

# Onshore Pipeline Regulations Review Discussion Paper

## Manitoba Hydro Responses

### Section 1: OPR – Lessons Learned

#### Question:

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

#### Response:

##### ***Improvement to the Understanding of Ground Disturbance in relation to Agricultural Activity:***

The CER recent updates to documentations and guidelines have been well received, but there still are some discrepancies/lack of clarity found in the documentation. For example, the definitions explaining a ground disturbance and the activities requiring consent is somewhat unclear. The CER – “Pipeline Damage Prevention Regulations – What you need to know” ([Link](#)) clearly identifies that the requirement of consent from the utility owner is required for “removing earth cover from the right-of-way.”

Identification on the CER – Damage Prevention section fails to note this requirement ([Link](#)); identifying only any activity that digs 30cm or greater within the prescribed area and/or cultivation to a depth of 45 cm or deeper. When following the site's link to the agriculture page for examples and “click” on “What agricultural activities need consent from the pipeline company” ([Link](#)), there again is no reference. One more “click” on “Activities in the prescribed area that require consent from the pipeline company”, brings us to the first mention of removing coverage being considered as a ground disturbance (unfortunately ½ way down the page). The reference is noted as “activity resulting in a reduction of the earth cover provided over the pipeline to a depth that is less than the cover provided when the pipeline was constructed”. The reference attached states: “It may not be possible to determine the original depth of soil cover provided when the pipeline was constructed. For guidance purposes in these cases, if the activity results in the reduction of the depth of earth cover over the pipeline, it is a ground disturbance.”

Only when looking at the specific Terms & Definitions does it indicate that a ground disturbance does not include a disturbance caused by agricultural cultivation to a depth of less than 45 cm below the surface of the ground. The only conclusion that can be drawn from this is that agricultural activity below 45 cm in depth that removes earth cover is permitted without the requirement to inform the utility of the activity. This seems counter to the definition of a ground disturbance where any removal of earth cover requires the consent of the utility. Overall, it appears as though the Regulations assume that all “agricultural cultivation” activities do not result in a removal of earth cover and as such, an opportunity for clarity may exist for the Regulations to emphasize that agricultural cultivation on the ROW is only permitted without permission from the utility, if it does not result in a removal of earth cover.

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This is not to remove a pipeline operator's responsibility to perform progressive surveys as required within the OPR, but clarifying all definitions of a ground disturbance would assist utilities and landowners with interpreting the regulations.

In addition, only on page 14 of the CER Agricultural Activities Near Pipelines document does it say 'agricultural cultivation less than 45 cm does not require consent, unless notified by the pipeline company that it's unsafe to do so in certain areas.' Not including the statement '...unless notified by the pipeline company that it's unsafe to do so in certain areas' in other places of the document where it states consent is not required for cultivation up to 45 cm leaves out this important requirement and can lead to misunderstanding and potential safety consequences.

In general, it is challenging for the user of the OPR to be expected to have to reference several different sections of the OPR before they are able to fully understand and interpret the requirements. In this respect, the regulations are written very similar to the Tax Act in that all the information required to fully understand a topic is scattered throughout several different sections of the standards; increasing the likelihood of a mis-interpretation of the requirements.

### **Workshops:**

Recent workshops on Damage Prevention Programs for Pipelines and Preventing Damage to OH Power Lines were well received and helpful. It would also be helpful for the CER to develop a selection of different scenarios with related interpretations of the regulations to assist the reader in understanding how to apply the regulations. Similar to the comment above, the regulations are at times challenging to interpret given the approach to how they are documented/presented. Examples/scenarios with interpretations of how the standards would apply to the scenario would be useful to understanding how to interpret the regulations.

## **Section 2: Reconciliation with Indigenous Peoples**

### **Question:**

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

### **Response:**

Nothing identified at this time.

### **Question:**

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?

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### Response:

OPR can contribute to the protection of heritage resources on a pipeline right-of-way during construction, and operations and maintenance activities by adding to the OPR the process used by the Manitoba Historic Resources Branch in working with Indigenous communities.

