

Fort Chipewyan Métis Nation  
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Alberta TOP 1B0

Date May 4, 2023

*Sent Via Email Only*

House of Commons, Standing Committee on Environment and Sustainable Development

ENVI@parl.gc.ca

**RE:** Provision of Supplementary Information- ENVI Meeting No. 59

Dear:

Francis Scarpaleggia, Chair, Terry Duguid, Lloyd Longfield, Leah Taylor Roy, Joanne Thompson, Patrick Weiler, Gérard Deltell, Damien C. Kurek, Hon. Mike Lake, Greg McLean, Heather McPherson , Xavier Barsalou-Duval , Michael V. McLeod , Elizabeth May

Fort Chipewyan Métis Nation (FCMN) was pleased to present to the Standing Committee on Environment and Sustainable Development on April 24, 2023 related to the Imperial Oil Resources spill and seepage from its Kearl oil sands mine site and the associated impact on our community. In addition to the comments provided during the session, we would like to take the opportunity to provide additional information related to our key concerns and expectations.

Our concerns are founded on the lived experience and knowledge of our community, our Elders, Leaders, Land Users and Knowledge Holders. FCMN also relies upon the technical expertise of multiple, established experts across disciplines including those who have served in high and authoritative posts in both Alberta and with the Government of Canada. Hence, we speak with authority, relevance, and knowledge on these issues.

The issue of a lack of oversight and management of the oil sands in NE Alberta extends far beyond the recent incidents at Imperial's Kearl oil sands project. Furthermore, the Imperial issues are far more serious than a breach of notification and communication protocols by Imperial and the Alberta Energy Regulator (AER). While, the seepage and spill, and the manner to which they have been managed is a

Page 1 of 1



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significant issue, it only scratches the surface of a much deeper problem with significant potential to affect not only our community and our sister communities but Canadians at large.

Canada and Alberta have failed to manage the oil sands at several levels. When projects are applied for by proponents, assessment of projects by review panels under the impact assessment process is based on several factors including the predictions of potential project impacts on the environment and health of communities. Once projects are approved however, the impact predictions are not validated to determine if they were accurate or not. To be clear, the follow-up required in the impact assessment process, is rarely, if ever, conducted by Canada, Alberta or industry. Imperial's Kearl mine is a case in point but, is not unique in this regard. The Joint Review Panel predicted in 2007 that the Kearl oil sands mine tailings pond would seep based upon the nature of the geology in the area. Despite this heightened risk, neither Canada, Alberta nor Imperial tracked or validated the impact predictions made back in 2007. Indigenous communities have been asking industry and governments to conduct this follow-up analysis for years but to no end. The requirements for follow-up do not carry over into project approvals established by the Alberta Energy Regulator (AER) after the project is approved. Hence, follow-up is never completed. This means, that we currently do not know if the cumulative impacts of the Kearl project (or any oil sands project) on the environment and the health of Indigenous communities that were predicted when the project was approved were accurate. This uncertainty hangs over communities every hour of every day; communities that are surrounded by oil sands development; those that rely on the region for their water, food, medicines, sustenance and culture.

The Kearl tailings pond is seeping along the entire north and eastern perimeters of the pond near key rivers in our region. The seepage is continuing to this day and has been for over a year with no estimates provided on how much seepage has occurred. Communities were aware of changes in groundwater quality that were occurring at the site back in 2019 through our own analysis of the data and review of annual Tailings Management Reports that Imperial submits to the AER. Our concerns have been ignored year after year. In fact, operators provide these reports to communities for "comment" after they have already been submitted to the regulator for approval. Some operators refuse to provide the reports or support the communities to review these technical reports, leaving the communities to review these reports at their own cost, if at all. In addition to Imperial, there are other operators that have also documented changes in groundwater quality occurring around their tailings ponds. In addition to changes in groundwater, we are also aware of changes in other environmental indicators (surface water quality, surface water quantity, contaminant levels in wildlife, changes in air quality) that affect the environment we depend upon and have great potential to impact our health. In fact, AER's Chief Environmental Scientist at the time, who now advises FCMN, wrote a report on the limitations of the air quality monitoring system back in 2016, following a near-miss critical incident that had the potential to seriously



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affect communities in the region. Several recommendations were tabled including required improvements to notification and communication protocols and these fell to the AER and Alberta Health to move forward. After 7 years, progress has been extremely slow and remains incomplete.

