

What Was Heard Report

AER Multistakeholder Fluid Tailings Regulatory Management Technical Advisory Committee

December 2015

Alberta Energy Regulator

What Was Heard Report: AER Multistakeholder Fluid Tailings Regulatory Management
Technical Advisory Committee

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1 Introduction

On March 13, 2015, the Government of Alberta released the *Tailings Management Framework for the Mineable Athabasca Oil Sands (TMF)*. The AER simultaneously suspended *Directive 074, Tailings Performance Criteria and Requirements for Oil Sands Mining Schemes*, and initiated work on a new directive as part of the *TMF* implementation.

In response to feedback from stakeholders and aboriginal communities seeking a more collaborative and transparent approach for engagement, the AER established the multistakeholder Tailings Regulatory Management Technical Advisory Committee (TAC) in September, 2015 under the direction and authority of AER president and CEO, Jim Ellis. The TAC was mandated to conduct a thorough technical review of version 1 of the *Fluid Tailings Management for Oil Sands Mining Projects* draft directive and, using a consensus-based approach, provide recommendations to the AER on improving the regulatory management of fluid tailings in the province. As part of this mandate, the TAC was asked to identify any gaps or deficiencies in the directive, including those identified in feedback provided throughout the public comment period.

Committee Composition

Committee selection was determined by the use of a delegate process. Criteria included stakeholder and aboriginal groups who had a direct interest and a high level of understanding of tailings management. The committee was comprised of major oil sands mining companies operating in the Lower Athabasca Region, First Nations, Métis, the Regional Municipality of Wood Buffalo, and environmental nongovernment organizations.

AER subject matter experts were members on the TAC and the Government of Alberta was invited to participate as an observer.

TAC Process

Operating with specific terms of reference agreed to by the TAC (see appendix 1), the committee met for ten full days from late September through mid-November 2015, including two days in Fort McMurray hosted by the Regional Municipality of Wood Buffalo. To create a common base of understanding, the TAC had an opportunity to engage in discussion about consensus decision-making at its first meeting. Ground rules were established and the TAC explored how the process could be applied for maximum benefit to build both technical awareness and important stakeholder relationships. This approach proved particularly fruitful in eliciting diverse perspectives, values and interests and in improving shared understanding around tailings management issues. Facilitators guided and supported the discussion, testing for consensus as the TAC worked through sections of the draft directive. TAC members understood that in areas where consensus could not be achieved by the group, a decision would be made by the AER.

A representative from the Government of Alberta (GoA) attended each session. The representative provided information and responded to specific policy questions as necessary. AER members of the TAC also responded to questions and provided clarification when requested. As information needs were identified additional AER subject matter experts were asked to present information to the TAC and answer questions.

The work done within TAC increased the shared understanding of fluid tailings management and potential impacts to the sector groups that comprised TAC. To ensure communication and information sharing outside of the TAC process, members were asked to provide caucus with their own sector groups and to report back to the TAC on any outstanding issues or concerns. Although the TAC reached consensus on many items, there were points where consensus could not be achieved.

Meeting Notes

Detailed meeting notes were taken to capture this input, and the AER provided an updated version of the draft directive after each set of two-day meetings.

Future Focus

Some sections in the directive refer to ongoing work that will be completed in 2016 or in response to additional policy direction expected from the GoA. TAC will continue this work on the 2016 version and stakeholders and aboriginal communities will have additional opportunities to participate in engagement related to tailings management as these opportunities are initiated by the GoA.

2 TAC Priorities

The TAC prioritized its work to ensure that sections relevant to version 1 of the directive were addressed. Where consensus was reached, the AER incorporated the TAC's feedback into a revised directive. Areas in which consensus was not reached were clearly identified and perspectives were fully documented to assist the AER in making its decisions on these topics. Time constraints prevented a review of all sections in the draft directive, and it was agreed that these sections could be reviewed as part of version 2 work on the directive.

The TAC focused its attention on the following sections of the draft directive:

- 1 – Introduction
- 2 – AER Approach
- 3 – Principles
- 4 – Profiles and Fluid Tailings Management Plan Application Requirements
- 5 – Fluid Tailings Management Reporting
- 9 – End of Mine Life
- 10 – Ready-to-Reclaim (RTR)

3 Summary of Feedback

Throughout the discussions, TAC demonstrated a strong desire to ensure the language in the draft directive was consistent with that in the *Tailings Management Framework (TMF)* policy document. The TAC identified areas in the draft directive where further clarity or description was needed, particularly with respect to meeting the goals of the *TMF*. The changes made to the draft directive in response to TAC input as well as the AER's rationale on non-consensus areas are listed in appendix 2. This report summarizes the general TAC discussion associated with each section.

3.1 Section 1: Introduction

TAC members indicated that version 1 of the directive should indicate in the introduction that there will be a second version in 2016, and that version 2 will reflect the expected continuous improvement based on experience and feedback. The introduction should also link to the *TMF* and the desired policy outcomes, and clearly state that requirements related to dams and fluid tailings impoundment are to be addressed elsewhere within the regulatory framework.

3.2 Section 2: AER Approach

TAC sought to describe and clarify the regulatory process to ensure regulatory effectiveness and include linkages to the AER strategic plan.

First Nations, Métis, and ENGOs articulated the importance of open information sharing and public participation in tailings management as a trust-building component. They encouraged the AER to set a new tone as a regulator by substantiating their decisions when approving applications.

