



**SUMMARY OF
PUBLIC ENGAGEMENT RESULTS
JULY 23, 2020**

**PUBLIC ACCESS TO INFORMATION GUIDELINES
AND INTERPRETATION NOTES
OFFICE OF THE REGULATOR OF OIL AND GAS
OPERATIONS**

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INTRODUCTION

The Office of the Regulator of Oil and Gas Operations (OROGO) made the draft *Public Access to Information Guidelines and Interpretation Notes* (Guidelines) available for public engagement on December 19, 2019.

Information on the Guidelines was made available to the public on the OROGO website and advertisements were placed in NewsNorth and L'Aquilon inviting comments.

Specific invitations to review the Guidelines and provide comments were issued to:

- Indigenous governments;
- 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 departments and agencies;
- Selected environmental non-government organizations with an NWT presence.

The deadline for comments was February 14, 2020. Three organizations provided feedback by the deadline:

- The Canada Energy Regulator;
- The Department of Industry, Tourism and Investment, Government of the Northwest Territories (GNWT); and
- The Land and Water Boards of the Mackenzie Valley (the Mackenzie Valley Land and Water Board, the Wek'eezhii Land and Water Board, the Gwich'in Land and Water Board and the Sahtu Land and Water Board).

The Standing Committee on Economic Development and Environment provided its feedback on the Guidelines on March 2, 2020, together with its feedback on the *Public Hearing Guidelines and Interpretation Notes*.

K'at'l'odeeche First Nation provided feedback in relation to the draft *Public Hearing Guidelines and Interpretation Notes* that also relates to the Guidelines and is incorporated into this report.

This document summarizes the comments received during the public engagement period and the response to these comments.

COMMENTS RECEIVED AND RESPONSE

All comments received are summarized here, organized according to the sections of the draft Guidelines. The responses to each group of comments are provided immediately after the comments themselves.

Typographical errors in the draft Guidelines that were identified by reviewers will be corrected in the final version but are not addressed in this document.

SECTION 1: INTRODUCTION

The comments received about section 1 of the Guidelines and the responses are captured in the following table.

Comments	Responses
Request to clarify whether the Guidelines applied only to the <i>Oil and Gas Operations Act</i> or also to the <i>Petroleum Resources Act</i> (PRA).	Section 18 of the <i>Oil and Gas Operations Act</i> (OGOA) authorizes the Regulator to issue guidelines and interpretation notes. There is no similar provision in the PRA. Therefore, the Guidelines apply only to information provided for the purposes of OGOA and its regulations.
Recommendation to update the map of OROGO's jurisdiction to reflect the establishment of the Thaidene Néné National Park and to identify the transboundary pipelines regulated by the Canada Energy Regulator.	The map has been updated as recommended.

SECTION 2: MAKING INFORMATION PUBLIC

The comments received about section 2 of the Guidelines and the responses are captured in the following table.

Comments	Responses
Recommendation to remove the adjective "narrow" from the description of the criteria used by the Regulator to determine whether information should be kept confidential.	The wording in the draft Guidelines was intended to reflect the emphasis on transparency of information under the revised OGOA. The adjective "narrow" has been removed and replaced with "specific".
Note that PDF documents will need to be password protected for editing.	Although a PDF document can be edited using specialized software, the edited document cannot be uploaded to the public registry. Therefore, the integrity of the public registry is not affected. However, OROGO may sometimes make documents available in non-PDF formats. Therefore, the reference to PDF documents has been removed.

Comments	Responses
Request to confirm that delineation and development wells are intended to have the same meaning as in the legislation.	The terms delineation and development wells are intended to have the same meaning as in OGOA. The definitions provided in the Guidelines reflect the Regulator’s commitment to the use of plain language in Guidelines. As stated in section 1 of the Guidelines, in the event of a conflict between the Guidelines and OGOA, OGOA is paramount.
Request to clarify why operator well inspection reports are specifically identified in the Guidelines when they are not listed in section 22(9) of OGOA.	The Guidelines mention several types of information provided to the Regulator that are not listed in section 22(9) of OGOA. These documents are highlighted in the Guidelines as they are likely to be of interest to the public and include, in addition to operator well inspection reports, applications and responses to information requests.
Request to clarify why well site seabed surveys are not identified in the Guidelines when they are listed in section 22(9) of OGOA. Recommendation to add well site seabed surveys to the table of geophysical or geological work to reflect the separate timelines for making related information public.	In order to keep the Guidelines as concise and straightforward as possible, well site seabed surveys were not specifically identified in the draft Guidelines as Regulator does not regulate the seabed. Therefore, well site seabed surveys have not been included as a specific type of information in the final Guidelines. However, in the event that OROGO receives well site seabed surveys in the future, the timeframes for making this information public contained in section 22(9) of OGOA would apply.
Request to clarify the timeline for making information from engineering research, feasibility studies, experimental projects and geotechnical work available in the event that this work was conducted on private lands.	Section 22(9) of OGOA does not specifically mention how the results of such studies will be made available if they are conducted on private lands. Therefore, information resulting from such studies not conducted in relation to a well would become publicly available five years after the work is completed.
Recommendation to change the timeline for making contingency plans public “within 5 days after the contingency plan is accepted” to reflect the requirement under OGOA to make the information available on receipt.	The timeline for making contingency plans public has been amended. The contingency plan provided as part of the application package will be posted with the application package (within five days after the application is deemed complete). During the review of the application, changes to the original contingency plan may be required. The final contingency plan, reflecting those changes, will be posted within five days of receipt. Text has been added to clarify that contingency plans are generally called Emergency Response Plans.

