



NWT OFFICE OF THE REGULATOR OF OIL AND GAS OPERATIONS

**SUMMARY OF
PUBLIC ENGAGEMENT RESULTS**

JULY 23, 2020

**PUBLIC HEARING 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 Hearing Guidelines and Interpretation Notes* (Guidelines) available for public engagement on January 14, 2020.

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 March 2, 2020. These organizations provided feedback by the deadline:

- The Canada Energy Regulator;
- The Department of Industry, Tourism and Investment, Government of the Northwest Territories (GNWT);
- The Department of Environment and Natural Resources (GNWT);
- The Standing Committee on Economic Development and Environment (GNWT);
and
- K'atl'odeeche First Nation.

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
Recommendation to change wording to include 'holding' or 'undertaking' a public hearing.	OROGO has revised the guideline accordingly.

SECTION 2: PURPOSE OF PUBLIC HEARINGS

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

Comments	Responses
Request for the Regulator to clarify how it differentiates between the public interest and the interest of First Nation rights holders and clarify what process the Regulator requires to respond to a potential infringement of rights.	<p>If a potential infringement of rights is raised in relation to a decision before the Regulator, the Regulator is responsible for fulfilling the duty to consult and accommodate if the potential infringement of rights falls within the scope the Regulator's legal authority to address.</p> <p>The scope of the Regulator's legal authority is determined by the provisions of the <i>Oil and Gas Operations Act (OGOA)</i>.</p> <p>If a potential infringement of rights raised by a First Nation falls outside of the Regulator's legal authority, it may be addressed through another regulatory process or through additional consultation between the GNWT and the First Nation.</p>

Comments	Responses
<p>Request to provide examples of applications that would require a public hearing, specifically applications for conventional and hydraulic fracturing activities and if these types of activities would require a public hearing and consultation with Indigenous Governments and First Nations.</p>	<p>Under OGOA, there is no mandatory requirement for the Regulator to hold a public hearing for applications submitted for conventional and/or hydraulic fracturing operations.</p> <p>A public hearing would only be held if the Regulator determined that more information was needed regarding an application which could only be gained by holding a public hearing. The Regulator could also hold a public hearing if it determined that the public interest would be served by conducting a more detailed and public examination of potential concerns and impacts regarding an application.</p> <p>Consultation with Indigenous Governments and First Nations will be carried out as needed in response to potential infringements of rights within the scope of the Regulator's legal authority and is not contingent on holding a public hearing.</p>
<p>Recommendation to clarify language on what is a public hearing.</p>	<p>The Guidelines have been revised to make this section clearer.</p>
<p>Recommendation to clarify the rationale for holding public hearings with respect to both 'applications' and 'projects'. The term 'project' is not defined in OGOA or its regulations.</p>	<p>The Guidelines have been revised to use only the term 'applications' to ensure clarity.</p>
<p>Recommendation that the Guidelines provide more clarity on the types of development scenarios that will require a public hearing and when the Regulator will hold public hearings.</p>	<p>Under OGOA, there is no mandatory requirement for the Regulator to hold a public hearing for certain types of developments. The Regulator could hold a public hearing for various types of oil gas operations (e.g. exploration, production, abandonment) if it is determined that more information was needed regarding an application which could only be gained by holding a public hearing or the public interest would be served by conducting a more detailed and public examination of potential issues regarding the application.</p>

Comments	Responses
<p>Recommendation to clarify when and how often the Guidelines will apply and when the Guidelines will be reviewed.</p>	<p>The Guidelines will apply as soon as they come into effect.</p> <p>However, it is not possible to predict when and how often the Guidelines will be used as it depends on the nature of the oil and gas projects proposed to the Regulator in the future.</p> <p>The Guidelines will be reviewed by the Regulator as needed. Factors that may trigger a review of the Guidelines could include:</p> <ul style="list-style-type: none"> • Changes or updates to legislation; • Introduction of new legislation; or • Lessons learned after implementation.
<p>Recommendation that the Guidelines strive for consistency with guidance and practices developed under the existing co-management system established under the <i>Mackenzie Valley Resource Management Act</i> (MVRMA). This should include reviewing specific provisions for triggers and considerations to hold public hearings under the MVRMA.</p>	<p>The Regulator and the co-management boards established under the MVRMA do not share the same legislative framework.</p> <p>Under the <i>Mackenzie Valley Resource Management Act</i>, there are mandatory requirements to hold public hearings for certain types of applications (e.g. Type A Water License Application). Under OGOA, the requirement to hold a public hearing is not mandatory and is at the discretion of the Regulator.</p> <p>The regulatory mandates under OGOA and the MVRMA are very different, which limits the extent that the Regulator's practices can be consistent with those of the MVRMA co-management boards</p> <p>When OROGO develops Rules of Procedure for public hearings, it will review the Land and Water Boards' Rules of Procedure will incorporate content where appropriate to support a consistent approach.</p>

