



Chippewas of Kettle & Stony Point First Nation

6247 Indian Lane
Kettle & Stony Point FN, Ontario, Canada N0N 1J1

To the attention of:

Impact Assessment Agency of Canada
Policy Dialogue Program
opr-rpt@cer-rec.gc.ca

June 30, 2022

Re: Onshore Pipelines Regulation (OPR) Review

Thank you for providing the opportunity to comment on the Canada Energy Regulator's Onshore Pipelines Regulation (OPR) Review. Comments on behalf of the Chippewas of Kettle and Stony Point First Nation (CKSPFN), pertaining to the Discussion Paper, are below.

1. Questions from OPR Discussion Paper

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

The Discussion Paper states, "Through the CER Act, the CER is responsible for ensuring that pipelines crossing provincial and international borders are **constructed, operated, and abandoned** in a safe and secure manner that **protects people, property and the environment**. The CER's Onshore Pipeline Regulations (OPR) provides the rules that companies with authorizations to build and operate these pipelines must follow."

As the OPR's rules for pipeline operating companies aim to protect people, property, and the environment throughout all stages of a project's lifecycle, it is crucial that the OPR regulate at all aspects of onshore pipelines and their impacts. For example, at a bare minimum, the OPR should require companies to report on ALL Scope 1, or direct, greenhouse gas emissions resulting from the planning, construction, operation, and decommissioning/abandonment of pipelines. Scope 1 emissions, by definition, would include fugitive emissions from pipeline infrastructure, and proper monitoring and reporting on these fugitive emissions would allow First Nations a much better understanding into overall project impacts. We encourage the OPR to go even further and bring the Regulations in line with the Strategic Assessment on Climate Change¹, which states that, "Proponents of projects likely to exceed the upstream GHG emissions threshold outlined in Table 1 will need to complete an upstream GHG assessment". Large pipelines that are regulated by the CER certainly exceed the upstream GHG emissions threshold.

¹ <https://www.canada.ca/en/services/environment/conservation/assessments/strategic-assessments/climate-change.html#toc9>



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The OPR should also consider the addition of cumulative effects regulations, which require companies to adequately report on all impacts of their projects alongside past, present, and future changes to the environment within an area, not just on an individual project basis. Cumulative effects assessment is especially important to First Nations who have seen their lands and waters experience “death by a thousand” cuts with irreparable harm to harvesting areas from industrial, agriculture, mining and other land uses. – see for example the recent court decision in *Yahey v British Columbia*² which recognizes an infringement of treaty rights resulting from the cumulative effects of various projects approved over many years.

In 2017, CKSPFN passed and affirmed Band Council Resolution #2851, a “Declaration to the waterways and lakebeds within its traditional territory for the management, use and enjoyment of the First Nation and its peoples”³. We ask that IAAC and CER review this assertion and consider how it relates to CER-regulated pipelines across our treaty territory and how the OPR guide activities that impact our waterways.

Although CKSPFN has had limited exposure to the OPR and its implementation thus far, it is appreciated that the regulation serves as an overarching set of rules for all pipeline projects, at all stages, within Canada. It is important that a level of federal government oversight matched with Indigenous government oversight is maintained for all onshore pipelines, to allow the true impacts of these projects to be analyzed and mitigated. Indigenous communities are disproportionately impacted by large infrastructure projects such as pipelines, and have the right to a full understanding of these impacts within traditional lands, waters and territories.

The OPR is working well to involve Indigenous peoples in regulations, as mentioned with its Indigenous Advisory and Monitoring Committees (IAMCs) since 2017. The OPR should continue in this direction, and provide further capacity supports to facilitate Indigenous participation in matters regarding pipeline oversight. It would also be beneficial to increase awareness of the OPR and its implications to Indigenous peoples, with capacity supports provided to attend information sessions and/or meetings.

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

As per the Discussion Paper, 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 (UNDRIP), as well as the Truth and Reconciliation Commission of Canada’s Calls to Action.

