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# **CEPA CONSULTATION FRAMEWORK**

## **PRINCIPLES, OBJECTIVES AND GUIDELINES**

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## Table of Contents

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Executive Summary	Page 3
CEPA Consultation Framework: Principles, Objectives and Guidelines	Page 6
CEPA Consultation Guidelines – Flowchart	Page 10



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## Executive Summary

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The Canadian Energy Pipeline Association (CEPA) has identified a need to develop a cross-industry “Aboriginal consultation framework” for its member companies. That need is driven by the following factors:

- Canada’s oil and gas transmission system is growing and, in order to expand, CEPA companies need to engage and consult with Aboriginal communities across Canada;
- Positive relationships are needed for effective operations; and
- Industry has a role to play which is variable depending upon circumstances and consults to determine the impact of their projects; however this consultation does not fulfill the Crown’s obligation. The Crown has to reconcile the Aboriginal interest with the public interest.

This report recommends a consultation framework that contains core consultation “principles” and associated CEPA “objectives,” as well as guidelines. Together the principles, objectives and guidelines form CEPA’s Aboriginal consultation framework and provide CEPA companies with the essential elements that are needed to guide their consultation activities.

It should be noted that CEPA has also developed a capacity framework as a companion document to the consultation framework. Although the two frameworks have been developed separately, they are intricately related. The two frameworks complement CEPA’s existing Aboriginal relations policy and are reviewed on an annual basis in order to continually address the priorities established by CEPA’s Board of Directors.

## Summary of Research

During the review of existing policies and guidelines, three main points emerged:

- 1) *Consultation is a priority issue for governments, industry and First Nations*



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The Federal Government updated its Guidelines on Aboriginal Consultation and Accommodation in March 2011. Several provincial governments are currently working with Aboriginal communities and organizations to develop or update their consultation guidelines.. A number of Aboriginal communities have also developed comprehensive principles, and many CEPA companies have either established guidelines or negotiated consultation agreements with Aboriginal communities.

CEPA has taken note of the Government of Canada's endorsement, last November 2011, of the United Nation's Declaration on the Rights of Indigenous Peoples. CEPA's Consultation and Capacity Frameworks serve to reaffirm CEPA members' commitment to the highest international and national standards regarding the respect for the rights of indigenous peoples and the development of projects deemed in the public interest, in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith, set forth in concluding Article 46 of the U.N. Declaration.

## *2) There are similarities and commonalities among basic principles*

A number of common principles emerged during the review of Aboriginal, industry, and legal guidelines. These principles are divided into eight broad categories:

- (i) Recognition of Aboriginal and treaty rights: Aboriginal rights must be respected;
- (ii) Relationships: consultation activities can create mutually beneficial relationships;
- (iii) Duty to consult: the Crown always has a duty to consult, even when Aboriginal rights have not been proven. The Crown is ultimately responsible for consultation, although some aspects of consultation may be delegated to industry;
- (iv) Underlying principles: consultation must be meaningful and requires a genuine attempt to address interests and concerns;



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- (v) Timing: consultation must be undertaken in a timely manner and as early in the decision/planning process as possible;
- (vi) Information to community: information must be comprehensive and understandable;
- (vii) Identification of impacts accompanied with the development of appropriate mitigation plans: impacts must be minimized; and
- (viii) Scope of consultation: the nature and scope of consultation will vary with the nature of the proposed activity and the impact to Aboriginal activities.

3) *The differences between industry and Aboriginal principles are subtle:*

Four subtle but significant differences emerged during the review of Aboriginal and industry consultation policies.

First, Aboriginal rights and title are interpreted differently by Aboriginal groups and industry. Industry recognizes and respects the assertion of Aboriginal and Treaty rights, Aboriginal groups state that rights and interests should not be questioned. While industry recognizes and respects the assertion of Aboriginal and Treaty rights, it takes the view that even though it may not be necessary to prove such rights in order for the Crown's obligation to consult to be triggered, industry still requires information from Aboriginal groups in order to mitigate impacts.

Second, industry policies, regulations and agreements assert a right to operate and maintain facilities so that public safety and pipeline integrity can be preserved. Although many First Nations have agreed to include the principle in agreements with industry, it is not articulated in their public policies.

Third, Aboriginal groups in some instances expect industry to be willing to cancel a proposed project or activity if the community so decides, whereas industry is clear that while mitigation measures may include avoidance of adverse impacts, simply agreeing to cancel an entire project would be unacceptable. Companies are of the view that increased incorporation of



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Aboriginal communities into planning processes through regular contact and information sharing, will make a demand that a project or activity be cancelled less likely to occur. If a demand should arise, the decision to proceed or not will be left to the regulator.

Finally, the issue of how cumulative impacts should be dealt with is not clear, although it is generally agreed that the Crown is ultimately responsible. Industry does not typically address the issue in its policies, but it is extremely important to Aboriginal communities.

## **Conclusion**

CEPA's consultation framework is consistent with current industry practices. It also addresses most of the over-arching principles found in consultation policies or other documents of Aboriginal groups, which were reviewed in developing this framework. The framework can be used as a foundation for companies to build more specific policies, or it can be used on its own as a guide to consultation activities.



