

Alberta Energy  
Regulator (AER)  
Third-Party Review  
23RFP-CS016

Third-Party Review Report  
September 11, 2023

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# Executive Summary

The Board of Directors of the Alberta Energy Regulator (AER) engaged Deloitte LLP (Deloitte) to review the actions taken by the AER following the issuance of an Environmental Protection Order (EPO) to Imperial Oil Limited (Imperial) on February 6, 2023. The scope of our review included several areas such as incident response processes, communication, emergency response, incident investigation protocols, compliance, and enforcement processes. Deloitte performed interviews with internal stakeholders, and as arranged by the AER, Deloitte also interview First Nations and Métis stakeholders (herein referred to as “Indigenous Peoples”), and reviewed relevant policies and procedures based on leading practice principles from Deloitte's Global Framework for Crisis and Incident Response.

The review found that while the AER followed the internal policies, standards, procedures, and/or processes. Opportunities for improvement were identified when these were compared to Deloitte's Crisis and Incident Response Framework. We noted:

1. The AER has procedures in place for responding to incidents and emergencies, but the Kearl incidents highlighted the need for more detailed processes and clearer communication protocols with Indigenous People and external stakeholders.
2. The AER needs to standardize and clarify the terms "incident" and "emergency" and establish formal documented procedures for internal communication and escalation to management and the Board for each.
3. Improvement opportunities within the Alberta EDGE system for triaging incidents and emergencies by severity and providing more clarity on identifying when items being reported are incidents or emergencies.

4. In light of the importance of the role played by the Engagement and Communication team of AER in communicating incidents through engagement and media, opportunities for improvement in communication processes, documentation, and verification. Recommendations include developing thorough communication protocols, assigning roles for communicating with local communities, and verifying stakeholders’ and Indigenous Peoples’ receipt of communications.
5. Opportunities for improvement in providing additional detail and guidance, specifying timelines, and updating risk criteria for Statutory Decision Makers (SDMs).

In conclusion, our review has identified opportunities for improvement that will clarify and mature processes, and procedures as well as streamline the AER's governance system for incident and emergency management.

The AER staff, management, and Board of Directors have been highly supportive throughout the review process, demonstrating their commitment to actioning change.

It has been a pleasure to work with the AER staff, management, and Board of Directors, as well as the representatives from the Indigenous Peoples interviewed and the Regional Municipality of Wood Buffalo (RMWB). We appreciate their openness, cooperation, and constructive feedback, which have contributed to the results of this Review.

# Project Overview

# Background, Objective and Scope

## Background:

An Environmental Protection Order (EPO) was issued February 6, 2023, by the Alberta Energy Regulator (AER) to Imperial Oil Limited (Imperial) in response to two containment incidents at the Kearl Oil Sands Project (Kearl). Kearl is an Imperial owned and operated oil sands site in the Athabasca Oil Sands Region of Alberta, 45 kilometers northeast of Fort McKay.

The Audit and Finance Committee (AFC) of the Board of Directors (Board) of the AER engaged Deloitte as a third-party to assess (herein referred to as “Review”) the AER’s actions surrounding the Kearl seepage and spill.



## Scope

The scope of the Review included:

- Risk Evaluation and Incident Communication
- Incident and Emergency Response
- Incident Notification
- Incident Investigation Protocol
- Investigation Communication (internal and external) Protocols
- Compliance and Enforcement Processes
- Board Reporting and Communications
- Review of relevant policies and procedures



## Objective

The objective of the Review was to review and provide recommendations on the AER’s policies, standards, procedures and communication processes for emergency response, incident reporting, investigation and action specifically during the period of the Kearl incidents between May 19, 2022, and issuance of the EPO.



## Out of Scope

The scope of the review did not include:

- Development of process maps
- Interviewing Imperial employees and directors
- Identifying and/or reviewing gaps in Imperial’s response
- Public communication support, including responding to public inquiries
- Forensic analysis of the response to the Kearl seepage and spill



Deloitte commenced work on the Review on May 16, 2023. The remainder of this report provides the results of the Review.

