, reconciliation will continue to be a buzz word …nothing more.

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

At the project application stage, the CER Act requires the Commission to consider the rights, interests and concerns of Indigenous peoples, including with respect to their use of lands and resources for traditional purposes. The CER's Filing Manual sets out information requirements and guidance for applicants regarding how lands and resources in relation to a project area are used by Indigenous peoples for traditional purposes, as well as the CER's expectations for engagement with Indigenous peoples regarding any potential project impacts on their rights and interests.

The CER has received feedback from Indigenous peoples that the CER can improve its oversight of actions taken by companies to protect sites of significance for Indigenous peoples and lands and resources used for traditional purposes, particularly during a company's operations and maintenance activities.

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 first step for the OPR to implement for 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 is to mandate the acceptance of Indigenous Land use Plans and Social Licenses. Those plans, although specific to each Indigenous Nation, still carry the overarching values of stewardship responsibilities and outlines the expectations of all companies wanting to conduct business within Indigenous lands. The Land Use Plans are the environmental, social, cultural and economic regulations for Indigenous lands.

The territorial lands surrounding each Indigenous Nation carry the land, use and occupancy of each Nation. The OPR should regulate the acceptance of those plans so that companies are mandated to accept the Land Use Plans because they are the laws and values of Indigenous peoples.

Indigenous people, and in this response Bonaparte First Nation has the inherent responsibility as *yucwmı̓nmen* (caretakers) of *Secwémpcùl̓ecw* (Secwépemc lands) to protect the lands. Secwépemc lands were never ceded or surrendered l.

Relinquishing responsibility *yucwmı̓nmen* to a third party does not benefit the land or the Indigenous governments/nations. On the contrary, every development within Indigenous unceded territory without Indigenous stewardship and shared decision making, further diminishes the ability of the Indigenous Nation to exercise their rights and infringes on title.

If the OPR is committed to doing better, it can do so by acceptance of the rights of Indigenous peoples and accepting those rights in a regulatory decision-making framework.

Knowledge

The Preamble of the CER Act states that the Government of Canada is committed to taking into account Indigenous knowledge in decision-making. Indigenous peoples have advised the CER that Indigenous knowledge should be considered and included in decision-making throughout the lifecycle of the pipeline. For example, Indigenous peoples have recommended that Indigenous knowledge experts be included in developing emergency response plans to protect sites of significance for Indigenous peoples and traditional use sites such as for medicinal plants.

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

We applause the statement that Indigenous peoples have recommended that Indigenous knowledge experts be included in developing emergency response plans to protect sites of significance for Indigenous peoples and traditional use sites such as for medicinal plants. But oversight is a requirement and the role of Indigenous Knowledge Keepers must be solidified through regulations or MOU's which again comes down to regulating Oil and Gas companies to accept Indigenous Land Use plans. The OPR must reword its use of   buzz terms   like "Public Interest and Emergency" where such words are irrelevant and meaningless and does nothing more than aggravate existing sore relationships. The word "Emergency" must be defined for its true intent because as it stands some companies, and in particular some Natural Gas Companies are using the word "Emergency" to escape prior planning and communication with Indigenous people. Again, the writer of this review would like to have a one on one discussion with the CER on this topic.

Involvement of Indigenous Peoples in Pipeline Oversight

The CER is committed to enhancing the involvement of Indigenous peoples in pipeline oversight. The CER has worked with the IAMCs to develop an Indigenous Monitoring Program where Indigenous monitors are trained and participate in CER inspection and other oversight activities for several pipeline systems and projects. This has provided the opportunity for values and priorities of Indigenous peoples to be directly addressed, relationships between all involved to be built (regulator, company, Indigenous peoples), and the considerations for heritage resources and sites of significance for Indigenous peoples to be addressed proactively.

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

By ensuring that at least 1% of pipeline profits get shared with Indigenous people in order ensure sustainability for Indigenous Stewardship departments. For every one visit the CER energy regulator makes to an area, there are at least 20 visits made by Indigenous Stewards. While Indigenous stewards are not qualified to carry out the role of the energy regulator, they can be a great tool for monitoring between visits to ensure pipeline integrity, for example, checking pipeline integrity within their respective territories after major floods or wildfires.