It is appreciated that the CER is taking this approach, and making reconciliation a “strategic priority” going forward with Indigenous involvement at the forefront. As part of a “life cycle” approach to regulation, and to align with UNDRIP more closely, companies regulated by the CER should move toward a consent-based project approach. Too often First Nations and other Indigenous governments are

² <https://www.canlii.org/en/bc/bcsc/doc/2021/2021bcsc1287/2021bcsc1287.html>

³ See Appendix A



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consulted in the late stages of pipeline projects, typically after important decisions have already been made. This does not equate to free, prior, and informed consent (FPIC) recognized by UNDRIP, and does not give Indigenous peoples the right to give or withhold consent for projects that will affect their people, relatives, ways of life, and/or lands.

The CER should require First Nations' consent before the following activities can proceed, in accordance with UNDRIP and the *United Nations Declaration on the Rights of Indigenous Peoples Act (2021)*:

- Operations and maintenance activities that disturb soil and/or water, and/or require environmental protection plans (EPPs) or similar environmental protection prescriptions to be followed before work commences
- "Integrity digs", which disturb soil on an angle to allow for safe worker access and often require water taking and discharge to natural water bodies. "Integrity digs" that disturb the soil that was not previously disturbed when the pipeline was laid into a vertical trench may create various environmental impacts and may impact Indigenous cultural heritage resources. Water taking and discharge may create impacts to natural water bodies and fish and fish habitat – turbidity, silting, water temperature changes, etc.
- Any and all activities that may impact rights to harvest
- Any and all activities that may impact cultural heritage sites and values, including burial grounds
- Pipeline conversions (e.g. gas to oil, oil to gas, or changes in product type and therefore risk) and reversals (which often include modifications to valves at water crossings) – including all lands and waters involved in these projects
- All new pipeline approvals, inclusive of all associated and ancillary facilities regardless of approval processes through other agencies, such as pump stations, compressors, tank and storage facilities, electrical generation and transmission facilities, dock facilities, transload facilities, etc.

Additionally, First Nations should be provided with adequate capacity supports from companies proposing pipeline projects, to undertake review of documentation and come to informed decisions surrounding impacts and consent.

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?

The OPR can contribute to the protection of heritage resources on pipeline right-of-ways by requiring companies to consult First Nations and Indigenous communities during the earliest stages of projects. Early consultation, supported by adequate capacity funding, will allow First Nations to contribute to detailed design phases of projects including determining preferred pipeline routes. Indigenous peoples have valuable knowledge of their lands and history, and can use this knowledge to identify sites of cultural heritage importance for protection. Culturally significant heritage sites and resources that are



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identified by Indigenous peoples must be protected by the OPR, regardless of how they are categorized in western policy systems.

During construction, operation, and abandonment, companies should continue to consult with impacted First Nations communities on matters related to archaeology or any other changes taking place to a pipeline including “integrity digs”. Companies should be required to provide supports to facilitate the participation of First Nations in on-site activities such as archaeological or environmental monitoring. Supports would include funding to purchase PPE, field equipment, and to compensate for time spent on site, meals and accommodation, and mileage. Opportunities to participate should continue throughout the project lifecycle, not solely during construction, to ensure heritage resources are protected long term.

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 OPR must ensure that Indigenous peoples rights to access their traditional lands and resources, as well as sites of significance, are not impacted by a pipeline right-of-way, no matter the project stage. If the preferred pipeline right-of-way cuts through traditional lands or sites of significance, Indigenous peoples should remain able to exercise their constitutionally protected treaty rights to hunt, gather, and fish in these areas. Companies should be required to make arrangements that facilitate access to First Nations and other Indigenous peoples during construction, operation, and maintenance of the pipeline in a manner that is safe.

Additionally, as mentioned above, certain sites of importance to Indigenous peoples may not be considered significant from a western science or policy perspective. For example, in the province of Ontario, an “unevaluated” wetland may be treated as insignificant despite its potential to hold cultural, historic, or environmental significance to Indigenous peoples. The OPR should ensure that traditional land and resource use be protected on all sites identified as significant.

