
# SUMMARY OF

# PUBLIC ENGAGEMENT RESULTS:

# POSSIBLE COSTS FROM SPILLS AND DEBRIS

**June 2019**

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# INTRODUCTION

On September 17, 2018, the Office of the Regulator of Oil and Gas Operations (OROGO) began a public engagement process on how to manage possible costs from spills and debris associated with oil and gas operations

A brief, plain-language Discussion Paper was made available to the public on the OROGO website and advertisements were placed twice in NewsNorth and L'Aquilon inviting comments. The Discussion Paper was also highlighted on OROGO's Twitter feed.

Specific invitations to participate were issued to:

- Aboriginal governments holding or asserting section 35 rights;
- Companies holding Operating Licences in OROGO's jurisdiction and the Canadian Association of Petroleum Producers;
- Other regulators with whom OROGO interacts as a result of existing Land Claim Agreements and Memoranda of Understanding;
- Federal and territorial government departments and agencies; and
- Selected environmental non-government organizations with an NWT presence.

The deadline for comments was February 28, 2019. Three organizations provided feedback by the deadline:

- Department of Environment and Natural Resources, Government of the Northwest Territories (GNWT)
- Strategic Oil and Gas Ltd.
- Acho Dene Koe First Nation

The Department of Lands (GNWT) requested an extension to the deadline and provided its feedback on March 5, 2019.

During the public engagement period, OROGO responded to questions from the following organizations about the Discussion Paper:

- Explor
- GNWT
- Inuvialuit Regional Corporation
- Katl'odeeche First Nation
- NWT Metis Nation
- Wek'eezhii Renewable Resources Board

This document summarizes the comments received during the public engagement period and, in some cases, provides additional information in response to the concerns raised.

# COMMENTS RECEIVED

The Discussion Paper contained six questions for discussion, as follows:

1. What concerns do you have about the management of possible costs from spills or debris in OROGO's jurisdiction?
2. What information do you think the Regulator should consider when assessing an applicant's financial health?
3. What information do you think the Regulator should consider when assessing the risk of a work or activity?
4. What information do you think the Regulator should consider when deciding on the amount and type of Proof of Financial Responsibility (PFR) required from an operator?
5. Is the list of basic principles complete? What would you add? What would you remove or change?
6. Are there other ways of managing possible costs from spills or debris that OROGO should consider?

All the comments received are summarized in the order of the questions from the Discussion Paper. General comments have been merged with the responses to the first question, as there was significant overlap in the responses between those two categories.

In some cases, additional information is provided after the comments to clarify an issue or address a concern.

## The Management of Possible Costs from Spills or Debris

The following comments and concerns were raised about the management of possible costs from spills or debris in OROGO's jurisdiction:

- Need to clarify the differences between the PFR and environmental security deposits set by the co-management Land and Water Boards for Land Use Permits and Water Licences in order to address real or perceived double bonding by OROGO, the GNWT and the Land and Water Boards.

- Need to provide more information on the PFR process, including:
    - A definition of PFR
    - The PFR review and decision-making process
    - Approved forms of PFR
    - Public vs confidential information
    - How OROGO determines that an activity is complete
    - Whether post-closure monitoring and performing reporting is part of PFR
    - How OROGO determines the extent of damage caused by a spill (for example, impact on future re-vegetation of the site, footprint of the disturbance, etc.)
- OROGO should provide more detail on its legislative mandate to issue authorizations on GNWT and Indigenous governments' surface and/or sub-surface rights and land tenure.
- OROGO should detail its responsibilities to address authorized operators that are not able to address their facilities and liabilities, including reclamation costs, on GNWT and Indigenous governments' lands (i.e. bankruptcies, corporate shells and insufficient security deposits).
- The discussion paper defines a spill as an unauthorized release of petroleum. There are many types of spills other than petroleum. The definition of a spill should be expanded to cover all types of hazardous substances regulated under the relevant legislation.

The Discussion Paper was intended to be a plain-language introduction to questions about PFR that was accessible to all readers, in order to obtain broad feedback on the principles that should underlie any eventual guidelines on PFR. If guidelines on PFR are pursued, OROGO will follow its established practice of sharing a draft of the guidelines for formal consultation with Aboriginal rights holders and asserted rights holders and for additional public engagement before they are finalized.