Comments	Responses
<p>Comment that “5 days after the information received” is a reasonable period of time for making information public.</p>	<p>No response required.</p>
<p>Request to clarify how the Regulator would address making information on hydraulic fracturing fluid public if it was provided before the timeframe provided in the Guidelines (30 days).</p>	<p>Section 22(9) of OGOA states that the Regulator “shall make the following information available to the public in accordance with this subsection”. OROGO interprets this to mean that the information in question, including hydraulic fracturing fluid information, will be made public at the time specified, not earlier.</p>
<p>A recommendation to clarify the definition of “pollution”, perhaps by referencing the definitions used in the <i>Environmental Protection Act</i>.</p>	<p>The definition of “incident” under OGOA references “pollution” and “pollution” is defined in section 1 of the <i>Oil and Gas Drilling and Production Regulations</i> (OGDPR).</p> <p>The definition of “pollution” in the guidelines reflects the OGDPR and has not been changed.</p>
<p>Comment that the table with respect to making drilling results available does not capture the explicit language in OGOA referring to information “obtained as a direct result of drilling the well”.</p>	<p>The text leading in to the table in question refers to “non-confidential information resulting from the drilling of the well”.</p> <p>This text has been amended to state “resulting directly” to better reflect the language used in OGOA.</p>
<p>Comment that the plain language definitions of exploratory, delineation and development wells are a good effort to improve comprehensibility and a recommendation to make it clear that OROGO is bound by the definitions in OGOA and those provided in the guidelines are a plain-language summary</p>	<p>A statement in Section 1 of the Guidelines has been added to clarify that the Guidelines are written in plain language for ease of understanding.</p> <p>This statement is directly followed by the statement that, if there is a conflict between the Guidelines and OGOA, OGOA is paramount.</p>

SECTION 3: APPLYING FOR CONFIDENTIALITY

The comments received about section 3 of the Guidelines and the responses are captured in the following table.

Comments	Responses
Request to clarify whether OROGO will also redact documents (either those provided to the Regulator or those produced by the Regulator) to allow for public availability.	<p>OROGO may redact documents it produces to allow for public availability of information while respecting the Regulator’s decisions on confidentiality.</p> <p>The content on use of redacted documents in Section 2 of the Guidelines has been amended accordingly.</p> <p>OROGO will not unilaterally redact documents provided to the Regulator. Instead, OROGO will use the confidentiality request process to work with the information provider to make as much information publicly available as possible, including through the use of redacted documents.</p>
Comment that allowing for the use of redacted documents is consistent with the framework of Bill 37, although not specifically provided for in OGOA.	No response required
Recommendation to clarify that redactions made by an information provider are draft and that the Regulator will make the final decision on what is confidential.	The Guidelines have been amended to clarify that redactions require the Regulator’s review and approval and are subject to the same tests for confidentiality established in section 22(2) of OGOA and the ATIPPA.
Recommendation to clarify that information can only be redacted if it meets the test for confidentiality established in section 22(2) of OGOA.	A specific example of an acceptable redaction has been added for clarity.
Request to add notification to the information provider of the Regulator’s decision to the steps for requesting confidentiality.	Giving notice of the Regulator’s decision to the information provider has been added to this process immediately after the Regulator makes its decision.
Recommendation that the confidentiality request process include the provision of written reasons for decision by the Regulator and a timeframe for posting those reasons (for example, 5 days after the decision is made).	Public written reasons for decision from the Regulator have been added to this process.

Comments	Responses
<p>Request for clarification of the option for withdrawing information from consideration if the Regulator decides that it is not confidential as this is not contemplated in the Act.</p>	<p>Giving the information provider the option to withdraw information if the Regulator does not agree that it is confidential respects the provider's right to decide what information to provide to the Regulator, based on how important it is that it be kept confidential.</p> <p>However, the information provider must be aware that this choice may result in significant consequences. For example, an operator that chooses not to provide required reporting to the Regulator would be committing an offence under the OGOA.</p> <p>The section on withdrawal of information has been amended to clarify possible consequences for the information provider.</p>

SECTION 4: CONFIDENTIAL INFORMATION AND PUBLIC HEARINGS

The comments received about section 4 of the Guidelines and the responses are captured in the following table.