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

Privacy and protection, proper honoraria, and respect for Indigenous knowledge holders are requirements for obtaining and using Indigenous knowledge. Capacity funding **MUST** be available for First Nations to conduct Indigenous knowledge studies, and to conduct Indigenous species of interest/at-risk studies independent of federal considerations or provincial/territorial considerations. Respect must be given to the individuals providing this knowledge, and their time and resources must be compensated. The OPR should clearly outline how Indigenous Knowledge will be protected and remain the property of the First Nation or individual who provides it. Indigenous knowledge, if given, should be considered equal in importance to traditional or western knowledge for the purposes of project planning.



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

It is imperative that First Nations receive proper advanced notice of pipeline projects taking place within their lands, and that they are kept informed throughout the planning, construction, operation, and decommissioning stages of these projects. In order for First Nations to participate in pipeline oversight, sufficient capacity funding is required to facilitate proper review of any documents received. Capacity funding should allow First Nations to participate in all stages of pipeline oversight, and provide resources that allow members and representatives to attend site visits, act as monitors, and adequately review documentation received from proponents. The OPR should encourage companies to go beyond the minimum requirements in terms of consultation with Indigenous peoples and governments.

Assessments of pipeline impacts should also be conducted collaboratively with potentially impacted First Nations, and include, but not be limited to: Impacts from construction, operation, maintenance, closure, and pipeline conversion which may include varying forms of disruption, disturbance, and alteration to:

- traditional land and resource use activities (e.g., hunting, plant harvesting, sacred sites)
- archaeological and cultural heritage resources, sites and artifacts
- changes to community access to areas that are normally accessible - project locations and construction sites
- blockage of local waterways used for travel, transportation, fishing and recreation
- wildlife and wildlife habitat
- surface water quality – including local streams, ponds, lakes, rivers
- groundwater quality
- wetland quality and function
- drinking water sources
- recreational waterways, beaches and swimming areas
- fish habitat and fish
- effects on human health, traditional foods and other community resource uses
- native vegetation
- species of specific interest to First Nations, or considered at risk by First Nations
- soil – lowering of topsoil productivity, soil degradation, soil erosion
- weed or crop disease conditions (introduction or spread), including spread of invasive species
- local quality of life with respect to the sensory environment – visual impacts, noise, vibration
- cultural landscapes and viewsheds
- potential accidents and malfunctions during the pipeline lifecycle, including spills of hazardous materials that can alter or contaminate the local environment and result in impacts to the environment and human health



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- damage to adjacent infrastructure, including existing pipelines and pipelines not operating but left in place, with the risk of product release or the risk of corridors creating preferential pathways for contaminants
- air emissions from construction activities – vehicles and equipment – including GHG emissions
- the influx of temporary construction workers with related impacts on available local accommodation, disturbance of local way-of-life, increased vehicle traffic and increased use of local hunting, fishing and harvesting areas by non-residents
- increases in demands for policing, emergency response and community services
- the variety of ways that people and human activities can damage pipelines such as vehicle accidents, firearm discharge during hunting, intentional damage
- impacts of natural disasters and climate change on pipeline infrastructure – floods, erosion, falling trees
- internal pipe corrosion

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

As stated above, information and updates during every stage of a project should be provided to all those affected by a pipeline. This includes those who live and work near pipelines, especially Indigenous communities, and other vulnerable populations. Ideally, proponents and the CER will have long-term relationship agreements in place with Indigenous governments so that leaders and staff can work with proponent staff and CER Crown representatives with binding agreements in place governing notification protocols, Indigenous government regulatory consent and oversight requirements, and reasonable funding to cover Indigenous participation in monitoring and adaptive management plans. Assessment of impacts should be conducted with all people affected by pipeline routes to capture every perspective.

The Discussion Paper states, “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.” Indigenous peoples and other individuals living or working near a pipeline should be invited to participate and learn more about a company’s emergency management processes. This could occur regularly via steering committee or advisory group, with capacity support provided by the company. Additionally, Indigenous contractors should be provided with preferential contracting opportunities for emergency management.