Guidelines on PFR would address the questions raised about the PFR process and the purpose of PFR. Bill 37, currently being considered by the Legislative Assembly, proposes some changes to OGOA that may address concerns raised about the transparency of the PFR process.

The content of OGOA, including the definition of a spill, is outside of OROGO's authority. OROGO cannot adopt a definition of a spill that is contrary to or broader than the definition in the legislation.

## Assessing an Applicant's Financial Health

The following items were suggested as information the Regulator should consider when assessing an applicant's financial health:

- The operator's compliance with Corporate Registries requirements in the NWT and in other provinces where they are working.
- The operator's ability to provide a performance security in the form of a bond to cover the cost of clean-up.
- The operator's financial statements.
- The operator's asset base in other jurisdictions.
- The operator's other ongoing projects and the level of financial and environmental responsibility it has shown with respect to those projects.
- The expected life cycle of the operator's project. If the project is long-term, the Regulator should consider that measures will be in place to protect against the possibility of the operator going bankrupt or losing financial capacity during the time of the project.

One respondent suggested that factors that might be considered "mitigative" with respect to an applicant's financial health (for example, a company's positive track record or the existence and size of a corporate parent) may warrant less consideration in the coming years as oil loses its profitability and even large operators struggle financially or go bankrupt.

With respect to an operator's compliance with the Corporate Registries requirements, operators are required to hold an Operating Licence, which must be renewed annually. The application requirements for an Operating Licence are contained in the *Oil and Gas Operations Regulations*. In order to apply for a licence, an applicant must be either:

1. An individual 18 years of age or old,
2. A corporation registered with the Registrar of Corporations under the *Business Corporations Act*, or
3. A corporation that is entitled to carry on business in any province or territory.

## Assessing the Risk of a Work or Activity

The following items were suggested as information the Regulator should consider when assessing the risk of a proposed work or activity:

- The remoteness and accessibility of the operation and any operational limitations on spills containment and recovery.

- The potential social costs that could be borne by adjacent land owners as a result from nearby spills or debris.
- The potential social impacts resulting from damage to the environment (for example, loss of business to landowners, tour operators, etc.).
- Site-specific environmental and social considerations (proximity to residences, frequencies of traditional and other uses).
- The nature of the operation, including the components that comprise the infrastructure.
- The type of fluid being produced (for example, sour versus sweet, heavy versus light).
- The status of the project (for example, operating versus suspended).
- The proponent's release history, including frequency and response.
- The full extent of potential loss of hunting, fishing and gathering opportunities by Aboriginal communities, including impacts on the points of access to these areas and impacts to the health and movements of the resources of interest.

## Determining the Amount and Type of PFR

The following items were suggested as information the Regulator should consider when deciding the amount and type of PFR required:

- The full cost of the clean-up after each well is installed and after the well is abandoned.
- The objective and reasonable risk of the specific project (probability of spill or debris and potential severity) in conjunction with the financial health of the operator.
- The operator's insurance coverage as part of the PFR required and as a possible substitute for cash collateral for potential spills/debris.
- The number and type of parties likely to be affected by the proposed project (for example, individuals or entire communities).
- The value of losses and damages associated with the loss of traditional harvesting and land use activities. This information may have been gathered by the affected First Nation(s). If not, the operator should be responsible for covering the costs of gathering the appropriate information through Traditional Use Studies or other equivalent work for the First Nation.

## The Basic Principles

The Discussion Paper suggested a list of basic principles for the management of possible costs associated with spills and debris, as follows:

- Operators are financially responsible for oil and gas activities through their full life cycle.
- There should not be "orphaned" oil and gas infrastructure in the NWT that results in costs to the public, Aboriginal governments and other land owners.
- Responsibility for spills or debris associated with oil and gas activities stays with the company that conducted the work or activity, or any successors to that company.
- The Regulator should always hold PFR if there is a risk of spills or debris from a work or activity.
- Operators should:
    - Adequately plan and account for the full lifecycle costs of oil and gas activities from the beginning.
    - Have the financial resources to manage the full lifecycle costs of their oil and gas activities.
    - Abandon or decommission wells and facilities that will no longer be used.
- Decisions about managing potential costs from spills and debris should:
    - Be based on objective information about the operator, the work or activity, the associated risk and the potential costs.
    - Take into account the scale and risk of the oil and gas activity.
    - Take into account a company's existing liabilities and track record.
- Decisions about managing potential costs from spills or debris should be reviewed at regular intervals throughout the lifecycle of the work or activity to consider changes in the risks associated with the project and the financial health of the operator.