# Approach and Methodology

## Approach



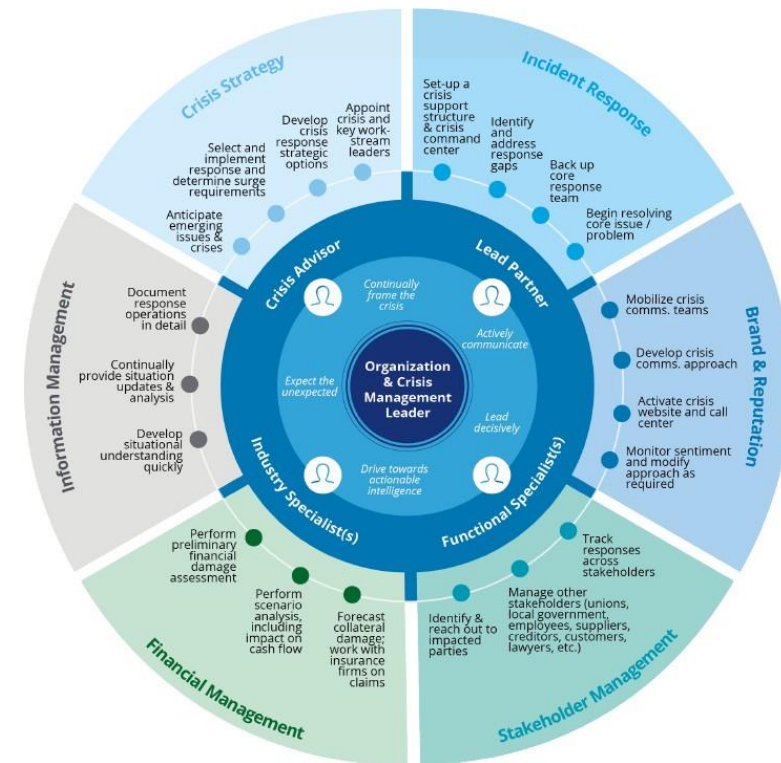
The following activities were performed as part of Deloitte's approach to the Review:

- Confirmed the objective, scope requirements, priorities, and timing with the AFC.
- Leveraging our Internal Audit approach, developed a workplan based on Deloitte's Global Framework for Crisis and Incident Response (the "C&IR Framework").
- Performed internal interviews with AER personnel to understand the AER's policies, standards, procedures and the actions taken in relation to the Kearsley Lake seepage and spill.
- Performed interviews arranged by the AER, with external stakeholders, including, Indigenous Peoples and the RMWB.
- Reviewed the relevant AER policies, standards and procedures based on the results of information gathered in interviews and compared against the C&IR Framework.
- Reported opportunities for improvement.

## Methodology



Our workplan leveraged Deloitte's Global Framework for Crisis and Incident Response, which is based upon leading practice principles and includes the following:






# Results

Based on procedures performed in relation to the Kearn incidents, our review found that the AER followed the existing policies, standards, procedures, and/or processes. AER was also supportive of the Review process and have expressed their commitment to actioning change. While no areas of non-compliance against existing policies, standards, procedures and/or manuals were noted compared to the C&IR Framework there were opportunities for improvement identified which are outlined below.





## Sound practices identified

Based on the pace of change, social trends and reconciliation action plans, it is expected that gaps and improvements emerge from evolving expectations. Our review identified the following sound practices at AER:

- **Adherence to stated policies, standards, procedures, and/or processes**  
Based on procedures performed, we have concluded that while the AER followed its stated practices in response to the Kearn incidents.
- **Engagement:**  
We experienced no challenges in securing commitment from employees, senior leaders, and the Board for interviews and documentation. Several employees sought out our teams to share thoughts and information related to our scope of work.
- **Commitment to change:**  
We observed the Board and management of the AER reinforcing their stated commitments to regulating the life cycle of oil, oil sands, natural gas and coal projects in a manner that protects public safety and the environment.