In Manitoba, legislation that commonly applies to cultural and heritage resources for construction, maintenance or operation of transmission lines or facilities includes: *The Heritage Resources Act* and the Province of Manitoba *Policy Concerning the Reporting, Exhumation and Reburial of Found Human Remains*. A heritage permit is required from the Historic Resources Branch (HRB) (Manitoba Sport, Culture and Heritage Department) to conduct any heritage resource investigation. The HRB is responsible for the issuance and management of heritage permits. Permits can only be issued to Registered Archaeologists; Manitoba Hydro has access to archaeologists to support any investigation. Manitoba Hydro integrates environmentally responsible practices in all aspects of our business. Environmental protection can only be achieved with the full cooperation of Manitoba Hydro employees, consultants and contractors at all stages of the Project from planning and design through construction and operational phases. For pipeline projects, Manitoba Hydro instructs that if archaeological and historic artifacts are uncovered during construction, operations or maintenance, work at the location will cease immediately, and discovery will be reported to the On-Site Supervisor. The On-Site Supervisor contacts the Manitoba Hydro Transmission & Distribution Environment and Engagement Department who will contact an archaeologist to preserve and protect cultural and heritage resources. The archaeologist will then work with the HRB to determine the procedure for moving forward.

The archaeologist will establish and maintain a record for each discovered or disturbed heritage object and of any human remains found during construction or operations. Information will include the provenience, artifact chain of custody, as well as a conservation and /or identification plan for the heritage resource or resources associated with each record. This is a requirement of *The Heritage Resources Act*. The Province of Manitoba manages a descriptive inventory regarding the physical location and composition of archaeological sites. Artifacts and field-collected data such as notes, photographs and geo-referenced information is provided to the HRB. The archaeologist prepares an annual report, as well as any necessary updated summaries and technical reports, and forwards to the HRB as partial fulfillment of the Heritage Permit.

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**Question:**

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?

**Response:**

Nothing identified at this time.

**Question:**

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

**Response:**

Nothing identified at this time.

**Question:**

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

**Response:**

Nothing identified at this time.

### **Section 3: Engagement and Inclusive Participation**

**Question:**

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

**Response:**

As it pertains to OPR required communications from utilities to those who live and work near pipelines, it would be helpful if the CER could provide sample letters/communication materials for utilities to build their communications from; in particular when there is minimum expectations from the CER in terms of what needs to be communicated by the utility. This would provide for consistency in the communications between utilities and those who live and work near pipelines. Alternatively, the CER could provide information on the regulations that could be attached to letters/emails, etc that are sent to landowners and to those who live and work near pipelines so as to ensure a consistent message is being communicated across the country.

The CER is not always familiar to those who live and work near pipelines which at times, can make it difficult for utilities to convince third parties of the importance of adhering to CER regulations. As such,

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the CER could increase its efforts to send communication materials directly to those who live and work near pipelines in a joint effort with the utilities to grow an overall understanding of the role of the CER and the importance of following the regulations.

**Question:**

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

**Response:**

As identified above, the on-line workshops certainly assist with promoting an understanding of the various requirements of the OPR. In terms of engagement requirements, we would encourage the CER not to send generic, “computer generated” looking emails that require the utility to click on a link to discover the CER is initiating an engagement with the utility, but instead craft an informative message in the body of the email indicating the purpose of the engagement. An additional improvement would be for the CER investigator to contact the utility directly in advance or shortly after such emails are sent to discuss the nature of the engagement so the utility can fully understand what the CER’s intentions and expectations of the utility will be.

**Question:**

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

**Response:**

The on-line version of the CER regulations could be more clear and easier to navigate in order to gain a complete understanding of the regulations so that the user does not have to click between multiple sections in hopes of coming across all relevant sections/definitions for a complete understanding of the respective regulation. The example in the response to Q1 above illustrates this point.

**Question:**

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?

