

July 16, 2018

BY E-MAIL ONLY

Bori Arrobo
Fort McKay First Nation

**IMPERIAL OIL RESOURCES LIMITED
APPLICATION NO. 1872083
KEARL OIL SANDS TAILINGS MANAGEMENT PLAN
STATEMENT OF CONCERN NO. 30507**

Dear Bori Arrobo:

You are receiving this letter because you filed a statement of concern (SOC) on behalf of the Fort McKay First Nation (FMFN) concerning the subject application filed by Imperial Oil Resources Limited (Imperial). The Alberta Energy Regulator (AER) is appreciative of FMFN's contributions during the review of the application, including your feedback on the draft approval conditions.

The AER has reviewed your SOC and feedback, along with the application, the applicable requirements, and relevant materials constituting the record of the application. The AER notes that after reviewing the draft approval conditions, FMFN provided detailed comments with outstanding concerns and key themes.

The decision report for Imperial's Kearl Tailings Management plan (TMP) application addresses many of the concerns you raised, such as the following:

- the use of end pit lakes (EPLs). The AER's decision is in the Water Capping Technology and Alternatives to Water Capping sections of the decision report, which prohibits Imperial from placing any water, including industrial wastewater, above treated or untreated tailings for the purpose of creating a water-capped pit lake.
- fluid tailings inventory is not in alignment with *Directive 085*, and there are a lack of clear milestones. The AER's decision is in the Fluid Tailings Profiles and Project Specific Thresholds and Deposit Milestones sections of the decision report.
- use of thickened tailings (TT) technology (i.e., thickeners and secondary chemical treatment). The AER's decision is in the Fluid Tailings Treatment Technology: Technology Selection section of the decision report.

- lack of alternative technologies to water-capped fluid tailings. The AER's decision is in the Fluid Tailings Treatment Technology: Alternative to Water Capping section of the decision report.
- lack of information on Tailings Solvent Recovery Unit (TSRU) tailings treatment. The AER's decision is in the Fluid Tailings Treatment Technology: TSRU Tailings section of the decision report.
- insufficient and unclear Ready to Reclaim (RTR) criteria, including consolidation and settlement issues, and establishment of wetlands. The AER's decision is in the Ready to Reclaim Criteria section of the decision report.
- long-term landscape stability, including the management plan for the integrity of the dykes, and the final landforms. The AER's decision is in the Capping Material Availability and the Deposit Settlement sections of the decision report.
- uncertainties regarding water management, including risks to ground and surface water, and the return of process affected water. The AER's decision is in the Environmental Effects and Implications: Surface Water and Groundwater, and Tailings Water Release sections of the decision report.
- ongoing engagement with indigenous communities. The AER's decision is in the Stakeholder and Indigenous Community Engagement section of the decision report.

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In its SOC and feedback, FMFN also raised concerns or provided recommendations that are not part of the AER's decision on Imperial's Kearl TMP application, and therefore are not reflected in the attached decision report or approval. For matters related to policies and programs administered by the Government of Alberta, the AER intends to provide these concerns to the Government of Alberta.

In particular, you raised concerns with impacts on traditional land uses and the exercise of Treaty rights related to the approval and operation of the mine. Imperial's Kearl TMP application is an amendment of an existing approval. The decision report addresses such topics as setting thresholds under *Directive 085*, RTR criteria, and providing updated plans and information on tailings technology and deposits. In short, the approval deals with how tailings are managed on the existing approved mine site footprint.

This is an existing mine site and no new lands outside of Imperial's lease will be used or impacted as a result of the Kearl TMP amendment. There are no changes to Imperial's Kearl mine boundaries, nor is there any additional disturbance as a result of the Kearl TMP amendment.

FMFN also raised concerns in the draft approval feedback that eight separate applications were being approved under the TMP application. By way of clarification, these applications are previously issued amendments to the scheme approval.

Based on the foregoing, the AER is of the opinion that the concerns outlined in FMFN's SOC have been addressed to the AER's satisfaction. Consequently, the AER has decided that a hearing is not required for the Imperial Kearl TMP.

As indicated in the decision report, the AER has issued the applied-for approval. This is your notice of that decision. A copy of the AER decision report, which includes the approval, is attached.

Under the *Responsible Energy Development Act* an eligible person may file a request for a regulatory appeal on an appealable decision. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Energy Development Act General Regulation*. If you wish to file a request for regulatory appeal, you must submit your request in the form and manner and within the timeframe required by the AER. You can find filing requirements and forms on the AER website, <http://www.aer.ca/applications-and-notices/appeals>.

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If you have any questions, contact Lonny Olsen, phone 403-297-3513 or e-mail Lonny.Olsen@aer.ca.

Sincerely,

<original signed by>

Paul Ferensowicz
Senior Advisor

Enclosure (1): (AER Decision Report)

cc: Jennifer Haverhals, Imperial Oil Resource Ltd.
AER SOC Coordinator
ACO
AER Indigenous Engagement
AER Fort McMurray Field Centre