3.3 Section 3: Principles

The TAC was of the view that principles deserved their own section in the directive, and wording from the *TMF* was used in most cases to ensure consistency and alignment between the two documents. In some cases, wording was adapted to make principles more applicable to a directive and the associated regulatory processes. There was consensus on the majority of the principles, with the exception of transparency and enforceability.

3.4 Section 4: Profiles and Fluid Tailings Management Plan Application Requirements

Consensus was not reached on whether an application or a submission would be required for existing operations. A new introduction to this section was requested to ensure alignment of the applications to *TMF* outcomes, describes the need for applications from existing operators in 2016, clarifies that the applications are under the *Oil Sands Conservation Act (OSCA)* and clarifies conditions of approval. Clarifications were made to a number of subsections to allow for greater specificity and understanding, including the addition of a concordance table and adjustments to the glossary. The 2016 deadline for applications was changed, by consensus, to April 29, 2016.

Some TAC members desired a method to quantify risk and uncertainties, but due to the lack of uniformity in technological methods employed, there is no standard process to achieve this. The directive was clarified to request the nature and magnitude of uncertainty with fluid tailings treatment technologies.

There was a range of thoughts and opinions regarding the sections on Ready to Reclaim (RTR) and Environmental Effects and Implications. There was a great deal of time spent creating a mutual understanding of what the definitions and implications of the terminology mean. Initially some TAC members viewed RTR as a point in time where reclamation would begin versus a period of time when fluid tailings are demonstrating performance during the operational stage of the deposit to ensure that the deposit can be reclaimed as to the targeted outcomes and schedule defined in the life-of-mine closure plan.

Some TAC members wanted to include socioeconomic impact in the Environmental Effects and Implications. This led to the addition of examples of effects or risk to the environment, such as effects on water quality and/or air emissions, and reclamation implications for wildlife and land access.

3.5 Section 5: Fluid Tailings Management Reporting

Consensus could not be reached on this section even after feedback was incorporated into the draft directive. The AER heard that there is a desire for stronger language surrounding the AER's actions with regard to stakeholder and public understanding of the performance reports. Some TAC members identified concerns with the fluid tailings management report requirements, notably the level of detail requested to show alignment with mine closure plans and site-wide water balance. Some of these concerns were addressed in updates to the directive. This section was not reviewed until the last set of meeting dates, which may have impacted the TAC's ability to resolve outstanding concerns. There is an opportunity to revisit this topic in 2016.

3.6 Section 6: Measurement Outcomes

TAC members prioritized the subject areas and this section was not discussed. This topic will be addressed in version 2 of the draft directive in 2016.

3.7 Section 7: Five-Year Review

TAC members prioritized the subject areas and this section was not discussed. This topic will be addressed in version 2 of the draft directive in 2016. In version 2, the AER will consider what form stakeholder engagement should take for the five-year review.

3.8 Section 8: Definition and Determination of Fluid Tailings Volume

Although originally scheduled as a topic for 2015, on the final day TAC members reprioritized the subject areas. Resultantly, this section was not discussed and will be addressed in version 2 of the draft directive in 2016.

3.9 Section 9: End of Mine Life

The TAC agreed to the end of mine life definition but did not achieve consensus on this section. Examples for changes to end of mine life date and potential considerations were included (suspension, production, reduction). The descriptions of integrated operations (mine and processing plant) and the impacts to the processing plant when the mine is completed were moved from the application requirements to the appropriate section in end of mine life.

3.10 Section 10: Ready-to-Reclaim (RTR)

This section was thoroughly discussed but consensus could not be achieved. Much of the discussion was undertaken to help TAC members gain a robust understanding of the intent of RTR as they worked through the material. Many members viewed the term “ready to reclaim” as misleading, inferring a point in time, rather than a period of time. RTR does not mean that reclamation can start. Additionally, the length of time fluid tailings are in an RTR state before being ready for reclamation is a concern for some stakeholders. Information to clarify the ready-to-reclaim definition and how it is related to reclamation outcomes and activities was shared among TAC members. This section was revised many times over the course of the ten days, with subsections and a conceptual diagram added to improve clarity and readability. Definitions were added for indicator, measure, criteria and sub-objective.

3.11 Section 11: Surveillance and Compliance Process

The AER is developing requirements around the *TMF*’s surveillance and compliance management system. This will be updated in version 2 of the directive.

Many TAC members expressed the importance of this section for review; however, they were willing to defer discussion to 2016.

3.12 Section 12: Mine Financial Security Program

The AER is waiting for additional direction on the Mine Financial Security Program. This section was not discussed and this topic will be addressed in version 2 of the draft directive in 2016.