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## Proposed Framework

<b>CEPA CONSULTATION PRINCIPLES &amp; OBJECTIVES</b>	
<b>Our Principles</b>	<b>Our Objectives</b>
<b><i>Mutual Recognition and Respect</i></b>	
Recognition and respect of Aboriginal and Treaty rights.	⇒ We will consult with Aboriginal communities on an on-going basis.
Aboriginal communities will be offered a distinct consultation process.	⇒ Consultation processes will be specific to the Aboriginal community.
Open, honest and clear communication.	⇒ We will work together with Aboriginal communities to make sure that we understand the information we provide each other.
We respect the diversity of Aboriginal communities.	⇒ Our approach will be flexible to reflect the different social and economic realities of Aboriginal communities across Canada.
<b><i>Early Notification</i></b>	
A timely exchange of information is important.	⇒ We will provide communities with information as early as possible. We expect Aboriginal communities to do the same.



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## CEPA CONSULTATION PRINCIPLES & OBJECTIVES

### Our Principles

### Our Objectives

#### ***Meaningful Consultation***

Consultation is mutually beneficial.



We will work with communities to identify specific concerns as well as potential opportunities.

The concerns and interests of Aboriginal communities need to be identified.



We will incorporate Aboriginal interests and concerns into our decision making and planning processes.

#### ***Long Term Relationship***

Relationships should be positive and mutually beneficial.



We will work towards developing long-term, sustainable relationships based on mutual respect.

Consultation processes are ongoing.



We will consult with Aboriginal communities on an ongoing basis about our plans and operations.

We want Aboriginal communities to participate in consultation activities.



We will work with Aboriginal communities and the Crown to encourage the provision of resources to participate in consultation processes, as required.

Agreements with Aboriginal communities can be used to clarify specific concerns and issues.



We will negotiate agreements with Aboriginal communities when it is mutually agreed.





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## CEPA CONSULTATION PRINCIPLES & OBJECTIVES

### Our Principles

### Our Objectives

The level of consultation will vary depending on the nature of the project or activity and the extent of the potential impacts on the exercise of Aboriginal and Treaty rights.



We will inform communities about our plans and, when there are impacts, we will work together on potential mitigation strategies.

When mutually beneficial, economic opportunity should be made available.



We will work with the community to build capacity to participate.

Shared responsibility for results is important.



We will measure our success by setting benchmarks.

The duty of consultation rests with the Crown.



We will support the Crown in its efforts to achieve meaningful consultation.

The safety and integrity of our facilities is paramount.



We will educate interested communities about our facilities and operations.



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## CEPA CONSULTATION GUIDELINES

### Preamble

In the table below, CEPA offers a series of suggestions for consulting with Aboriginal communities. These suggestions should be followed in order to help develop and maintain successful, long-term relationships with Aboriginal communities. It is important to note that these suggestions are predicated on the following principles that are considered essential to the successful implementation of projects:

- Build relationships based upon mutual respect – meet with Aboriginal communities on an ongoing basis to discuss project plans. This process will inform planning processes and also support labour and business development;
- Maintain a record of contact, including an inventory of issues, concerns and interests raised by Aboriginal communities;
- Communicate with the community throughout the entire project – consult and communicate with communities before, during and after completion of a project(s); and
- Maintain long-term relationships – long-term relationships are maintained through ongoing communications.



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## CEPA CONSULTATION GUIDELINES

<p><b>Step One:</b>  <i>Engage at an early stage.</i></p>	<p>Notify Aboriginal communities and engage in discussion as early as possible, before a decision is made to proceed with a particular project.</p>
<p><b>Step Two:</b>  <i>Determine appropriate consultation methods.</i></p>	<p>Based on the scope of the proposed activity and input from the affected Aboriginal community(ies), determine appropriate consultation methods. Methods could range from simple information sharing to the negotiation of protocol agreements.</p>
<p><b>Step Three:</b>  <i>Provide information about proposed projects to affected communities.</i></p>	<p>Provide Aboriginal communities with information about projects that might affect them. Information may include: a description of the timing, nature, and scale of the proposed activities; maps; environmental reports; and related employment and contracting opportunities.</p>
<p><b>Step Four:</b>  <i>Aboriginal community to participate in consultation activities.</i></p>	<p>Work with Aboriginal communities and the Crown to facilitate the provision of resources to Aboriginal communities to participate in consultation processes, as required.</p>
<p><b>Step Five:</b>  <i>Identify effects with Aboriginal communities.</i></p>	<p>Use studies and other tools to identify effects. Possible tools include, but are not limited to: Traditional Use Studies, environmental studies, heritage inventories, wildlife inventories, fisheries studies and past experience.</p>



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<b>CEPA CONSULTATION GUIDELINES</b>	
<b>Step Six:</b> <i>Mitigate impacts.</i>	Jointly develop mitigation measures with affected Aboriginal communities. Examples of mitigation measures include: relocating workspaces, using less intrusive construction methods, relocating pipeline route, protecting sensitive sites.
<b>Step Seven:</b> <i>Negotiate agreements with Aboriginal communities, where jointly agreed by the parties.</i>	Negotiate agreements and/or participation initiatives with Aboriginal communities for economic opportunities and potential benefits.
<b>Step Eight:</b> <i>Implement agreements and/or participation initiatives.</i>	Agreements or initiatives could include: business/economic opportunities, Aboriginal employment, contracting set-asides, training opportunities, business partnerships, collaborative management, joint ventures, etc.



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## CEPA CONSULTATION GUIDELINES - FLOWCHART

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The following flowchart demonstrates the continuity of CEPA's consultation guidelines.