SECTION 3: SCOPE OF PUBLIC HEARINGS

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

Comments	Responses
Request to clarify why OGOA's mandate as outlined in Section 2, does not include protection of Aboriginal and Treaty Rights and to clarify what other processes are in place to ensure protection of these rights.	<p>The Regulator does not establish its own legislation. OGOA is administered by the Department of Industry, Tourism and Investment.</p> <p>Although Section 2 of OGOA does not specifically include protection of Aboriginal and Treaty Rights, it does not preclude the Regulator from considering Aboriginal and Treaty Rights where infringement of these rights falls under the scope of what the Regulator has the legal authority to address (see discussion of the Regulator's consultation obligations under Section 2).</p>
Request to clarify why impacts on Aboriginal rights holders potentially affected by a project are not triggers for holding a public hearing.	<p>OGOA does not contain mandatory provisions that trigger the requirement to hold a public hearing.</p> <p>Consultation with Indigenous Governments and First Nations will be carried out as needed in response to potential infringements of rights within the scope of the Regulator's legal authority and is not contingent on holding a public hearing.</p>
Recommendation to change wording to clarify the types of information that may be presented at public hearing.	The Guidelines have been revised accordingly.
Recommendation to change wording to clarify the Regulators mandate, as described in the Guidelines, from exploitation of oil and gas resources to development of oil and gas resources.	The Guidelines have been revised accordingly.
Request to clarify how the Regulator will coordinate the public hearing process with co-management boards established under the MVRMA, specifically Land and Water Boards, to ensure duplication of processes is minimized.	<p>When holding public hearings, OROGO will coordinate with the appropriate Land and Water Board, to minimize duplication to the extent possible.</p> <p>OROGO will also invite the Land and Water Board to participate in the pre-hearing conference to identify potential areas of overlap.</p>

SECTION 4: TYPES OF PUBLIC HEARINGS

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

Comments	Responses
Request to clarify how Aboriginal and Treaty rights are considered by the Regulator when the Regulator is considering how an issue fits into the Regulator's mandate.	Please refer to the first response in Section 3.
Recommendation that OROGO should consider issuing a public notification in advance of the hearing in line with requirements as outlined in the legislative requirements and Rules of Procedure used by the co-management boards established under the MVRMA.	<p>OROGO will ensure that adequate timelines for notification of public hearings are included in OROGO's Rules of Procedure for public hearings.</p> <p>When OROGO develops Rules of Procedure for public hearings, it will review the Land and Water Boards' Rules of Procedure will incorporate content where appropriate to support a consistent approach.</p>

SECTION 5: ORAL PUBLIC HEARING PROCESS

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

Comments	Responses
Recommendation that OROGO should consider issuing a public notification in advance of an oral public hearing to allow communities adequate time to respond.	OROGO will ensure that adequate timelines for notification of public hearings are included in OROGO's Rules of Procedure for public hearings.
Recommendation to clarify the use of the term 'intervener' in relation to the applicant. A submission from the applicant should not be considered an intervention as it may cause confusion during the hearing process.	The Guidelines will be revised to clarify that the materials submitted by the applicant will not be considered an intervention.
Recommendation that the Regulator develop timelines and detailed procedures for holding public hearings.	When OROGO develops Rules of Procedure for public hearings, they will include timelines and more detail on public hearing processes and procedures.
Recommendation that the Regulator use pre-hearing conferences to find common ground on certain issues to help focus the issues before they are heard by the Regulator. The public hearing can then focus on matters of disagreement between the applicant and the other parties.	OROGO agrees with this recommendation.

Comments	Responses
Recommendation that the Regulator should include a statement in the Guidelines that directs interveners to file a written intervention within the time specified by the Regulator, or state that the Regulator will issue a directive prior to the public hearing specifying the timelines for filing of interventions for the hearing.	When OROGO develops Rules of Procedure for public hearings, they will address the timelines for filing interventions.
Recommendation that the Regulator include a statement in the Guidelines that clarifies timelines on when the Regulator may cancel a public hearing and provide rationale as to why the Regulator would cancel a public hearing.	When OROGO develops Rules of Procedure for public hearings, they will include details on the cancellation of public hearings.

SECTION 6: WRITTEN PUBLIC HEARING PROCESS

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

Comments	Responses
Request to clarify the difference between a written public hearing and an oral hearing as the term 'public hearing' is confusing in that no actual hearing takes place.	Although a written public hearing is not held in an actual location and is not a forum where evidence is presented orally, it is still considered a public hearing as it allows the applicant and interveners to present their respective evidence in writing regarding an application being considered by the Regulator.

SECTION 7: ACCESS TO INFORMATION FOR PUBLIC HEARINGS

No comments were received about section 7 of the Guidelines.

SECTION 8: CONFIDENTIAL INFORMATION AND PUBLIC HEARINGS

The comments received about section 8 of the Guidelines and the responses are captured in the following table.

Comments	Responses
<p>Request to clarify what information can be considered confidential by the Regulator during the public hearing process. Leaving too much discretion to the Regulator during the hearing process could allow information of critical importance to the public, such as the composition of fracking fluids and other chemical substances and processes, to be kept confidential.</p>	<p>A request for information to be held confidential during the public hearing process would be considered based on the criteria established in section 22(2) of OGOA, as well as the additional criteria for confidentiality contained in OGOA as follows:</p> <ul style="list-style-type: none"> • Financial or competitive impact of the disclosure (section 22(3)); and • Impact of the disclosure on security of operations and infrastructure (section 22(4)). <p>The process for requesting confidentiality and criteria for confidentiality are described in the <i>Public Access to Information Guidelines and Interpretation Notes</i>.</p> <p>The composition of hydraulic fracturing fluid is specifically identified in section 22(9) of OGOA as information to be made publicly available 30 days after the well was completed using hydraulic fracturing.</p>
<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, as described above.</p> <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. 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. If requested to do so, the Regulator would treat confidentiality of TK with the same legal weight as any other request to keep information confidential. This approach is consistent with that of other resource co-management boards in the Northwest Territories.</p> <p>The <i>Public Access to Information Guidelines and Interpretation Notes</i> have been amended to discuss the confidentiality of 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>

CONCLUSION

The public engagement process resulted in a number of comments on the Guidelines, primarily associated with clarifying the Regulator's role in consultation and refining the Regulator's proposed processes for conducting public hearings

The Guidelines have been amended to reflect the comments received where possible, while maintaining the integrity of the Guidelines with respect to their objectives.

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