**Response:**

Gender Based Analysis+ is becoming best practice in environmental assessment. The requirements of this should be clearly outlined in any updates to the filing manual or other documents related to the environmental assessment of pipeline projects.

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### Section 4: Global Competitiveness

**Question:**

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

**Response:**

Nothing identified at this time.

**Question:**

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

**Response:**

The CER could be a facilitator of sharing best practices throughout the industry. It was noted in the more recent workshop that attendees are somewhat reluctant to share their innovative ideas and best practices with an audience of its peers so it may be preferred that the CER engage in one-on-one communications with the utilities to identify best practices and then publish information on best practices on their web site with contacts of the representative utility that the reader could contact for more information. To the extent that the CER identifies best practices as part of their investigations and compliance verifications, they could then, with the permission of the respective utility, publish information on the best practice on their web site.

In addition, to the extent that the CER conducts research or becomes aware of innovative and best practices from other countries, they could publish this information on their website or mention this information in their workshops.

**Question:**

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

**Response:**

Nothing identified at this time.

**Question:**

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?

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**Response:**

Nothing identified at this time.

**Question:**

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

**Response:**

Nothing identified at this time.

### **Section 5: Safety and Environmental Protection**

**Question:**

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?

**Response:**

As identified above, the structure of how the OPR is written could be more user friendly and less dependent on the user having to jump between different sections of the OPR to fully understand the regulations. The guidance documents could also be more complete as they often do not contribute significantly to a more fulsome understanding of the regulation. Also identified above, examples of how the regulations would apply under different scenarios would also support the readers' understanding of the OPR requirements.

**Question:**

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?

**Response:**

The human factors and organizational structure of a utility has typically evolved to accommodate the nature of the utility's specific operations and circumstances and as such, it would be very difficult and inefficient for the regulations to stipulate how an organization should be organized and the nature of human skill sets that it requires to operate. Having said that, if the CER expects, for example, for a utility to have an employee dedicated to a certain aspect of the OPR (e.g. Damage Prevention Coordinator or Emergency Management Coordinator) or for an employee to have specific training/certification/education then that requirement should be clearly stated in the OPR. In addition,

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if the CER expects contractors to meet certain specifications/ certification levels, etc. then the regulations should clearly state what those are.

**Question:**

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

**Response:**

Nothing identified at this time.

**Question:**

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

**Response:**

Nothing identified at this time.

**Question:**

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

**Response:**

Examples / scenarios may assist with communicating the CER's requirements and identifying any specific areas of concern that the CER has. On-line workshops may also assist with explaining the requirements for contractor management.

**Question:**

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

**Response:**

Nothing was identified.

**Question:**

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

**Response:**

The Canada Energy Regulator could provide guidance documents on certain environmental components such as 'significance' as it relates to determining if an incident has occurred. Guidance on



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what should be included in a company's Environmental Protection Plan, as required in the OPR, would also help improve environmental compliance.

**Question:**

**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?

**Response:**

Manitoba Hydro develops environmental protection plans for most projects and they are all based on the company's Environmental Protection Program and Environmental Management System. As in Question 22, if the requirements of the environmental protection program are better articulated, then no additional work is required.

**Question:**

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

**Response:**

Nothing identified at this time.

**Question:**

**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?

**Response:**

Nothing identified at this time.

**Question:**

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

**Response:**

Nothing identified at this time.

**Question:**

**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?

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**Response:**

Nothing identified at this time.

**Section 6: Implementation Objectives**

**Question:**

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

**Response:**

It would be helpful if the CER published/provided on-line summaries/lists of annual reporting requirements for different groups of companies. For example, provide a list of all annual reporting requirements for group 2 pipeline companies with references to the relevant sections of the OPR that identifies and describes the nature of the reporting required and the timing of the reporting. Given the high volume of turnover of senior staff throughout the industry, this would be particularly useful for employees with new responsibilities impacted by the CER regulations.

**Question:**

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

**Response:**

Engagement options include:

- workshops/lunch and learns
- working groups
- conferences

**General Comments (if any)**

Nothing identified at this time.