4 Areas of Consensus

The sections where consensus was achieved are captured below with specific details outlined in the summary table noted in appendix 2:

- 1.1 Introduction
- 2.0 AER Approach
- 3 Principles (as listed below)
 - Align with Existing Government of Alberta Legislation, Regulations, and Policies
 - Holistic Approach to Tailings Management
 - Incorporates Continuous Improvement: Considers Timeliness, Flexibility, and Adaptability
 - Manage and Decrease Risk
 - Manage Both New and Existing (Legacy) Tailings
 - Share Responsibility
 - Technological Innovation
- 4.1 Profiles and Fluid Tailings Management Plan Application Requirements: Introduction
 - 4.2.1 Application Process: Preapplication Considerations
 - 4.2.2 Process Requirements
 - 4.2.3 Submission Method and Format
 - 4.2.4 OSCA Application Review Process
 - 4.2.5 Incomplete Applications
 - 4.2.6 Amendments
- 4.3 General Requirements
- 4.4 Fluid Tailings Inventory Profiles
- 4.5 Legacy Fluid Tailings Inventory
- 4.6 Fluid Tailings Treatment Technologies
- 10.2 Ready to Reclaim: Objective
 - 10.8.1 Ready to Reclaim: Temporary Locations

Throughout the collaborative TAC discussions, a shared understanding emerged of fluid tailings and the draft directive. The following items had the support of many or most members and are therefore noteworthy. These areas that were close to consensus are identified below:

- 1.1 Introduction: AER Requirements
- 3 Principles: Clearly Communicates
- 3 Principles: Pursue Cost-effective Solutions
- 9 End of Mine Life
- 10.1 Ready to Reclaim: Overview
- 10.3 Ready to Reclaim: Sub-objectives
- 10.7 Ready to Reclaim: Reclamation

5 Non-Consensus

5.1 Managing Non-Consensus

When consensus could not be reached on over-arching themes, TAC members were asked to document their perspectives to ensure the AER was fully informed about the various points of view. Non-consensus topics of a more specific or one-off nature were documented. Select topics will be re-tabled for discussion in 2016. Three main areas of non-consensus are described below.

5.2 Areas of Non-Consensus

5.2.1 Applications versus Submission

The draft directive indicated that operators will make applications under the *Fluid Tailings Management for Oil Sands Mining Projects* for approval by the AER. Substantial discussion took place whether the directive should require an amendment application to be submitted for existing operations in all cases, or whether a submission would suffice in some cases. The TAC was unable to reach consensus and members submitted their perspectives to the AER for consideration and a final decision.

Industry's position was that automatically treating every tailings management profile and plan submission for existing operations as an application is not required. Concern was expressed about the precedent that is being set for other plan submissions, potential for extended review and approval timelines, capacity and level of effort required by the AER and stakeholders, and how tailings are regulated during the interim.

The AER considered the perspectives put forward by TAC members and made a decision.

The following points were extracted from the AER Decision: Requirement for an amendment application for fluid tailings management profiles and plans (appendix 3):

- The AER believes that all current fluid tailings management plans and approvals for existing oil sand mine operators will require changes to ensure that the *TMF* and its intended outcomes are met, including
 - fluid tailings volume profiles that meet *TMF* and directive requirements must include both legacy (not previously required) and new fluid tailings;
 - performance measures and objectives going from fines capture and strength to volume management within a specified timeframe, and ready-to-reclaim performance criteria;
 - project-specific thresholds (triggers and limit) that will be set by the AER for approved profiles; and
 - other substantive changes to an activity or its related approval.
- Under the *Responsible Energy Development Act (REDA)*, whenever approval of the AER is sought it is treated as an application and is subject to a formal application process, which includes statements of concern and a hearing.
- The *TMF* is clear that a high level of transparency is expected from the AER, including the involvement of others in such activities as the evaluation of fluid tailings profiles and thresholds. The AER believes an application enables a transparent process.

Additionally, the AER believes that requiring an amendment application

- provides a transparent process to the public, stakeholders, First Nations, and Métis that is aligned to the *TMF*; and
- adheres to *REDA*, which outlines that submissions to the AER that require approval, are considered applications.

Submissions and the AER's decision and rationale are provided as appendix 3.

5.2.2 Public Participation in Application Review

Fluid Tailings Management for Oil Sands Mining Projects indicates that a transparent fluid tailings management application review process is desired to ensure that *TMF* outcomes are met. According to the *TMF*, transparency includes involving others (outside the AER) in the evaluation of fluid tailings profiles, plans, and thresholds. The TAC provided significant feedback on whether the existing regulatory application review process (as defined in *REDA*) should be augmented to increase stakeholder involvement in reviewing fluid tailings management plans. TAC did not reach consensus on one specific outcome. Subsequently, members submitted their positions to the AER. Some stakeholders were satisfied

with the AER's decision to treat tailings plans as an application and want to maintain their standing as adversely and directly impacted parties. Others noted that they are not in favour of adding additional engagement or transparency processes beyond what is already required by the *REDA* application process. Still others indicated concern with any process that expands the "directly and adversely impacted" test to stakeholders that do not live in the community. There was some appetite to create new opportunities to involve the public and build understanding about fluid tailings management plans. One suggestion was to hold industry-led information sessions prior to the application submission. There was also a suggestion to use electronic tools, such as talk.aer.ca, to enhance information sharing. Furthermore, an independent panel of experts to review the applications after submission to ensure that the desired TMF outcomes will be met was recommended. This panel would also produce a public report summarizing its findings.

The AER shared with the TAC that a decision on this topic will be forthcoming early in 2016, after a thorough and thoughtful analysis has been undertaken on how best to achieve this principle. The decision will be aligned with the *TMF* policy intent.

Submissions are provided as appendix 4.

5.2.3 Performance Reporting

The Fluid Tailings Management for Oil Sands Mining Projects establishes fluid tailings management reporting requirements for operators. After preliminary discussion, the TAC was unable to reach consensus on all of the requirements. More time for discussion was not available in 2015.