## Improvement themes identified

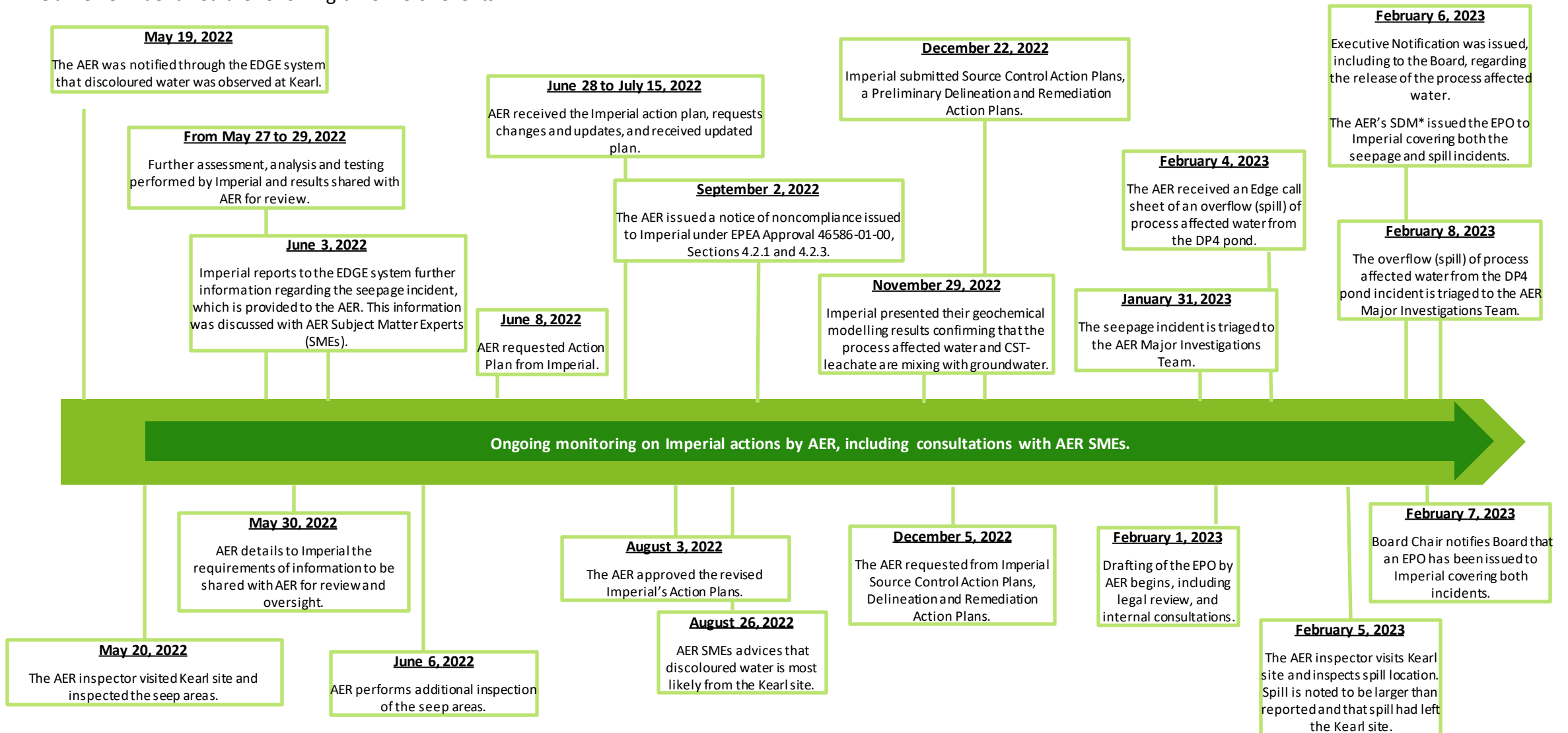
Based on interviews conducted, and responses from internal stakeholders, Indigenous Peoples, and the RMWB, the following themes emerged:

- **Policies and procedures:** The content within the AER's policies, standards, procedures, and manuals for emergency response, incident reporting, investigation contain sections of information and guidance which is dated and not in line with the C&IR Framework and/or the expectations of external stakeholders interviewed.
- **Terminology and clarity in documentation:** While policies and procedures exist, the level of detail of criteria, definitions and related guidance leaves much up to the reader's interpretation and the potential for inconsistent application, resulting from varying reader interpretation where greater clarity is required.
- **Board reporting requirements:** While management utilizes tools to communicate with stakeholders, including the Board, such as Executive Notifications, existing policies and procedures do not include escalation criteria and/or timelines for reporting incidents or emergencies to the Board.
- **Communication and stakeholder engagement:** Although it is the duty holder who is legally required to report a release to anyone who “may be directly affected by the release”\*, the AER’s process and timelines in place for communication with external stakeholder groups does not explicitly consider the expectations of Indigenous Peoples.