Section 3. Engagement and Inclusive Participation

The Preamble of the CER Act affirms the Government of Canada's commitment to transparent processes that are built on early engagement and inclusive participation. The CER is committed to fostering trust and confidence through robust communications, transparency, collaboration and inclusive engagement. The CER expects the companies it regulates to take a proactive approach to communication and engagement as they conduct regulated activities.

Planning for Pipelines and Related Company Activities

The CER has received feedback from Indigenous peoples, municipalities, landowners and other stakeholders that improvements can be made in how companies interact with them as companies conduct their activities. Indigenous peoples and others have provided feedback that the ability to participate in company planning for operations and maintenance activities, and in emergency planning and response exercises, is important. Landowners have expressed concerns about the potential impacts of company activities to property and about the adequacy of reclamation activities. Municipalities have noted the need for two-way, proactive communication with companies when pipelines are being planned and designed.

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

Collaborative interactions must be fully supported financially in order to ne effective and meaningful. Why should Indigenous People pay for the cost of engagement with the federal regulators and Companies?

The above statement *"The Preamble of the CER Act affirms the Government of Canada's commitment to transparent processes that are built on early engagement and inclusive participation."* And goes on to state that *"the CER is committed to fostering trust and confidence through robust communications, transparency, collaboration and inclusive engagement. The CER expects the companies it regulates to take a proactive approach to communication and engagement as they conduct regulated activities."* Again, this sounds wonderful except neither Canada, BC, the CER or Companies have ever agreed that there has to be financial capacity for that to work. Again, this gets back to an earlier comment that its great to talk about protecting and accessing berry patches but meaningful relationships are built when there are shared resources, and open dialogue to enable equal partnerships.

Proactive Communication and Engagement
The CER expects that companies communicate and engage proactively with those potentially affected by company activities. The OPR requires a company to have processes in its management system and programs for communication of all safety, security, emergency management, damage prevention and environmental protection matters with those who may be affected. The OPR requires that a company proactively plans and engages with first responders and the public on emergency response measures. The OPR does not currently require a company to have an engagement program in place but in some recent pipeline authorizations the Commission has added incremental engagement responsibilities as conditions.

The CER has received feedback that improvements can be made on engagement and communication requirements. For example, the CER has received input from Indigenous peoples that clarity is needed

on requirements for company communication and engagement on planning and implementing activities related to pipeline construction, operations and maintenance. For emergency preparedness and response, the CER has received feedback from Indigenous peoples, first responders, and others that there is a desire for greater understanding of, and involvement in, a company's emergency management processes.

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

Plain language communication is needed but communications can only flourish through open dialogue. A company sending a 50 page technical document of plans is totally useless if the Indigenous people don't have the technical knowledge to break it down. As it currently stands, companies only come to the Indigenous government when it needs to engage and then it's' mainly for the purpose of ticking of the boxes for NEB processes. ***Companies, including the CER, must be mandated to cover the cost of engagement and communication through yearly capacity agreements.***

Trust and Confidence

As noted in the CER's [Strategic Plan](), the CER aims to foster the trust and confidence of Canadians through robust communications, transparency, collaboration and inclusive engagement. The CER is working to deliver a regulatory system that Canadians can trust by being open and transparent about CER decisions, data, engagement, regulatory framework approaches, and being more inclusive in who the CER listens to and learns from, in all phases and parts of the CER's work.

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

- By having outreach workers assigned to network with Indigenous groups.
- holding member representatives at the Indigenous Advisory Monitoring Committee accountable to carrying out their due diligence to network with the Indigenous groups they represent.
- Regular yearly plain language newsletters
- More visibility along pipeline communities by way of signage and Billboards along Pipeline routes.

Gender-based Analysis Plus (GBA Plus)

The Preamble of the CER Act expresses the Government of Canada's commitment to assessing how groups of women, men, and gender-diverse people may experience policies, programs, and projects, and to take action that contributes to an inclusive and democratic society and allows for all Canadians to participate fully in all spheres of their lives. Gender-based services, and other initiatives on diverse groups of women, men, and people with other gender identities. The "plus" in GBA Plus acknowledges that GBA goes beyond biological (sex) and socio-cultural (gender) analysis plus (GBA Plus) is an analytical tool used to assess the potential impacts of policies, programs, differences. Everyone has multiple identity factors that intersect to make people who they are; GBA Plus also takes into account many other identity factors, such as ethnicity, language, geographical region of residence, disability status, religion, age and family status.