Some TAC members expressed concerns with aspects of the reporting requirements in part due to the complexity or the perceived duplication of the requirement, and in part due to uncertainty about how the requirements will be interpreted by AER staff outside of the TAC process in the future.

Submissions were not requested on this topic. A decision was made by the AER subject matter experts at TAC to maintain this as written, with some updates based on feedback, and to provide rationale. This is outlined in more detail in appendix 4.

6 Public Feedback

Seven public submissions were received by the AER and provided to the TAC for review and consideration as they were received. Submissions received mid-process were reviewed and incorporated into the TAC dialogue. Most submissions were received on November 17, 2015. The TAC agreed that it had discussed most of the concerns raised and items that had not been discussed were noted. The AER will formally respond to each organization that made a submission.

Acknowledgements

The Alberta Energy Regulator (AER) is deeply grateful to the individuals listed below for their enthusiasm and commitment in providing feedback on the draft directive, *Fluid Tailings Management for Oil Sands Mining Projects*. This collaborative approach represented a shift for the AER, and the willingness of committee members to join in this process by contributing their time and their expertise was fundamental to its success. Their contributions have substantially improved the draft directive. The AER considered all feedback and is responsible for the final content of the directive. This summary report reflects the process experience as well as the type and range of input provided. It was prepared by the AER and due to time constraints was not reviewed by the Fluid Tailings Management Technical Advisory Committee members before sharing with the GoA, the AER Board of Directors, and other approval authorities. This document will be shared with TAC members before its public release.

Fluid Tailings Management Technical Advisory Committee members:

- Dave Andres, Northwest Hydraulic Consultants Ltd. representing Sierra Club of Canada
- Lyndon Chiasson, Teck Resources Limited
- Tania de Silva, Alberta Energy Regulator
- Calvin Duane, Canadian Natural Resources Limited
- John Errington, Fort McKay First Nation and Mikisew Cree First Nation
- Chris Fordham, Syncrude Canada
- Fred Fraser, Fort Chipewyan Métis Local 125
- Alex Hall, Métis Nation of Alberta Association Fort McMurray Local Council 1935
- Jennifer Haverhals, Imperial Oil Limited
- Eddison Johnson, McKay Métis Sustainability Centre
- Travis Kindel, Regional Municipality of Wood Buffalo
- Andrea Larson, Alberta Energy Regulator
- Karen McCallion, Alberta Energy Regulator
- Blair Penner, Suncor Energy Ltd.
- Mary Richardson, Keepers of the Athabasca
- Chris Severson-Baker, Pembina Institute
- Velma Whittington, Fort McMurray First Nation
- Scott Wytrychowski, Shell Canada Ltd.

Other participants:

- Casey McWhan, CNRL (former TAC member)
- Roni-Sue Moran, Fort McMurray First Nation (former TAC member)
- Erin Flanagan, Pembina Institute (alternate)

Meeting observers:

- Government of Alberta
- Edith Vanderpuye, Alberta Environment and Parks
- Julie Self, Alberta Environment and Parks

Meeting support: Kim Sanderson, meeting recorder

The AER would also like to acknowledge the follow staff that directly supported TAC:

- Project Executive Sponsor: Tristan Goodman, Vice President, Major Projects and Transformation
- AER Stakeholder Engagement support: Rhonda King, Carey Patterson, Jennifer Lutz, Annemarie Marshall, Jennifer Comrie, Linda Falstead and Filip Palasz
- AER Technical Presenters: Kevan van Velzen, Closure & Liability, Tim Eaton, Dam Safety, Jeff Toering, Compliance and Enforcement, Christine Macken, Consensus-Based Decision-Making

Appendix 1 TAC Terms of Reference

AER Multistakeholder Fluid Tailings Regulatory Management Technical Advisory Committee (TAC)

Terms of Reference

October 5, 2015ⁱ

1 Background

The Government of Alberta (GoA) released the *Lower Athabasca Region: Tailings Management Framework for the Mineable Athabasca Oil Sands (TMF)* on March 13, 2015. The *TMF* provides policy direction for the management and reduction of fluid tailings on Alberta's landscape. The Alberta Energy Regulator (AER) is responsible for developing and implementing requirements to achieve the *TMF*'s objectives and outcomes.

The AER responded to the release of the *TMF* by suspending *Directive 074: Tailings Performance Criteria and Requirements for Oil Sands Mining Schemes* while it conducted a thorough analysis of the new provincial framework to determine how best to implement it. On April 9, 2015, the AER announced that a new directive would be developed to manage the accumulation of fluid tailings and that *Directive 074* would remain suspended until it is replaced by the new directive (*Directive XX: Fluid Tailings Management for Oil Sands Mining Projects*). The new directive is taking an iterative approach to development:

- Target to have Version 1 finalized by end of 2015.
- Version 2 will build on knowledge from fluid tailings applications review and will include further detail in sections on fluid tailings performance reporting, and surveillance and compliance. Completion of Version 2 is targeted for the end of 2016.

The AER expects oil sands mine operators to continue to proactively manage fluid tailings volumes while the first version of new directive is finalized.

The AER engaged with different stakeholders in developing an initial draft of the new fluid tailings directive. Stakeholders informed us that they believe that a more collaborative, technical approach is needed to increase the credibility tailings management. The AER responded by establishing this multistakeholder technical advisory committee on regulatory tailings management (TAC) to conduct a thorough review of the draft directive in conjunction with a 60-day public feedback period.