\*Environmental Protection and Enhancement Act, Section 110

# Timeline of AER Actions for the Kearn Incident

Our review identified the following timeline of events:



\*Statutory Decision Maker



# Perspectives from Indigenous Peoples

As a part of the third-party review, Deloitte interviewed representatives\* from the Mikisew Cree First Nation, the Fort Chipewyan Métis Nation, the Willow Lake Métis Nation, the Fort McMurray 468 First Nation, the Athabasca Chipewyan First Nation, the Fort McKay First Nation, the McMurray Métis Local 1935, and the Fort McKay First Nation. All respondents expressed significant concern with the gap in communications around the event, especially in the context of one email to a single point of contact to the communities in May 2022 with no additional follow-up until the EPO was issued in February 2023. For nine months a developing event with offsite impacts was being managed and no additional communications were formally provided to regional Indigenous and First Nations communities. The following is a summary of what we were told by interviewees related to the in-scope areas of our Review:

## Notification, Communication and Information Access

- Expectations around communication and incident notifications from Indigenous Peoples are heightened and evolving.
- Request for an enhanced notification process taking into consideration types of notifications, method of communication and mechanisms to keep contact lists up to date.
- When provided, information is often technical in nature and not easily understandable by community members.
- The AER website is difficult to navigate and find information relevant to communities.
- Communities want to be aware of information relevant to them and not necessarily just more information.

## Risk Assessment and the AER Oversight

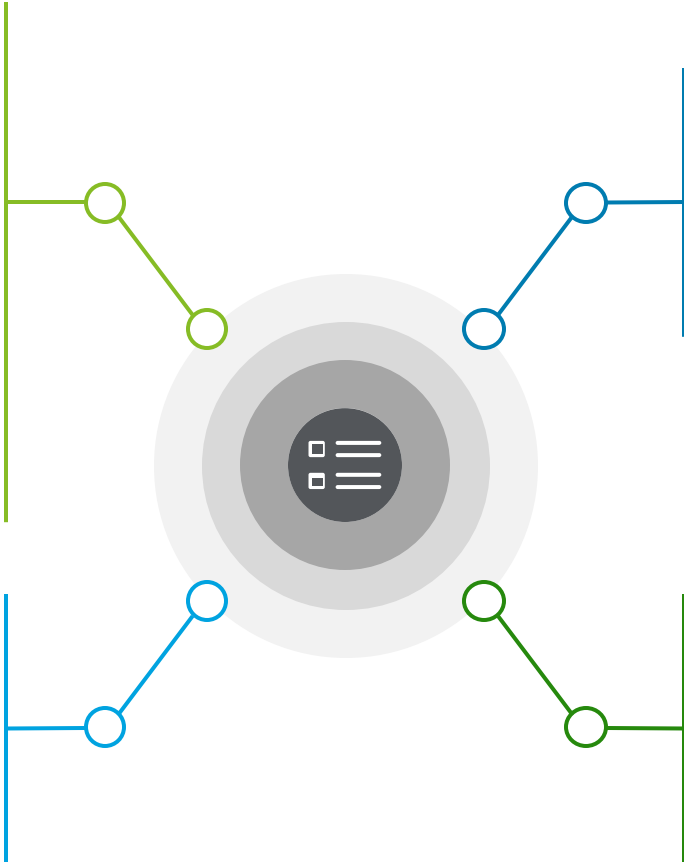
- There is a common feeling that previous incidents are not considered when dealing with project applications, assessments, and incidents.
- Indigenous Peoples feel that assessment processes often lack crucial tests and have limited scope.

## Consultation and Engagement

- The AER's policies and procedures related to the in-scope areas are not evolving with Indigenous Peoples expectations.
- The AER should differentiate between a rights holder, and a stakeholder in their policies and procedures to better address the unique needs, rights, and perspectives of each group.

## Strengths and Positive Practices

- Recent increase in communication, including executive leadership, following the EPO.
- Bi-weekly updates on the Kearl Incidents with AER staff.



# Observations and Improvement Opportunities Identified

The following observations and opportunities for improvement were identified:

| Observations  | Opportunities for Improvement   |
|---|---|
| <p><b>1. Risk Evaluation and Incident Communication</b></p> <p>The AER has procedures in place for responding to incidents and emergencies, which involve receiving reports through the EDGE system and evaluating the severity of the incident. In May 2022, an incident was reported to the AER regarding discoloured water around the Kearl lease boundary. An inspector visited the site the following day initiating the incident response process, which progressed for several months while conclusive results for testing were determined. During this period, the AER issued a Notice of Non-Compliance to Imperial on September 2, 2022. While the AER followed existing policies and procedures, it should consider more detailed processes for handling incidents and emergencies. This includes clearer communication protocols with Indigenous Peoples and external stakeholders, the use of clearer terminology, and more clearly documented procedures for internal communication and escalation to management and the Board.</p> | <ul style="list-style-type: none"> <li>• Create more detailed incident and emergency processes covering reporting, inspection, evaluation, communication, escalation, resolution, and post-incident review.</li> <li>• Create detailed call-out protocol and procedures outlining who, when, and how to communicate internally and externally during emergencies. These plans should address various communication channels and timelines for updates.</li> <li>• Adhere to the Incident Response Officer's (IRO) guidelines and provide the information to the different stakeholders on a timely basis.</li> <li>• Standardize and clarify the terms "incident" and "emergency" across policies, procedures, and manuals.</li> <li>• Establish formal documented procedures for internal communication and escalation to management and the Board for incidents and emergencies.</li> </ul> |
| <p><b>2. Incident and Emergency Response</b></p> <p>The AER has guidelines in place for responding to incidents and emergencies, including the Incident Response Handbook, Emergency Management Program Manual, and Compliance and Enforcement Program. The AER's role is to ensure that duty holders respond effectively to incidents. While the AER followed existing policies for the Kearl incidents, there are opportunities for improvement, including providing more detailed guidance and timeliness for responding to escalating incidents, defining what constitutes an emergency, and outlining sampling responsibilities, expectations, and/or requirements for inspectors and licensees after an incident is reported.</p>   | <ul style="list-style-type: none"> <li>• Revise and update the AER's Emergency Management Program Manual for noted observation areas.</li> <li>• Provide specific guidelines for inspectors and licensees regarding sample collection, methods, responsibilities, locations, frequency, and handling protocols.</li> <li>• Incorporate and elaborate on the definition of "waterbody," explicitly indicating its coverage with regards to groundwater, either inclusion or exclusion, within the Incident Response Handbook.</li> <li>• Specify if Directive 071* applies to Oil Sands mining, e.g., Kearl incidents.</li> </ul>  |

\*Directive 071: This directive sets out the requirements for emergency preparedness and response for sites regulated under the Oil and Gas Conservation Act, Pipeline Act, Oil Sands Conservation Act, and Geothermal Resource Development Act.

# Observations and Improvement Opportunities Identified (cont'd)

| Observations   | Opportunities for Improvement   |
|--|---|
| <p><b>3. Incident Notification</b></p> <p>The Alberta EDGE system is operated by the Ministry of Transportation and is responsible for being the point of contact for all energy, environmental, and industrial emergencies, incidents, and complaints reporting. Incidents are triaged and classified by the EDGE system based on severity and forwarded to relevant parties, such as inspectors or other governmental bodies. During the Kearl incident in May 2022, the EDGE system was notified, and the severity was assessed by EDGE as a “minor impact”. The AER followed existing policies and procedures, but there are opportunities for improvement, such as clarifying triage criteria for defining incidents versus emergencies and updating call handling procedures for use by the EDGE system.</p> | <ul style="list-style-type: none"> <li>• Define precise incident criteria for the AER Triage Table for EDGE.</li> <li>• Review and update the AER Triage Table for lessons learned from this incident for the Alberta EDGE system operated by the Ministry of Transportation to use.</li> <li>• Ensure timely notification of Indigenous Peoples and all relevant stakeholders, including those potentially affected, by incorporating them into the incident notification and triage process.</li> </ul>   |
| <p><b>4. Incident Investigation Protocol</b></p> <p>The AER Compliance and Enforcement personnel conduct inspections and testing to verify compliance and issue notices of noncompliance, orders, sanctions, or penalties. In the Kearl seepage incident, inspectors visited the area within 24 hours of the receiving the call sheet from the EDGE system and followed incident response protocols. The AER followed existing policies and procedures, but there are opportunities for improvement, including outlining when incidents and emergencies should be re-evaluated, specifying timeliness of incident response processes, and balancing investigation integrity with stakeholder transparency expectations.</p>  | <ul style="list-style-type: none"> <li>• Develop a systematic method to re-evaluate incident categorization, including for seepage and spills.</li> <li>• Create clear guidelines and timelines for engaging with Indigenous Peoples for more timely and relevant communication during incident response.</li> <li>• Set clear timelines for incident response processes to ensure appropriate response time.</li> <li>• Formulate explicit guidelines for sharing information with Indigenous Peoples, stakeholders, and the right holders during incident response process, considering their diversity.</li> <li>• Specify if Directive 071 applies to Oil Sands mining, e.g., Kearl incidents.</li> </ul> |

\*Directive 071: This directive sets out the requirements for emergency preparedness and response for sites regulated under the Oil and Gas Conservation Act, Pipeline Act, Oil Sands Conservation Act, and Geothermal Resource Development Act.