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?**

I believe that this is addressed in Organizational policies of various groups and workplaces. We live in a multi-cultural society and country where diversity, for the most part, is embraced and welcomed. If identity factors influence how people experience policies and initiatives, then I believe that this is more of a social dilemma then a regulatory one. However, some things the OPR may consider with respect to those people implementing the OPR or by those people who are impacted by the operational activities addressed in the OPR are

1. Get into the weeds and review not just the internal policies for equitable treatment, but view daily operational practices with a racial equity lens. Showing diversity on web pages and in advertisements is one thing, but demonstrating diversity, equity and inclusion through what you do every day speaks volumes.

2. Target specific outcomes: It's helpful to initially gain public perspectives of what "success" looks like, and then unapologetically put focus and leverage where necessary to bring those outcomes to life.

3. Hiring diverse staff and asking key partners about their hiring track record will help diverse candidates get and retain jobs. Focusing your operations with diverse workers will ensure that awareness grow and thrive.

4. Hiring the best person for the job regardless of diversity affiliation.

(Not sure I got the meaning of the question)

Section 4. Global

tute work, and other injuries requiring treatment by a medical professional per million hours worked. Global indicators such as these can contribute to data trending and support the development of an effective regulatory oversight system as well as public awareness. In another recent initiative, CER has used data to provide an [interactive pipeline map](#) and to identify events of interest to the public and potentially affected parties.

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

As a regulated entity the CER must be as accountable to the public on operational methods, policy objectives and performance operations with emphasis placed on aggregate reports that synthesise information on the CER performance. Components within the performance metrics could include
- ☐ Aggregate reporting
- ☐ Online reports
- ☐ Aggregate reporting on specific pipelines, and
- ☐ Ad hoc or regular reporting to parliament on the yearly performance

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?

Share with all citizens through the www and make special efforts to report the same to Indigenous groups.

Change in Pipeline Use and Status

To support Canada's transition to a low carbon economy, clear processes are key for the change of use and change in status of energy infrastructure. Changing market patterns will require the ability to quickly adapt systems to respond.

Changes in pipeline use could include change of product in the system or change of product flow direction. The CER has seen an increase in instances where companies are seeking to change the type of product being carried or the direction of flow of the product that was initially approved for the pipeline. These changes can have impacts on pipeline integrity. For these situations, the OPR contains requirements that a company must follow to ensure safety and protection of the environment.

For a change in pipeline status, when a company plans to permanently end the operation of a pipeline, or part of one, the company must submit an application to the Commission. The legal term in the CER Act is seeking "leave to abandon" the pipeline. The company must follow the requirements of the OPR and the Commission's conditions on the authorization to ensure that the pipeline is properly cleaned, removed if appropriate, and that required environmental remediation and reclamation is completed.

Competitiveness

The Preamble of the CER Act states that the Government of Canada is committed to enhancing Canada's global competitiveness by building a system that enables decisions to be made in a predictable and timely manner, providing certainty to investors and stakeholders, driving innovation and enabling the implementation of sound projects that create jobs for Canadians. The CER's objective is to provide regulatory clarity and efficiency with clear, transparent expectations and processes. The CER supports innovation as companies adjust to changes in government policies, societal expectations, and global markets. In light of the commitment to enhancing Canada's global competitiveness, there may be areas for improvement in the CER's regulatory framework, including the OPR.

Predictable and Timely Regulatory Oversight

Predictable and timely regulatory oversight is important to industry. The CER is committed to implementing a regulatory system that is predictable, transparent and efficient. The CER is working to continue to improve its regulatory oversight by providing clarity on its requirements and streamlining processes. For example, the CER has provided clear guidance through its [Event Reporting Guidelines](#) for submitting information on events required by regulation to be reported to the CER, and a one-stop reporting portal through its online Event Reporting System.

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

We believe that the opening statement…" Predictable and timely regulatory oversight is important to industry" places the CER in a conflicting situation. Is it the role of the CER to act as a tool to streamline and push through pipeline activity or is the mandate of the CER to act as an independent regulatory public body, paid by the Canadian taxpayers to provide oversight and on regulatory environmental and pipeline safety requirements.?

