



MIKISEW CREE FIRST NATION

ALLISON BAY INDIAN RESERVE #219
BOX 90, FORT CHIPEWYAN, ALBERTA T0P 1B0
PHONE: (780) 697-3740 FAX: (780) 697-3826

July 4, 2023

WITH PREJUDICE

VIA ELECTRONIC MAIL (laurie.pushor@aer.com)

Laurie Pushor, CEO
Calgary Head Office
Suite 1000, 250-5 Street SW
Calgary, Alberta T29 0R4, Canada

Dear Mr. Pushor:

**Re: Request for temporary Suspension at Imperial Oil Ltd. Kearl Project
Alberta Energy Regulator (“AER”) Approval Number 10829
Environmental Protection and Enhancement Act (“EPEA”) Approval 46586-01-00**

On behalf of Mikisew Cree First Nation, I write with grave concern over the ongoing continuous, off-lease seepage, at multiple locations, from Imperial Oil Resources Ltd.’s (Exxon) Kearl Project (“Seepage”).

This Seepage has violated and continues to breach the Kearl Project’s EPEA Approval. For example, section 4.2 of the EPEA Approval prohibits the approval holder from releasing any substances from the plant to the surrounding watershed.

The Seepage has also impacted our traditional territory and Treaty rights, the extent of which remains unknown, in part, because of AER’s weakening of monitoring requirements for the Kearl Project.¹ The Seepage has further impacted at least the mental health of our members, if not the physical health (i.e. cancer rates and other rare diseases).

In response to the Seepage, the AER has issued Notices of Noncompliance and at least one Environmental Protection Order. Imperial has not fully complied with these. Nor has it stopped the Seepage, over a year after purportedly becoming aware of it in May 2022.

Therefore, on behalf of Mikisew, I call on the AER to exercise its discretion as an independent regulator and require Imperial’s immediate compliance with the EPEA Approval. We ask that the AER immediately use its statutory powers² to order a suspension of all Imperial licences at the Kearl Project and require the cessation of all operations associated with the wells, facilities and tailings ponds, until the

¹ See for example: Removal of requirements specified in EPEA Approval 00046586-00-02, sections 4.2.25 and 4.2.26, in the renewed 2018 EPA approval 00046586-01-00.

² *Responsible Energy Development Act*, SA 2012, c R-17.3, [s 2](#); *Protection and Enhancement Act*, RSA 2000, c E-12, [s 140](#), [s. 143](#), [s. 210 \(1\)\(a\) and \(b\)](#); See also: *Oil and Gas Conservation Act*, RSA 2000, c O-6, [s 44](#); *Environmental Protection and Enhancement Act*, RSA 2000, c E-12, [section 70\(3\) \(b\)](#).

Seepage is stopped. Such an order should issue due to Imperial's apparent inability to carry out its obligations as a licensee, the lack of Imperial financing to clean up the Kearl tailings ponds and the number of breaches of the EPEA Approval, including but not limited to:

1. Imperial has not demonstrated that they have provided the necessary Deposits, per the submissions made by Mikisew, and other First Nations, on the Mine Financial Security Program. Internal estimates from the AER suggest that it may cost as much as \$130 billion to clean up tailings ponds, un-remediated mining sites, and oil sands mining infrastructure.³ In 2021, the last year for which reporting is available, Imperial Oil provided its base security deposit of \$64,655,000 in financial security.⁴ Because achieving ready-to-reclaim criteria is accounted for in operating costs, rather than a liability, Alberta is exposed to a significant risk from default. Imperial's RTR criteria is based on the same seepage monitoring program that failed to detect the Seepage subject to the Environmental Protection Order. The combined failure to a) properly account for the costs of tailings remediation, and b) have remediation criteria for tailings that properly protect the receiving environment, means that the Kearl site provides a significant financial risk to Albertans.
2. In May and June, the AER confirmed the May 19, 2022 Imperial report of discoloured surface water off-site of the Kearl Project, i.e. *prima facie* in violation of the EPEA Approval.
3. Imperial has repeatedly failed to comply with the AER's orders and directives, receiving Notices of Noncompliance, which the AER refuses to disclose to Mikisew and/or the public, but are believed to include notices dated:
 - a. September 2, 2022, Notice of Noncompliance releasing a substance from the site to the surrounding water shed and for failing to manage and contain industrial wastewater as per their EPEA approval, 15 weeks after it was initially reported.
 - b. May 5-11, 2023, Notice of Noncompliance for exceedance of sulphate levels in a Kearl Project offsite well, and failing to control industrial runoff.⁵
4. On February 4, 2023, Imperial reported to the AER an additional release of 5,300 m³ of industrial wastewater due to an overflow of an industrial wastewater storage pond that affected additional on and off-lease areas.
5. On February 6, 2023, AER issued an Environmental Protection Order, 9 months after the seepage was initially reported. Imperial has failed to fully comply with the [Environment Protection Order](#) issued February 6, 2023.⁶

³ Cleaning up Alberta's Oilpatch Could Cost 260 Billion. Global News, November 1 2018
<https://globalnews.ca/news/4617664/cleaning-up-albertas-oilpatch-could-cost-260-billion-regulatory-documents-warn/>

⁴ Annual Mine Financial Security Program Submissions. 2021 Submissions for 2020 Reporting Year.