# Observations and Improvement Opportunities Identified (cont'd)

| Observations  | Opportunities for Improvement   |
|---|---|
| <p><b>5. Investigation Communication (Internal &amp; External) Protocol</b></p>   |   |
| <p>The AER's Engagement and Communication team plays a critical role in incident and investigation processes, including communicating with stakeholders, and issuing public media releases. During the Kearl incidents, the AER followed existing policies and procedures, but there are opportunities for improvement in structured communication processes, documentation, and verification of stakeholder communication.</p>   | <ul style="list-style-type: none"> <li>• Develop thorough communication protocols prioritizing efforts, identifying risks, and choosing channels based on severity.</li> <li>• Create protocols for engaging Indigenous Peoples and external stakeholders (for example, municipalities, and/or the public), specifying types of incident response, incidents, investigations and emergencies which require communication, and the frequency, methods, content, and responsible parties for such.</li> <li>• Assign roles for communicating with local communities and inhabitants in the affected areas.</li> <li>• Verify stakeholders' receipt of initial and subsequent communications.</li> </ul> |
| <p><b>6. Compliance and Enforcement Processes</b></p>   |   |
| <p>The Compliance &amp; Liability Management Manual provides a framework for addressing non-compliance issues, with SDMs delegated decision-making authority for compliance assurance. The Statutory Decision-Making Guide serves as a resource for making these decisions, including the issuance of EPOs decisions once they are made by the SDMs. While the AER followed existing procedures for the Kearl incidents, there are opportunities for improvement in the Order Procedures and Statutory Decision-Making Guide, particularly in providing additional detail and guidance, and updating risk criteria.</p> | <ul style="list-style-type: none"> <li>• Clearly define "significant impacts" in Expedited EPO process. Provide examples for guidance.</li> <li>• Following the complete process of evidence gathering, set time limits for Standard EPO process.</li> <li>• Develop objective criteria that the SDMs can use to assess and determine the specific actions to take based on actual and potential risk factors.</li> <li>• Include "Perceived Risk" factor in the decision-making process to address concerns related to public safety, the environment, or orderly deployment.</li> </ul>   |
| <p><b>7. Board Reporting and Communications</b></p>   |   |
| <p>The AER's internal procedures do not contain processes for communication to the Board, including guidelines for sharing information or specifics about timing and communication methods. There are opportunities to develop policies and procedures for communication with the Board of Directors.</p>   | <ul style="list-style-type: none"> <li>• Create clear guidelines for Board communication, specifying shared information, communication frequency, timing, and preferred methods.</li> <li>• Establish an escalation protocol for incidents and emergencies, defining the chain of command and steps to escalate information to the Board.</li> </ul>  |

\*Directive 071: This directive sets out the requirements for emergency preparedness and response for sites regulated under the Oil and Gas Conservation Act, Pipeline Act, Oil Sands Conservation Act, and Geothermal Resource Development Act.

# Board of Directors Response

# Board of Directors Response

*The following was provided by the Board of Directors of AER in response to the results of Deloitte's review.*

The Board of Directors of the AER accepts Deloitte's findings and recommendations from their review of the AER's internal actions in response to the Kearl incidents.

We would like to thank Deloitte for their thorough, independent review and AER staff for their openness, transparency and willingness to identify weaknesses and improvements in our current systems and processes.

We would also like to thank the Regional Municipality of Wood Buffalo and the Indigenous communities who took the time to give Deloitte their feedback to help the AER improve.

The Board notes that there was no non-adherence with internal policies, standards, procedures and/or processes in response to the Kearl incidents, and that protecting public safety and the environment was paramount in our peoples' actions. We expect nothing less.

However, Deloitte identified a number of out-of-date policies, standards, procedures and processes that need improving, as well as a need for greater transparency, consistency and timeliness in our communications. In particular, our communications failed to meet the expectations of communities who live close to the operations we regulate.

We are committed to move swiftly to correct the deficiencies identified by Deloitte, as well as working collaboratively with local communities to address concerns raised in the report.

Consequently, we have instructed AER management to prepare a detailed action plan to address these deficiencies and concerns. We have also asked Deloitte to assess the outcomes of the action plan in the coming months, and the Board will proactively report these results publicly.



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