Innovation and Flexibility

The OPR's management system requirements provide companies the flexibility to continually improve and innovate to meet regulatory requirements in a way that aligns with company-specific risks and the systems needed to address them. Several Canadian Standards Association standards for matters such as pipeline design, storage, transport, and security are incorporated by reference in the OPR to provide specific technical rules that companies must follow. These standards allow for the use of up-to-date processes and technologies.

The CER supports innovative approaches and the use of equipment, processes, and procedures that are based on new technologies. The CER has seen development of technologies in several areas related to pipeline design, operation, and monitoring, such as new leak detection technologies, pipeline inline inspection technologies, and new defect assessment procedures. The CER has also been involved in reviewing a number of these new technologies through the current regulatory framework.

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

We don't have the technical; expertise to answer this question

Data and Digital Innovation
Over the past few years, the CER has worked to create a data and digital innovation culture and systems that enable the effective delivery of the CER's mandate. Data technology allows results to be tracked over time and analyzed to contribute to continual improvement. The OPR requires a company to have a data management system in place to monitor and analyze the trends in hazards, incidents and near-misses. The OPR requires a company to submit incident reporting to the CER, and the CER tracks incident data to support company performance monitoring, oversight planning and related regulatory actions. Industry tracking measures such as the Total Recordable Injury Frequency Rate (TRIFR) are helpful to review the number of fatalities, lost time injuries, substions over the past years where a company has not been clear whether it should apply to decommission the pipeline or for leave to abandon a pipeline.

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

The OPR regulations should be developed and implemented that takes that choice away from individual companies as to whether it should decommission or for leave to abandon a pipeline. Such regulations should determine under which category the pipeline falls: decommission or abandon a pipeline. Once those guidelines are in pace and consistently applied there should be penalties for companies that don't comply to the guidelines.

Section 5. Safety and Environmental Protection

The OPR provides requirements for safety and environmental protection outcomes through management system and program requirements. This approach allows for companies to innovate and develop systems and programs in the way that best addresses their situations. In consideration of learnings from implementing the OPR, there may be areas for improvement in safety and environmental protection requirements.

Management Systems

The OPR was amended in 2013 to clarify management system requirements, and the CER has conducted audits that have identified areas for improvement in company management systems. The CER recently published a guide for management system requirements with a protocol for conducting management system audits. Based on past audit results, feedback from industry, and learnings collected through various forums over the past several years, the CER recognized that the previous audit guidance could be further refined. With this updated guidance, the CER anticipates that companies will be in a better position to evaluate their respective management systems because they will have a clearer understanding of CER expectations for future audits. Company development and implementation of well-designed and effective management systems are fundamental to keeping people safe and protecting the environment.

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?

As it stands now the CER is too lax with those companies. First, the OPR should have provincial guidelines and not follow a Canada wide generic approach and secondly the OPR should clarify and have clear guidelines for companies to implement and carry out a provincial or Canada wide management system. The words "Public Interest and Emergency" is used too frequently by Companies in carrying out management system requirements including maintenance and repairs.**Human and Organizational Factors**

Through the CER Act, the CER may now include human and organizational factors in management systems required by the OPR. Human and organizational factors affect how people make decisions and perform their work. Human and organizational factors include matters such as individual capabilities and limitations (e.g. fatigue, decision-making and competence), group dynamics and team coordination (e.g. critical communication, workload distribution), work and job factors (e.g. task complexity, human-machine interface), and organizational influences (e.g. cultural characteristics, priorities, organizational structure). When managed well, human and organizational factors set individuals, teams and companies up for success. When they are poorly managed or have not been considered, safety and environmental protection outcomes can be compromised. The human and organizational factors discipline considers the interaction of all these things and applies tools, data, methods, and training to optimize human and organizational performance. There is a growing awareness and understanding that examining human and organizational factors enables better anticipation and management of hazards and risks to prevent pipeline system failures. The Canadian Standards Association and the American Petroleum Institute now include references to human and organizational factors, in connection with recommended best practices for pipeline safety management systems. In 2021, the Canadian Standards Association began developing an Express Document providing guidance on human and organizational factors for pipeline systems. The CER supports this work with leadership and expertise. Providing direction and guidance on human and organizational factors can assist in promoting and advancing:

- identification of all types of hazards including those related to hardware, software, environment, human limitations, and organizational functioning and effectiveness;

- continual learning and improvement; and

- development and maintenance of a robust culture of safety across regulated companies, for both employees and contractors.