The following comments were received with respect to the proposed principles:

- The principle that decisions on PFR should be "based on objective information about the operator, the work or activity, the associated risk and the potential costs" should be clarified to include information about the land disturbance from the activity, including the impact on natural vegetation, critical / designated habitat and the costs of wildlife and habitat rehabilitation.
- The list of principles should incorporate "precautionary" principles, meaning that operators are not only responsible for paying for any damage done but that they are also equally obligated to prevent harm when it is within their power to do so, even when not all evidence is readily available.

- The list of basic principles is complete as well as fair and reasonable; it aligns with operator responsibilities in other jurisdictions. OROGO should clarify how the Regulator deems there is no longer a risk of spills or debris from a work or activity.
- The principle that operators should abandon or decommission "wells and facilities that will no longer be used" should be aligned with the timeframe in the *Well Abandonment and Suspension Guidelines and Interpretation Notes* and OROGO should clarify the method of releasing PFR payments as the [abandonment / decommissioning] work is undertaken.
- How will OROGO deal with situations where the activity is deemed complete and the PFR returned and later on there is a problem that must be addressed? There is also the possibility that the PFR of an insolvent company does not cover the actual cost. How will OROGO practically deal with these situations? To some extent, an "orphan infrastructure" program is still necessary.
- With respect to regular reviews to consider changes in risk and financial health, OROGO must be prepared to move in either direction (to a higher PFR or a lower PFR) as a result of the review.
- The term "abandon" may incline an Operator to practical minimal clean-up of a site. Proper safety measures must be included in the decommissioning, such as fencing/barricading around well sites or other infrastructure in order to protect wildlife populations and prevent accidental damage to infrastructure, such as well heads.

With respect to the use of the term "abandon", this is the term used in the *Oil and Gas Drilling and Production Regulations* (OGDPR) and is common to the industry across Canada. The OGDPR defines an abandoned well as "a well or part of a well that has been permanently plugged" (section 1(1)). Section 56 of the OGDPR requires that an abandoned well must be left in a condition that isolates all oil or gas bearing zones, discrete pressure zones and potable water zones and that prevents any formation fluid from flowing through or escaping from the well-bore.

The *Well Suspension and Abandonment Guidelines and Interpretation Notes* (Guidelines), issued by the Regulator in 2017, provide information on appropriate methods for permanently plugging a well and address requirements for the isolation of potable water zones. The Guidelines also require that the wellhead of an abandoned well must be removed (cut and capped) and that surface infrastructure associated with the entire well operation must be removed within 12 months of the cutting and capping operation.

## Other Approaches to Managing Possible Costs

The following items were suggested as other ways to manage possible costs from spills and debris:

- Insurance-type products such as surety bonds.
- A tax on operators as part of their development fees, which could be used to help alleviate the costs of spills and debris that cannot be managed by the operator (for example, because of bankruptcy) or are remnants from previous developments.

# CONCLUSION

The public engagement on the possible costs of spills and debris resulted in useful feedback. In particular, it is clear from the comments that:

- The purpose of PFR under OGOA requires clarification, particularly with respect to the differences between PFR and the securities held for Land Use Permits and Water Licences under the *Mackenzie Valley Resource Management Act*.
- Future guidelines should address the practicalities of PFR – how the amount is determined, what forms are acceptable, how and when can it be adjusted, when will it be returned, etc.
- The proposed principles are generally acceptable, although their implementation through a guideline may require a more detailed or nuanced approach.

The comments received will inform the development of guidelines on PFR, along with the results of research into regulatory best practices in other jurisdictions.

OROGO thanks all of the organizations and individuals who took time to participate in the public engagement process.