

BY E-MAIL ONLY

October 25, 2017

Paul Jespersen

Joslyn Energy Development Incorporated

SUNCOR ENERGY INC.

APPLICATIONS NO. 1857270, 1857274, 1890348, AND 075-94

STATEMENT OF CONCERN NO. 30302

Dear Paul Jespersen:

You are receiving this letter because you filed a statement of concern (SOC) on behalf of Joslyn Energy Development Incorporated (JEDI) about the applications. The Alberta Energy Regulator (AER) is appreciative of your contributions during the review of the applications, including your feedback on the draft approval conditions.

The AER has reviewed your SOC, along with the applications, the applicable requirements, and all relevant materials constituting the record of the applications, including Suncor's responses to your SOC and the feedback you provided in regards to the draft approval conditions.

In its review of your concerns, the AER considered the following:

- JEDI is concerned that overburden mining by Suncor in the same area as JEDI's oil sands lease 7407090428 (OSL 428), which it acquired in 2007, will sterilize bitumen or diminish in-situ recovery potential, and that water seepage from the in-pit dump will negatively affect the potential as an in-situ recoverable resource. JEDI alleges that Suncor's proposed mine plan would constitute the tort of nuisance and indicates that JEDI would seek injunctive relief from the Court of Queen's Bench.
- JEDI recommended three approval conditions: 1) no overburden removal within OSL 428, 2) a 250 metre setback, and 3) constructive dialogue and cooperation for zero tailings generation within Suncor's project.
- Suncor stated that the MOA amendment does not preclude the future recovery of resource within OSL 428.

- Suncor stated that, if and when JEDI provides development plans or intends to complete further work on OSL 428, Suncor remains committed to working with JEDI to accommodate surface access.
- The AER notes that JEDI acquired OSL 428 in 2007 and JEDI has not submitted an application or received approval to develop OSL 428. Further, no work has been conducted by JEDI since core drilling in 2011 and 2012.
- The concerns between the two parties seem to arise from the different rights held by each party. Suncor holds rights to conduct surface activities, such as overburden removal, under its mineral surface leases (MSLs) and is authorized to construct facilities and commence and continue a scheme to recover oil sands under its *Oil Sands Conversation Act (OSCA)* scheme approval. JEDI holds the right to explore and work oil sands minerals under its OSL.
- Suncor's approved project has had MSLs in place since 2005 and 2011 in the area overlying OSL 428. Suncor's MSLs give it the right to conduct overburden removal. Further, Suncor's approved project boundaries under its *OSCA* scheme approval have included the area overlying OSL 428 since 2005, which is before JEDI took possession of its mineral interests in OSL 428 in 2007. Given these facts, JEDI ought to have expected that Suncor would conduct surface activities as part of its mining operations overlying OSL 428 when JEDI acquired OSL 428.
- The AER notes that no change is proposed in these applications to Suncor's approved project boundaries, the mine pit or South Tailings Pond boundaries that intersect OSL 428.
- With respect to JEDI's specific concerns regarding impacts of overburden removal and water seepage on a possible in situ project, the AER is of the view that an allegation of such impacts is insufficient to demonstrate that these impacts may occur. In order for the AER to consider whether there could be impacts on JEDI's development of its minerals, the AER requires information as to the type of development that JEDI would be undertaking. This information would typically be provided in an application to the AER for such development. For instance, the AER would require geologic information (e.g., resource characterization and caprock integrity) and a viable operating pressure (depth dependent), to understand whether the OSL 428 is even suitable for in situ operations. JEDI is not permitted to conduct an in situ project on OSL 428 until it receives an approval. If JEDI intends to proceed with its project, it should file its application for its project approval.
- Whether water seepage from removal of the overburden might impact an in situ project would also depend on the type of development and geological and hydrogeological characteristics, such as resource characterization and the

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location of aquifers in the area. Without information laying out the proposed development in OSL 428, the AER does not have the information to demonstrate that JEDI may be directly and adversely affected.

- Finally, as noted by JEDI, the Alberta courts are the appropriate forum to raise its concerns regarding the tort of nuisance; the AER does not have authority to decide that matter.

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Based on the foregoing, JEDI has not demonstrated that it may be directly and adversely by the AER decision. These applications have not proposed any changes to Suncor's existing rights to remove overburden in the area of OSL 428. Further, there is insufficient information to demonstrate in situ development of OSL 428 will occur, let alone the alleged impacts on any such future in situ development.

The AER has issued the applied-for approvals and this is your notice of that decision. 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-notice/appeals>.

If you have any questions, contact LaiLoni Boswell at 403-297-2450 or e-mail lailoni.boswell@er.ca.

Sincerely,

<original signed by>

Paul Ferensowicz
Senior Advisor, Corporate Planning & Enterprise Projects, Major Initiatives

Enclosure (3): **20171025A**
OSCA Approval No. 8535N
EPEA Approval No. 94-02-18

cc: Jason Heisler, Suncor
Ken Bisgrove, Suncor
Stacey McArthur, Suncor
AER SOC Coordinator
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