2 Mandate

The TAC is established under the direction and authority of the AER president and CEO, Jim Ellis. The TAC's mandate is to conduct a thorough technical review of Version 1 of the draft directive and, using a consensus-based approach, provide recommendations to the AER on improving the regulatory management of fluid tailings in the province.

As part of this mandate, the TAC is to identify any gaps or deficiencies in the directive, including reviewing feedback provided through the public comment period.

The TAC is to provide its recommendations throughout the process and within the given timeframe provided below to address gaps or deficiencies for first version of the directive. The TAC can also provide recommendations for inclusion in the second version of the directive.

The following items are out of scope for the directive and outside of the TAC's mandate:

- dam safety requirements
- regional monitoring (under the jurisdiction of the Alberta Environmental Monitoring, Evaluation and Reporting Agency)
- new measurement standards for reporting
- tailings policy development and *TMF* implementation work streams led by the GoA; ready-to-reclaim policy, integrated water management policy, and Mine Financial Security Program policy.

3 Decision-Making Process

The TAC will reach agreement on its recommendations through consensus. Consensus is achieved when each stakeholder agrees that they can support the outcome of a particular recommendation or action. Stakeholders may not achieve all their goals, but the optimal solution is in everyone's best interests and the solution does not damage or harm any stakeholder's interests. The resulting recommendations are likely to be more innovative and longer-lasting than those reached through traditional negotiation processes.

While the goal of the TAC committee is to reach consensus on its recommendations, items on which consensus is not reached will nevertheless be forwarded to the AER. Where consensus is not reached, the views of the various parties, including the pros and cons of their respective solutions, will be provided to the AER without attribution unless attribution for their view is specifically requested by a member. The AER is the final decision-maker on regulatory requirements.

The TAC is not a substitute for public engagement on the draft directive. In addition to the TAC recommendations, the AER will consider comments provided by the public during the 60-day feedback period.

4 Committee Composition

The TAC will consist of representatives from industry, environmental nongovernment organizations (ENGOS), First Nations, Métis, municipalities, community-based groups with direct interest in tailings management, and the AER. The group size and balance of stakeholders will be determined by stakeholder response, but to ensure that the process is manageable and productive, the AER is recommending the TAC should not exceed 20 members.

Subject matter experts may be invited to provide input where their specific expertise would enhance the committee's understanding of a matter related to fluid tailings management.

The GoA will be invited to participate as an observer to the TAC and will be included in distribution of meeting documentation.

5 Expectation of Committee Members

- Members will respect confidentiality; it is expected that members will express a diversity of views as they collectively explore the nature and extent of risks associated with proposed regulatory changes. To ensure dialogue is open and meaningful and to develop trust, members must agree to respect the transitory and confidential nature of conversations. There will be expectations with regards to confidentiality and attributing specific conversations without prejudice to the parties.
- Members will represent their stakeholder group or organization and have authority to speak on behalf of the stakeholder sector.
- Members should have in-depth knowledge of fluid tailings management issues and strong familiarity with the *TMF*.
- Members should be committed to seeking mutual understanding of each other's interests and contributing to an environment where participants can work together in a meaningful and collaborative way to create mutually satisfactory solutions.
- Members will actively participate. If a member is unable to attend a meeting, they may send an alternate from their respective organization or group.

6 Meeting Organization and Support

The TAC will consider the use of co-chairs from among its members at its initial meeting. The co-chairs and the AER lead and facilitator(s) would form a committee coordination team (CCT). If TAC determines not to use co-chairs, TAC members will be requested on a volunteer basis to conduct work or perform coordination duties outside of the TAC meetings.

An independent meeting recorder will be present at all committee meetings to document the discussion.

TAC Committee Member Responsibilities

Co-chairs or committee volunteer(s)

- Develop proposed agendas for TAC meetings based on the work plan.
- Provide coordination and ensure the effective operation of the committee during and between TAC meetings.

- Serve as committee spokespersons, if required.

AER Lead

- Collaborate with other CCT members to develop proposed agendas.
- Provide coordination and ensure the effective operation of the committee during and between TAC meetings.
- Serve as committee spokespersons, if required.
- Ensure there is appropriate AER subject matter expert participation.
- Participate in formulation or consensus decisions regarding recommendations.

All TAC Members

- Participate in formulation or consensus decisions regarding recommendations.
- Appropriately prepare for TAC meetings.
- Ensure that action items are executed.
- Ensure key discussion points and areas of agreement/disagreement are accurately captured and executed.

TAC Committee Support or Non-members

AER Facilitator(s)

- Provide coordination and ensure the effective operation of the committee during and between TAC meetings.
- Provide guidance to help members have productive and meaningful conversations.
- Encourage listening and ensure that all members in the room have opportunities to participate.
- Help the group get beyond positions and instead understand interests.
- Help the group identify innovative solutions that address common interests.
- Focus on an effective meeting process, including collaborating with other CCT members to develop proposed meeting agendas.
- Act as point person for logistics, with assistance from other AER staff as required.
- Ensure that the TAC members have meeting materials in advance of meetings.
- Be content neutral on substantive issues and impartial towards the parties.

Meeting Recorder

- Track meeting attendance.
- Document discussions.
- Capture action items and key discussion points, including meeting highlights, in meeting minutes.
- Assist with reporting, as required.

Others (observers)

Government of Alberta

- Be invited as an observer by the AER
- Help clarify the policy intent of the *TMF*.
- Follow expectations of confidentiality that apply to TAC
- Participate in a way that supports the mandate and timelines of the TAC.