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 should develop a metric of standards to be followed and reported on by companies and mandate that the companies be required to follow.

Programs and Plans for Safety

The OPR requires a company to have a Safety Management Program in place that anticipates, prevents, manages and mitigates any conditions that may affect safety during all company activities. The OPR also requires a company to develop a Construction Safety Manual and a Maintenance Safety Manual to provide for safety during all company activities throughout the project lifecycle.

The CER has found that better connections can be made between company safety manuals and the Safety Management Program. A company's safety manuals should reflect the implementation of the company's management system and Safety Management Program, and should apply to the full lifecycle of the project, for both employees and contractors.

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 should make its safety management program generic and to be followed by companies regulated by the OPR, as well as the contractors and subcontractors working for those companies.

Respect and Workplace Safety

The CER is aware that CER Inspection Officers, CER Indigenous monitors, and members of the Indigenous Advisory and Monitoring Committees have experienced discrimination and harassment while conducting work on CER-regulated infrastructure. The CER recently issued a letter to all companies regarding conduct in the field and reminding them of their legal obligations with respect to protecting employees and preventing occurrences of workplace harassment and violence. On 1 January 2021, the Government of Canada's new Work Place Harassment and Violence Prevention Regulations made under Part II of the Canada Labour Code(CLC), came into effect. These regulations apply to all employers and workplaces covered under Part II of the CLC, including the federal public service and the federally regulated private sector. The CER expects that companies have policies and processes in place to meet the requirements and intent of legislation and regulations for workplace safety and for safety matters related to company activities. The CER is seeking to understand whether further requirements or guidance are needed to address this issue.

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

The issue would be that there are   different bodies regulating Workplace Harassment and Violence Prevention. While contractors and subcontractors and employees would fall under Provincial Workplace safety but the CER policy is federally regulated. Again, as mentioned earlier in this comment reponse, there are serious silos going on. The question to be asked is "Should the workplace safety policies of

Pipeline Companies fall under the Federal program and be unified, or fall under the provincial jurisdiction in which they operate?

Contractor Management

Companies are responsible for all activities related to their CER-issued regulatory approvals or certificates. The OPR requires a company to communicate with, and oversee, all personnel including contractors to inform them of all safety and environmental protection requirements and obligations. Due to the nature of the energy industry and work, the majority of personnel working at CER-regulated sites are contractors.

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

Contractor Management should be required to be regulated under the Federal Workplace policies

Process Safety

The OPR requires a company to identify hazards, and evaluate and manage risks, in order to prevent incidents. The CER has found that hazard identification often focuses on worker safety. Process safety hazards must also be identified, and risks evaluated and managed, in order to prevent incidents such as unintended releases. Process safety focuses on the prevention of releases of hazardous material or energy that can lead to major accidents such as fires, explosions, and unintended releases. Process safety management is the application of management principles and systems for the identification, understanding, avoidance, and control of process hazards to prevent, mitigate, prepare for, respond to, and recover from process-related incidents.

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

By having companies develop a provincial process safety management and that they have regular yearly drills to test its effectiveness.

Programs and Plans for Environmental Protection

The OPR requires a company to have an Environmental Protection Program that anticipates, prevents, manages and mitigates any conditions that could adversely affect the environment. As part of the Environmental Protection Program and risk-assessment process requirements in the OPR, companies are expected to review the environmental performance of their systems. This can result in proactive improvements to environmental outcomes. For example, when a company reviews risks to environmental protection, the results may drive upgrades to the company's infrastructure or practices in way that reduces waste or emissions.

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

The regulated companies should be required to follow, or exceed, the OPR's Environmental Protection Program. The companies should not be allowed to have a generic Environmental Protection Plan for all Canadian provinces and territories.

Companies typically submit an Environmental Protection Plan for constructing a new pipeline. The Environmental Protection Plan should reflect the implementation of a company's management system and Environmental Protection Program, and apply to the full lifecycle of the project. The CER has found that the Environmental Protection Plan can better describe specifications for reclamation and how environmental protection will be carried out during operations and maintenance activities for all phases following construction. The Environmental Protection Plan is a product that needs to be adapted for specific applications and activities, and so must be closely managed and updated throughout the project lifecycle.