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

As mentioned, the OPR could improve communication and engagement requirements by requiring proponents to consult with Indigenous governments early and often throughout the project life cycle. This includes from the very first discussions that added capacity may be needed. First Nations must be involved in the early planning stages (prior to filing with the CER), to fully participate in the consideration of “alternatives to” the project.



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The OPR should mandate regular progress reports from pipeline operating companies to impacted Indigenous communities, and each company should be required to create a detailed consultation and engagement plan that must meet standards set by the OPR. Proponents should be required to submit their consultation record to the appropriate First Nation(s) prior to filing with the CER.

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

Transparency can typically be achieved through ongoing open and honest communication about a project, and binding long-term relationship agreements as noted above. For example, the Canadian Nuclear Safety Commission (CNSC) is entering into long long-term relationship agreements with Indigenous governments providing structured forums for ongoing respectful and open dialogue regarding areas of interest on CNSC-regulated facilities and activities in traditional and treaty territories⁴. As a peer regulator to the CER, the CNSC's leadership is setting the bar Indigenous-federal regulator relationships. The OPR should ensure that this happens from the beginning stages of a project, and throughout its lifecycle including any changes to function or usage of pipelines. Adopting a consent-based approach to project planning would also improve transparency through the OPR, as First Nations would be involved from the beginning stages and be provided with a genuine say in project outcomes.

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
- b. those people who are impacted by the operational activities addressed in the OPR?

All reviews should include a Gender Based Analysis Plus (GBA+) report. This is particularly important for Indigenous communities that have long experience with the "sex trade" and impacts on women and girls from itinerant industrial and commercial work forces.

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

Apply all components of the Strategic Assessment of Climate Change during project reviews and analyze projects considering the United Nations Sustainable Development Goals.⁵ An immediate best practice to implement would be to ensure all project reviews and decisions are conducted in line with the federal government's *United Nations Declaration on the Rights of Indigenous Peoples Act*.

⁴ <https://nuclearsafety.gc.ca/eng/acts-and-regulations/memorandums-of-understanding/indigenous-arrangements.cfm>

⁵ <https://sdgs.un.org/goals>



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

During construction, operations, maintenance, and abandonment, proponents must seek to establish collaborative Adaptive Management Planning processes to enable active oversight from potentially impacted First Nations, with required capacity funding. As part of these processes, proponents should be required to file detailed progress reports inclusive of scheduling changes, route changes, water crossing changes, wildlife encounters, and any other changes that may arise. In addition, the OPR should ensure that First Nations and other Indigenous peoples are consulted before any decisions are made regarding changes to a pipeline's use. For example, if a pipeline is changing from transporting natural gas to a different type of product, the company must inform and seek consent from Indigenous communities before doing so. Any decisions regarding changes to normal pipeline operations should be made in collaboration with nearby affected individuals.

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

The OPR can drive further improvement to the environmental performance of regulated companies by mandating reporting of Scope 1, 2, and 3 emissions for all pipeline operating companies in Canada. The same reporting requirements should be used for every company regulated by the OPR, and reporting on emissions should be inclusive of fugitive methane emissions as well as other accidental spills or leaks from pipelines.

14. 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?

Implement third party review and monitoring, led by an Indigenous organization if available. Follow up monitoring programs are often left to companies to self-report. Indigenous people have been on this land since time immemorial and are often far better qualified to assess environmental impact and cumulative effects. Indigenous Nations must be provided with capacity funding to review individual project Environmental Protection Plans and be invited to actively contribute to a CER-regulated company's Environmental Protection Program.

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

CKSPFN would like to be engaged by the CER for the development of technical guidance in a similar format to this review. Proper capacity funding should be provided for technical review, along with advanced notice and adequate time to provide input. Email correspondence should be sent to consultation@kettlepoint.org.



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Additional Comments

CKSPFN looks forward to continued discussions with the Impact Assessment Agency of Canada and the Canada Energy Regulator in the spirit of full implementation of the *United Nations Declaration on the Rights of Indigenous Peoples*. We ask to receive a response from IAAC and CER regarding how our input was considered and where it was reflected in the CER's OPR, including the 2017 Water Assertion attached at Appendix A.