You may hear during your deliberations that the environment is being adequately monitored by the Canada-Alberta Oil Sands Monitoring Program (OSMP) and this information is available to communities to assure their environment and health is being monitored and protected. Mr. Pushor (AER), in his testimony to you, for example, referred to the OSMP as a venue where regional monitoring provides the necessary data to fulfill, among other things, validation of predicted environmental assessment effects but as signatories of that program we can confirm that this is not the case and the program is not set up to serve this purpose. It is important to understand that since the inception of the program in 2012, \$0.5 billion dollars have been invested in environmental monitoring and not a single State of the Environment Report has been written by the program nor are the data accessible or publicly available in any reliable form or function. The Office of the Auditor General of Alberta has reported year after year, the deficiencies of the Oil Sands Monitoring Program and in fact, the program has failed to produce an annual report on its use of public funds for over 3 years. Despite the Auditor reports, there remains no accountability or transparency. While Indigenous communities are beginning to conduct some community-based monitoring under this program, they have no authority to influence the program or policy or regulatory decisions based on the results of the monitoring. Decision-making authority rests with Canada and Alberta.

***Recommendation #1: All oil sands mines, including but not limited to Imperial Kearn should be required to validate the impact predictions made during their original project application using current and relevant data to determine if the impact predictions were accurate or not and propose mitigations. This process should be public, transparent, and overseen by an independent oversight body with technical expertise.***

***Recommendation #2. Given the lack of follow-up and our uncertainty as to the condition of the environment and how that is impacting our health, culture and well-being, a cumulative effects assessment is required to assess the cumulative impacts on the environment and the health of communities in the region due to oil sands activities. This should be conducted by the Honorable Steven Guilbeault (the Minister of Environment and Climate Change) who holds the authority to appoint a Committee or ask the Impact Assessment Agency of Canada (the Agency) to conduct a regional assessment.***



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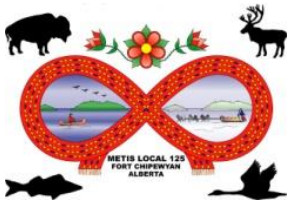
Finally, while the Imperial issues may have raised the lack of management of the oil sands to the recent attention of the Committee, there are long-standing policy and regulatory issues that must be addressed. FCMN understands the economic contributions the oil sands make to Canada however, there are significant management deficiencies that have now created a high-risk legacy to the economy of Canada and to the health and wellness of our peoples that will affect us for generations.

The Tailings Management Framework (TMF) for Alberta's oil sands resides under the 2012 Lower Athabasca Regional Plan (LARP) which is intended to set environmental limits, conserve sensitive lands, provide certainty regarding land uses to industry, diversify the economy and offer numerous recreational opportunities in the region. The Government of Alberta owns the policy while the AER implements portions of it through regulation (such as Directive 085 for managing fluid tailing volumes). There are several components of the TMF including tailings management, water management, reclamation, and the Mine Financial Security Program.

LARP is supposed to be the key mechanism for management of cumulative effects in Alberta including oil sands development. Alberta continues to ignore concerns of Indigenous communities related to LARP and the 10-year review of LARP as required under legislation to report to the Stewardship Minister on its ongoing relevancy and effectiveness is proceeding without any meaningful inclusion of Indigenous communities who are very concerned about both its relevancy and effectiveness to manage cumulative effects that continue to occur on our lands and waters.

Implementation of the TMF by Alberta has been hampered by endless staff turnover in the department and changes in governance structures with the different components of the TMF being managed in a fragmented, disconnected manner. Significant reports have been written on the gross underestimation by Alberta on mine financial securities and the liability Albertans and Canadians will carry to remediate and reclaim the oil sands landscape. In addition, there is no certainty of what the reclaimed landscape will look like, the level of contamination, or if the land will be useable. The AER has approved criteria proposed by industry for them to use to track if lands are ready-to-reclaim and despite our on-going concerns regarding the adequacy of these criteria, we have been ignored. In fact, currently, the main reclamation feature industry is relying on to close their sites, end-pit-lakes, have not been proven as acceptable reclamation features. The tailings management component of the TMF, as managed by the AER under Directive 085, is also inadequate with tailings volumes continuing to increase with no certainty of how they will be managed at mine closure.