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?

By mandating that the company's Environmental Protection Plan have standard underlining principles and objectives.

Management of Contaminated Sites

Both provincial and federal regulatory frameworks provide for management of contaminated sites. Through the Environmental Protection Program required in the OPR, a company must address contaminated sites proactively. The CER issued a Remediation Process Guide in 2011. Recently, after consultation, CER published an updated [Remediation Process Guide](#) with clear objectives and a process for demonstrating that contamination is being managed in a manner that protects the environment and human health.

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

Requirements for contaminated site management should be clarified in the OPR with set guidelines and processes to follow.

Emergency Management Program

The OPR requires a company to have an Emergency Management Program in place that anticipates, prevents, manages, and mitigates conditions during an emergency that could affect worker or public safety, the environment, or property.

In consultation conducted in 2016 and 2017, Canadians requested that information on companies' emergency procedures manuals and emergency management programs be made available to the public. As a result, companies are now required to post online their emergency procedures manuals and information related to their emergency management programs.

Emergency management specialists, company representatives, and regulators across Canada have worked over the past few years to develop a standard for emergency preparedness and response for petroleum and natural gas industry systems. The CER has been a leader and contributor in the development of this standard – CSA Z246.2 Emergency preparedness and response for petroleum and natural gas industry systems. CSA Z246.2 allows a standardized approach to be taken across jurisdictions when coordinating an emergency response process.

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?

The Emergency Management Program and jurisdiction for coordinating emergency response measures should have Indigenous representatives. The Indigenous representatives could be trained to act as a resource for OPR emergencies within their territory , when needed.

Quality Assurance for Pipeline Materials

The OPR requires a company to have a Quality Assurance Program in place that confirms that the pipe and components purchased by the company meet the company's specifications. The CER has worked with companies on a number of initiatives to improve quality assurance programs over the past few years. In 2017, the CER led a technical workshop with industry and manufacturers on heat treated fittings. Following that review, the CER issued a White Paper in 2018 with recommendations for improvements to quality assurance processes and programs. In 2020-2021, the CER worked with the Canadian Standards Association to develop an Express Document that provides direction on quality assurance for the procurement of pipe and pipe fittings.

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

The Quality Assurance Program should be mandatory for companies to follow.

Strength of Steel Pipe Relative to Welds

The CER has learned that certain welding procedures can cause girth welds (i.e. welds joining pipes) and the pipe steel adjacent to girth welds to have a lower strength than the base steel of the pipes being joined for certain steel types. The CER takes a proactive approach to addressing matters such as these and is continually engaged with the Canadian Standards Association to update and strengthen relevant standards. In February 2020, the CER issued a Safety Advisory related to girth weld strength. The CER expects companies to know the strength and welding characteristics of the steel they are using and the relative strength of the girth weld area, and to account for this in the design, construction, and operation of their pipelines.

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?

We don't have the technical expertise to answer this question

Section 6. Implementation Objectives

The following objectives will support implementation of an updated OPR, and we are seeking your input to help us with our planning.

Provide a Compliance Promotion Function

Best practices in regulatory oversight show that compliance promotion can be an important tool for the effective implementation of regulations. Compliance verification and enforcement processes can be supported by compliance promotion activities and tools such as outreach meetings, communication on regulatory requirements and desired end results, and discussion forums. The CER actively implements compliance promotion through activities such as compliance meetings with companies, safety and information advisories, and technical workshops.

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

Build standard compliance requirements into the OPR regulations.

Support the Regulations with Technical Guidance

Technical guidance can play a role in supporting compliance promotion and effective implementation of regulatory requirements. Technical guidance can assist interested parties in understanding the requirements of the regulations. It can provide examples of how the regulations may apply in certain situations, how harms may be prevented, and how safety and environmental protection outcomes can be achieved. It can also provide information on best practices and learnings from regulators across similar industries.

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

I believe there should be an Indigenous component to help develop the technical documents for safety protection and prevention.

Please send your submission for the Onshore Pipeline Regulations Review – Discussion Paper by email to:

Email: opr-rpt@cer-rec.gc.ca

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