Miigwetch,

CKSPFN Consultation Department



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Appendix A – CKSPFN Declaration to the Waterways and Lakebeds within Traditional Territory



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Wednesday, May 31, 2017

Minister [REDACTED]
Indigenous Affairs and Northern
Development Canada
Terrasses de la Chaudiere
10 Wellington, North Tower
Gatineau, Quebec
K1A 0H4



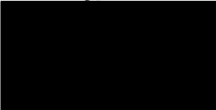
Dear Minister [REDACTED]

Re: Chippewas of Kettle and Stony Point First Nation Band Council Resolution # 2851

Enclosed please find the Chippewas of Kettle and Stony Point First Nation BCR #2851 regarding the affirmation of the First Nation's declaration of ownership to the lakebeds and waterways located within our traditional land base.

Please direct inquiries to Chief Thomas Bressette at your convenience.

Sincerely,



Council Assistant

Attach. (1)

c: Ministry of Indigenous Relations & Reconciliation
Ministry of Natural Resources
Ministry of Environment
Municipality of Lambton Shores

Ph: 519-786-2125

Toll Free: 1-877-787-5213

Fax: 519-786-2108

<http://www.kettlepoint.org>

T17203



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FIRST NATION COUNCIL RESOLUTION

| | | | | |
|---------------|------|-----------------------------------|------------------------------------|------------------------|
| REFERENCE NO. | 2851 | DATE OF DULY CONVENED MEETING: | 2017 / 05 / 29 (YEAR/MONTH/DAY) | PROVINCE OF ONTARIO |
|---------------|------|-----------------------------------|------------------------------------|------------------------|

THE CHIPPEWAS OF KETTLE AND STONY POINT FIRST NATION DO HEREBY RESOLVE:

WHEREAS the "Chippewas Nation of Indians and His Majesty King George IV as represented by the Superintendent of Indian Affairs" entered into the Provisional Agreement of 1825 and Treaty of 1827 regarding a certain tract of land in Southwestern Ontario and which surrendered certain parts of the tract and created the Reserves designated as Kettle Point #44 and Stony Point #43, and,

WHEREAS in neither agreement or Treaty was there a surrender of the waterways known as Lake Huron including the lakebed or any other waterways within the traditional territory; and

WHEREAS under Aboriginal and Treaty Rights, the Chippewas of Kettle and Stony Point First Nation assert ownership and jurisdiction over said waterways to the International Boundary and the land underlying the waterways (lakebed); and

WHEREAS the Chippewas of Kettle and Stony Point First Nation make DECLARATION to the waterways and lakebeds in its traditional territory including the waterway known as Lake Huron to the International Boundary, and including the lands under the waterway of Lake Huron known as the lakebed; and

WHEREAS the Lake Huron waterways are described as the point of intersection of the surrendered lands with Lake Huron as its most northerly point, extending directly out into Lake Huron to the International Boundary, then running along the International Boundary to the southerly limit of the herein described lands at the water's edge of the St. Clair River, and the land underlying this portion of Lake Huron (lakebed) and assert this waterway and lakebed has never been surrendered; and

THEREFORE BE IT RESOLVED THAT the Chippewas of Kettle and Stony Point First Nation hereby notify each government- Federal, Provincial and Municipal, company, individual, or groups of individuals, and any others who use or who plan to use any part or portion of this territory that they must disclose their use to the First Nation, and seek express permission from the government of the First Nation, namely the elected Chief and Council for the proposed usage; and

FINALLY THEREFORE BE IT RESOLVED the Chief and Council of the Chippewas of Kettle and Stony Point First Nation pass and affirm this "DECLARATION TO THE WATERWAYS AND LAKEBEDS WITHIN ITS TRADITIONAL TERRITORY FOR THE MANAGEMENT, USE AND ENJOYMENT OF THE FIRST NATION AND ITS PEOPLES" as confirmed within the First Nation's Aboriginal and Treaty Rights.

QUORUM 6 _____
(CHIEF)

(COUNCILLOR)

(COUNCILLOR)

(COUNCILLOR)

(COUNCILLOR)

(COUNCILLOR)

(COUNCILLOR)