With respect to water management, the final component of the TMF, industry made commitments during project approvals that water management during operations would not rely on the release of oil sands



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process waters to rivers in the region. Yet, due to significant lobbying on behalf of the industry, we find ourselves now being pressured to consider a federal regulation under the Fisheries Act in the next two years (2025) for the treatment and release of process waters to the rivers we drink from and depend upon. Industry has failed to provide any justification as to why this regulation is required now during operations and has also failed to consider how alternatives to release of process water could be used to better manage water volumes stored on site. Management of contaminated process water requires an integrated, incentive-based regulatory system to drive the use of alternatives as, opening the valve to the river and relying on dilution is absolutely not the acceptable solution. Both Canada and Alberta have referred to the Imperial incident as evidence to accelerate development of this regulation for release of process waters without understanding that industry has failed to consider alternatives to release or even use of best available technology to treat the waters intended for release should these regulations come to be. Furthermore, how can this even be considered given the poor oversight and regulation of the oil sands? The regulatory system has failed to manage a single operator with a documented high risk of seepage (Imperial Kearn) and certainly does not have the confidence or competencies to manage the safe treatment and release of waters to our rivers.

We have presented above key examples from every component of the TMF that demonstrates the failure of Alberta's policy to manage tailings as well as to manage cumulative effects under LARP. The situation becomes even more concerning when the relationship between the Government of Alberta and the AER is considered. While the AER is not an agent of the Crown and is intended to be arms-length from Alberta, it is required to implement the policies established by the Government of Alberta (such as Directive 085 under the TMF). The Ministers responsible for the AER (Ministers of Energy and Environment and Parks) are to determine AER's objectives and monitor that the AER is meeting them. The AER has failed to effectively regulate the oil sands in Alberta and has failed to implement the policies of the Government of Alberta. However, the Ministers responsible to ensure the AER is performing effectively have also failed to provide the required oversight.

Communities have been deeply concerned about the management of Alberta's oil sands, the lack of federal oversight, the lack of oversight of the Government of Alberta over the AER, and the performance of the AER. Industry understands the need for regulatory compliance but when the regulatory system is dysfunctional and there is no accountability through the chain of oversight, compliance is relative.

***Recommendation #3. An independent review of the management of the oil sands in Alberta is required with specific attention to the effectiveness of the AER, the mechanism of oversight of the AER by the Government of Alberta, and the potential for alternate management structures including an increasing role for Canada and Indigenous communities.***



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Communities have been concerned about the risk of tailings pond seepage and dam breaches for years. In 2016, a Reactive Monitoring Mission requested by the United Nations investigated the threats to Wood Buffalo National Park, downstream of Alberta's oil sands and impacted by the cumulative effects of water control structures, climate change, oil sands development, etc. Several recommendations were tabled for Canada to consider to improve the outlook for the park. An Action Plan was created to address these recommendations including 142 actions with assigned responsibilities to provincial, territorial, or federal governments depending on jurisdiction and authorities. One of the actions, as requested by Indigenous communities, was a systematic risk assessment of the tailing ponds of the Alberta oil sands region. Seven years later, implementation of this risk assessment has not begun by Alberta and in fact some representatives from Alberta continue to question the need for such an assessment arguing that the current management frameworks to address impacts are sufficient. Given the unfolding situation with Imperial Kearn and the mismanagement of the Kearn lease as well as the oil sands overall, the uncertainty with respect to tailings risk has increased.

***Recommendation #4. A full audit and risk assessment of the tailings ponds is required that considers and evaluates the results of dam safety inspections, status of seepage detection and volumes, approval compliance, capacity constraints, etc. This audit should be conducted by an independent and competent technical body selected in conjunction with Indigenous communities in the region.***

FCMN appreciates the opportunity to provide this supplemental information to the Standing Committee on Environment and Sustainable Development related to our concerns and recommendations. As mentioned by several members of the Committee, our trust is broken and has been for some time. What are the first steps to rebuilding this trust? Begin by hearing us, accepting these recommendations, and working with us towards solutions to protect our lands and our people. Reconciliation and implementation of commitments made under UNDRIP begins with sincere and accelerated effort to take action in response to our concerns. We hope that our efforts in providing this additional information will be considered seriously in this regard.

We would be happy to discuss this information more fully at any time and are also open to more detailed discussions that include our technical experts if the opportunity arises.



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Sincerely,

Carmen Wells, Lands and Regulatory Director

Fort Chipewyan Métis Nation

CC Tammy Riel CEO, Fort Chipewyan Metis  
Board of Directors, Fort Chipewyan Metis