Additional subject matter experts

- Be invited by the AER.
- Follow expectations of confidentiality that apply to TAC.
- Participate in a way that supports the mandate and timelines of the TAC.

7 How we work together (group rules)

- Listen generously
- Affirm others
- Speak straight
- Be “here”
- Come prepared
- Don’t leave anyone behind
- Honour breaks & time
- Hard on problem, easy on people

8 Timelines

The AER anticipates that the committee will meet for five two-day workshops between September and November 2015. There may also be a one-day oil sands site tour, based on a needs assessment by the TAC. Timelines must align with the AER’s commitment to release a fluid tailings management directive by the end of 2015. The TAC must conclude the directive review no later than November 19, 2015.

The following dates have been confirmed with the TAC committee:

- September 23–24, 2015
- October 7–8, 2015
- October 21–22, 2015
- November 4–5, 2015
- November 18–19, 2015

Optional: One additional day for a facility tour.

The AER may request the TAC to meet in 2016 as the AER updates and issues V2 of the directive.

9 Member Compensation

Members who are otherwise not compensated for their time on the TAC will be provided with an honorarium and are entitled to reimbursement by the AER of nominal expenses incurred as a result of their participation according to the following guidelines:

- Meeting attendance honorarium: \$125/half day, \$250/full day
- \$106 preparation time per meeting and \$106 follow up time per meeting (if required pending AER approval)
- Travel expenses; Mileage: \$0.505/km or flights;
- Meal allowance: \$41/day maximum (with receipt); lunch and refreshments will be provided during meetings
- Overnight accommodation: \$220/night maximum (with receipt); one night for each day of meetings
- Parking payable with a receipt

ⁱ Draft Terms of Reference document was amended and finalized at the October 8, 2015 TAC meeting

Appendix 2 TAC Summary of Feedback and AER Response

Section	Subsection	Recommendations	Changes Incorporated in Draft Directive	Outcome
1: Introduction	1.0	<ol style="list-style-type: none"> 1. Incorporate additional information and language from the TMF 2. Clarify where fluid tailings impoundments and dam safety are managed 	<ul style="list-style-type: none"> • Added sentence to clearly state that fluid tailings impoundment or dam requirement, performance was out of scope • Clarified that the directive enables the implementation of the TMF • Moved TMF objective and included “balance of social, environmental and economic needs” from Section 2 • Identified 2016 version • Acknowledged the TAC and contributions to the directive 	Consensus
	1.1 AER Requirements	Add specificity	None	Partial Consensus
2: AER Approach	2.0	<ol style="list-style-type: none"> 1. Provide additional information about regulatory processes to manage fluid tailings site-wide and by individual deposit 2. Move Principles into a separate section, Section 3, and update language to reflect that used in the TMF 	<ol style="list-style-type: none"> 1. Updated AER approach as per feedback 2. Added AER's strategic plan as a reporting mechanism for the performance of tailings regulatory management 	Consensus
	2.1 Fluid Tailings Profiles and Thresholds	Add profile guidelines and considerations from TMF	<ul style="list-style-type: none"> • Added TMF wording on the considerations for establishing profiles (clearly show policy alignment and provide understanding how profiles will be generated) • Added social, economic and 	Non Consensus

Section	Subsection	Recommendations	Changes Incorporated in Draft Directive	Outcome
			<p>environmental factors</p> <ul style="list-style-type: none"> Added TMF threshold considerations Created Section 3 for Principles 	
3: Principles	3.0	<ol style="list-style-type: none"> Create consistent language with TMF Add monitoring under transparency 	<ul style="list-style-type: none"> Separated principles into own section (originally in section 2) Added bullets describing each principle using TMF language added Ensured TMF principles and wording was used, exceptions to make the wording more applicable to a directive and regulatory processes Directive aligns with TMF and other policies 	<p>Partial Consensus</p> <p>Consensus was achieved on the majority of principles listed</p> <p>Most feedback surrounded seeking alignment with the TMF.</p> <p>Non Consensus existed with the principle of transparency due to the addition of monitoring and support enforceability</p> <p><i>AER Response: Intention to make wording more applicable to a directive and regulatory processes as well as capture alignment with the TMF intent</i></p>
4: Profiles and Fluid Tailings Management Plan Application Requirements	Application versus Submission	Non-consensus issue: application vs. submission for initial fluid tailings profiles and plans	None	<p>Non Consensus</p> <p>(see accompanying appendices for full written submissions on this topic, including AER rationale for the decision made).</p> <p><i>AER response: given required changes to existing fluid tailings plans to ensure alignment to the TMF and after reviewing feedback submitted by TAC members, the AER confirmed its decision that an application to amend existing approvals for initial fluid tailings profiles and plans is required to be submitted by current oil sands</i></p>