⁵ AER Update on Imperial Kearl: May 5-11 stated "In light of the exceedance of sulphate levels in the offsite well, this week we issued a notice of noncompliance to Imperial, for failing to control industrial runoff, as mentioned in last week's update and our communication of earlier this week." No more details have been provided to Mikisew despite requests, including from Chief Billy-Joe Tuccaro to Jaimie Long in early June 2023.

⁶ AER, [Environment Protection Order](#), February 6, 2023. "Whereas the AER has determined that additional work is required to ensure that source control of the Substance is in place prior to spring freshet to prevent further environmental impact." As of April 27, the erosion control measures for the west external tailings area were not complete, and several control measures continued to be worked on into May. See community updates April 27, 2023, May 4, 2023, and May 11 2023. <https://www.aer.ca/protecting-what-matters/holding-industry->

Imperial has failed to stop the Seepage dating back to at least May 19, 2022, when it was first reported.

However, tailings pond seepage is nothing new. The AER will be aware of the Commission for Environmental Cooperation Report, dated September 4, 2020, confirming that off-site seepage from the Athabasca region tailings ponds has been ongoing for years.⁷ A technical review of the Kearl Project's Tailings Management Reports for Oil Sands Mining Schemes ("TMRs"), which are required by Directive 085⁸, has indicated seepage from Kearl since at least 2019. On multiple occasions, Mikisew raised concerns with Imperial on these TMRs. The AER, at minimum, received these same TMRs, and knew or ought to have known that off-site Seepage was an issue at Kearl even before May, 2022.

Of concern, Mikisew was not asked by Imperial to review the 2022 TMR, which was expected to be made publicly available on May 31, 2022. It is not yet available.⁹

That said, with knowledge of the ongoing and long-standing Seepage from the Kearl Project, the AER is obligated to act. The AER is bound not only by its statutory mandate and undertaking to protect the public interest, but also by the Honour of the Crown. Mikisew asks that, while the Seepage and noncompliance continues at the Kearl Project, the AER take adequate and effective enforcement action to stop the Seepage as the only regulator with the discretionary power to take these enforcement measures.

We invite the AER to demonstrate its ability to act as an independent and responsible regulator. We ask that the AER put our people's lives over the protection of excessive record-breaking profits and executive salaries.

For clarity, this request is not a challenge to any Kearl Project licence or authorization. Mikisew is asking for compliance with the Kearl Project's current licences and authorizations, namely the EPEA Approval.

A timely response will be appreciated no later than **July 20, 2023**.

Sincerely,



Chief Billy-Joe Tuccaro, on behalf of Mikisew Cree First Nation

cc. Premier Danielle Smith premier@gov.ab.ca
Minister of Energy and Minerals, Brian Jean. Minister.energy@gov.ab.ca
Minister of Environment and Parks, Rebecca Schulz aep.minister@gov.ab.ca
Minister of Indigenous Relations, Rick Wilson ir.ministerofficer@gov.ab.ca
Minister of Environment and Climate Change Canada, Steven Guilbeault Steven.Guilbeault@parl.gc.ca

[accountable/investigations/ongoing-investigations/imperial-oil-kearl-oil-sands](#). Although a notice dated June 1, 2023 indicated that Imperial updated the communities on May 31, 2023 – Mikisew did not receive a presentation.

⁷ Commission for Environmental Cooperation, Secretariat, Alberta Tailings Pond II, Factual Record regarding Submission SEC-17-001 available at: <http://www.cec.org/media/media-releases/cec-secretariat-releases-report-on-alberta-canada-oil-sands-tailings-ponds/>, including the finding that “*that there is scientifically valid evidence of OSPW seepage into near-field groundwater around tailings ponds, especially when compared with the first peer-reviewed evidence published in 2009...*”.

⁸ AER, Directive 085, [Fluid Tailings Management for Oil Sands Mining Projects](#), Release, effective: May 19, 2022.

⁹ Tailings Management Reports for Oil Sands Mining Schemes, available annually: <https://www1.aer.ca/productcatalogue/380.html>.