Comments	Responses
<p>Request to clarify how the proposed process for requesting access to confidential information during a public hearing process relates to section 22(5) of OGOA, which establishes rules for the disclosure of confidential information by the Regulator.</p> <p>If the proposed process is acceptable under OGOA, recommendation to allow parties to request information considered confidential as part of other decision-making processes outside of public hearings.</p>	<p>Section 22(5) of OGOA allows the Regulator to disclose confidential information without the written consent of the provider "for the purposes of the administration or enforcement" of the Act or its regulations.</p> <p>However, given that the Act expressly limits the information that can be deemed confidential by the Regulator under section 22(2), it seems unlikely that the intention of the Act is to allow the Regulator to then broadly disclose this information as part of administration of the Act, since everything the Regulator does is, effectively, administration the Act. It seems more reasonable that the Regulator's powers under section 22(5) would be used if the administration of the Act were impaired without the disclosure of the confidential information.</p>

Comments	Responses
	<p>OGOA allows for additional types of information to be deemed confidential if provided as part of a public hearing (if the rationale for confidentiality outweighs the public interest in disclosure):</p> <ul style="list-style-type: none"> • Because of the financial or competitive impact its disclosure would have on the provider (section 22(3)); and • Because of the impact on security of operations and infrastructure (section 22(4)). <p>The Guidelines have been amended to clarify the additional types of information that may be held confidential if provided as part of a public hearing and to remove the detailed process for requesting access to confidential information during a public hearing process.</p>
<p>Request to clarify how traditional knowledge will be addressed under the confidentiality provisions during a public hearing.</p>	<p>Requests for traditional knowledge to be kept confidential would be considered by the Regulator under section 22(2) of OGOA, as described in Section 3 of the Guidelines. If deemed confidential, the confidentiality would apply to all processes, not only to public hearings.</p> <p>While the criteria established under section 22(2) do not specifically reference traditional knowledge, the Regulator considers traditional knowledge to be a form of “scientific or technical information” for the purposes of applying the confidentiality criteria. This approach is consistent with that of other resource co-management boards in the Northwest Territories.</p> <p>Section 3: Applying for Confidentiality has been amended to include specific reference to traditional knowledge information.</p>
<p>Recommendation that the Regulator provide written reasons for decision in response to requests to access confidential information and make them public within five days of the decision being made.</p>	<p>The Guidelines have been amended to remove the detailed process for requesting access to confidential information during a public hearing process (see discussion above).</p> <p>Requests for access to confidential information during a public hearing will be addressed on a case-by-case basis during the pre-hearing process.</p> <p>The Regulator’s written decision in response to such requests will be made public within five days of the decision being made.</p>

SECTION 5: PERMITTED SHARING OF CONFIDENTIAL INFORMATION

The comments received about section 5 of the Guidelines and the responses are captured in the following table.

Comments	Responses
Recommendation to clarify that sharing of confidential information with other governments is contingent on a number of additional requirements not captured in the Guidelines.	Additional text has been added to the Guidelines to summarize the requirements for this possible sharing of confidential information.

SECTION 6: INFORMATION FILED BEFORE THE EFFECTIVE DATE

The comments received about section 6 of the Guidelines and the responses are captured in the following table.

Comments	Responses
Request for clarification why information provided to the Regulator submitted before the effective date cannot be made public under section 22 of OGOA.	<p>Section 91 of the <i>Petroleum Resources Act</i> (PRA) granted confidentiality to all information, from any party, provided for the purpose of OGOA or its regulations (other than Part 1 of OGOA, which deals with traffic, tolls and tariffs), unless written consent was provided to disclose the information (for example, under OROGO's <i>Information Disclosure Guidelines</i>).</p> <p>Section 28(2) of the <i>Interpretation Act</i> states that a right granted under previous legislation must be respect under new legislation. The confidentiality granted to information received before the effective date under Section 91 of the PRA is a right.</p> <p>Therefore, the Regulator cannot apply the disclosure provisions established under Bill 37 to information received before it came into effect.</p>

CONCLUSION

The public engagement process resulted in a number of comments on the Guidelines, primarily associated with clarifying and refining the Regulator's proposed processes for identifying information as confidential, managing confidential information during public hearings and managing information received before the coming into force of Bill 37.

The Guidelines have been amended to reflect the comments received where possible, while maintaining the integrity of the Guidelines with respect to their objectives. Significant changes were made to Section 4: Confidential Information and Public Hearings as a result of the feedback received.

The Regulator thanks all the organizations and individuals who took time to review and comment on the Guidelines.