Section	Subsection	Recommendations	Changes Incorporated in Draft Directive	Outcome
				<i>mining operators. The rationale is that there will be substantive changes to existing fluid tailings management plans in order to meet the TMF policy, an amendment application provides a transparent process, and adheres to the Responsible Energy Development Act (REDA) which outlines submissions to AER for approval are considered an application.</i>
	4.1 Introduction	<ol style="list-style-type: none"> 1. Provide additional information about regulatory processes related to the requirement for an application (amendment) and issuing approvals (approval conditions) for existing operations 2. Clarify how oil sands mine projects currently under review and new oil sands mine projects will be handled 	<ul style="list-style-type: none"> • Updated section based on recommendations • Added clarifications to describe both new applications and amendment applications. • Clarified that OSCA and EPEA approvals will be amended as appropriate 	Consensus
4.2 Application process	4.2.1 Preapplication Considerations	Request that an existing application include a requirement for industry to engage with stakeholders pre application	Made minor updates to the section to address clarity recommendations	Consensus <i>AER response: Pre application requirement for industry to engage stakeholders exists</i>
	4.2.2 Application Process Requirements	<ul style="list-style-type: none"> • Clarify when applications are required. (Previously didn't speak to new projects or projects already under review.) • Clarify that operators must submit the applications, not projects 	<ul style="list-style-type: none"> • Section updated to address recommendations 	Consensus <i>*Submission date for 2016 moved to April 29th by consensus</i>

Section	Subsection	Recommendations	Changes Incorporated in Draft Directive	Outcome
		<ul style="list-style-type: none"> Change submission date for 2016 applications to accommodate time for the applications to be prepared, reviewed by the regulator and the public review process 		
	4.2.3 Submission Method and Format	None	None	Consensus
	4.2.4 <i>REDA</i> Application Review Process	<ul style="list-style-type: none"> Add that the application will ensure TMF transparency expectations are met (GoA request) Add link to AER website Clarify that conditions of approval will require more detailed information as the project progresses (this allows flexibility in the plans) 	<ul style="list-style-type: none"> Updated section to address recommendations Added reference to <i>REDA</i> application review process (GoA request) 	Consensus
	4.2.5 Incomplete Applications	Clarify process	Updated section to address recommendations	Consensus
	4.2.6 Amendments	Clarify when amendment applications are required	<ul style="list-style-type: none"> Made minor wording changes Added a new sentence "the approval of the fluid tailings management plan will not constrain the AER's decision on the future applications." 	Consensus <i>AER Notation: Post TAC feedback during final review process resulted in further clarification to this section</i>
	4.3 General Requirements	<ol style="list-style-type: none"> Clarify section to describe alignment with existing approvals and plans Add requirement for concordance 	Updated section based on recommendations	Consensus

Section	Subsection	Recommendations	Changes Incorporated in Draft Directive	Outcome
		table		
	4.4 Fluid Tailings Inventory Profiles	<ol style="list-style-type: none"> 1. Reorganize requirements to increase clarity and logical flow 2. Include justification for prioritizing sequence of treated fluid tailings 3. Clarify some of the requirements 	<ul style="list-style-type: none"> • Added <i>TMF</i> wording on fluid tailings volume profile guidelines and requirements to provide justification for the proposed profile and any deviation from the guidelines • Moved requirement from Section 4.5 to 4.4. This section now provides requirement to justify both legacy and new volume profiles. • Added requirement to justify the sequencing of fluid tailings treatment and deposition (stakeholder request to ensure perceived higher risk tailings were being managed appropriately) • Deleted word storage – reworded to capacity to hold. • Clarified that water and fluid held on site within the closed-circuit system • Moved requirement of maps showing relationship between tailings plans and closure and reclamation plans to RTR section 4.7 • Clarified timing increments for tables with fluid tailings volume information • Clarified timing of volume and mass balance information 	Consensus
	4.5 Legacy Fluid Tailings Inventory	Reorganize requirements to increase clarity and logical flow	Adjusted sections from 4.4 to 4.5 to focus section 4.5 on the determination of the legacy tailing volumes as of January 1, 2015. This is a onetime request for 2016 and the adjustment made will make for an	Consensus

Section	Subsection	Recommendations	Changes Incorporated in Draft Directive	Outcome
			easy deletion in Version 2.	
	4.6 Fluid Tailings Treatment Technologies	<ul style="list-style-type: none"> Clarify directive is asking for trade-off between technologies, contingency technologies and risk mitigation (wording adjustments) Add wording to clarify the technology includes associated infrastructure (industry request) Define robustness (technology robustness) Request to quantify risk and uncertainties 	Updated directive to address recommendations	Consensus <i>AER response: there is not a standard process to quantify risk in these applications, therefore updated the directive to request nature and magnitude of uncertainty</i>
	4.7 Ready to Reclaim	<p>Include additional information to define Ready to Reclaim and clarify requirements</p> <ul style="list-style-type: none"> Added more description to issue to better define RTR (wording was taken from RTR section) Add reference to RTR section (electronic link would be useful /discuss with document services) Clarify that the application will contain the level of detail commiserate with the stage of operation Transfer requirement for a map showing relationship of tailings deposits to closure plan (modified targets for ecosites as discussed below) Modify requirement to have currently operating deposits justify 	Updated directive to address recommendations	Non-Consensus <i>AER Response: For existing deposits a targeted range of ecosites is required to demonstrate alignment to reclamation plans. For proposed deposits, the level of details required is less; site type and moisture regime.</i>

Section	Subsection	Recommendations	Changes Incorporated in Draft Directive	Outcome
		<p>RTR performance criteria to the targeted range of ecosite level. Proposed deposit's justification is to site type or moisture regime.</p> <ul style="list-style-type: none"> Add definition in the glossary for indicators, sub-objectives, measures, and criteria Modify wording asking for long-term data management system to a description of how they will ensure long-term data accessibility (more consistent with the regulatory issue) 		
	4.8 Environmental Effects and Implications	<ol style="list-style-type: none"> Clarify the use of the words risks and risk analysis vs effects and what will be addressed. Both "environmental risks" and "net environmental effects" are identified as principles in the TMF Provide examples of environmental effects or risk to the environment such as effects to water quality and/or air emissions. Examples to reclamation implications to wildlife and land access have also been added Include quantification of environmental risk Include social considerations 	<ul style="list-style-type: none"> Expanded issues section to clarify section intent and information requirements Updated directive to address recommendations Changed the word "must" to "will" as per feedback 	<p>Non Consensus</p> <p>*How the AER manages risk is not clear</p> <p><i>AER Response: Concepts and expectations described in this section are aligned with the TMF policy intent</i></p> <p><i>AER response: A requirement to quantify the risk was not included; rather operators are required to describe the nature and magnitude</i></p>
5: Fluid Tailings Management Reporting	5.1 Introduction	<ul style="list-style-type: none"> Delete repetitious wording Add "to support regional reporting" and clarified AER annual reporting to ensure its use for that purpose 	Updated directive to address recommendations	<p>Non Consensus</p> <p>* Use of the word "consider" in the sentence about opportunities to enhance stakeholder and public</p>

Section	Subsection	Recommendations	Changes Incorporated in Draft Directive	Outcome
		<p>(aligned with TMF)</p> <ul style="list-style-type: none"> Add “The AER will consider opportunities to enhance stakeholder understanding of the performance reports.” 		<p>understanding of the performance reports is too soft</p> <p><i>AER response: A decision and details about what stakeholder and public involvement with the performance reports, beyond posting the reports online, will be discussed in 2016</i></p>
	5.2 Performance Report Requirements	<ol style="list-style-type: none"> Industry proposed changes to this section for the TAC to consider (available on Talk.AER TAC site) Ensure risks and effects are used consistently throughout the directive Update titles Add the opportunity for industry to provide the reference to information required, where it has been provide in other AER reports, instead of the information itself. Specify how information was to be captured (e.g., “show in a figure”) Modify water information from a water balance to an inventory Add “Within the constraints of proprietary information” in the Technology Reports; Intellectual property rights may constrain the level of detail companies can or are will to report Simplify request for volume and analysis associated with settling 	<ul style="list-style-type: none"> Updated directive to address recommendations Updated requirement for characterization of the quality of water recovered from fluid tailings and run off (as per <i>TMF</i>) Include opportunity for industry to reference other reports submitted to the AER 	<p>Consensus on topics: Inadequate Deposit Performance and Technology: Continuous Improvement</p> <p>Consensus on date change on annual performance reports due to the AER on April 30th each year.</p> <p>Non Consensus on topics: Fluid Tailings Volume Reporting Requirements, Monitoring Reporting Data Requirements and Environmental Monitoring Results</p> <p>*Some members felt that that the volume and quality of water is not required</p> <p><i>AER Response: The water requirements are consistent with the TMF. There is an option to cross reference to an earlier submission if it is duplicative</i></p>

Section	Subsection	Recommendations	Changes Incorporated in Draft Directive	Outcome
		<p>and consolidation.</p> <p>9. Remove request for location and volume of off-spec treated tailings (duplicative)</p> <p>10. Keep requirement to report on deposit milestones</p> <p>11. Change wording in sentence under Environmental Monitoring Results, "Reporting under this directive does not relieve an operator from any requirements to report...in the relevant EPEA reports..."</p> <p>12. Change ecosite to site type [with caveat by AER that this is permissible only in this section – not in application requirements]</p>		
6: Measurement Outcomes		Not discussed		2016 Topic
7: Five-Year Review		Not discussed	Added commitment that in version 2 AER would consider what stakeholder engagement would look like for the 5 year review.	2016 Topic
8: Definition and Determination of Fluid Tailings Volume		Not discussed	Added that GoA recognizes that guideline is aligned with the TMF	2016 Topic
9: End of Mine Life		<ol style="list-style-type: none"> 1. Agree to the EOML definition as per mine scheme approval 2. Include additional examples related to changing to end of mine life and potential considerations (suspension, production) 	<ul style="list-style-type: none"> • Changes made to address recommendations and enhance clarity around end of mine life • Transferred the description on integrated operations (mine and processing plant) and the impacts to 	<p>Consensus on the EOML definition as per mind scheme approval</p> <p>Non Consensus on the section</p> <p><i>AER Notation: Post TAC feedback</i></p>

Section	Subsection	Recommendations	Changes Incorporated in Draft Directive	Outcome
		reduction)	the processing plant when the mining is completed from the application requirements to end of mine life section. Minor wording adjustments to add clarity	<i>during final review process resulted in further clarification to this section</i>
10: Ready to Reclaim Status	10.1 Overview	<ol style="list-style-type: none"> 1. Include additional information to clarify ready-to-reclaim definition and how it is related to reclamation outcomes and activities 2. Need to clearly understand this is a period of time, not a point in time 3. Create schematic to assist with understanding <ul style="list-style-type: none"> • Ensure understanding of where this directive hands off to a subsequent directive • Change “ready to reclaim” term so it is now referred to as RTR in an effort to reduce confusion with Ready for Reclamation 	<ul style="list-style-type: none"> • Changes made to address recommendations • Updated Section to improve clarity and readability. The concepts or expectations have not changed. • Added subsection for overview, objective, sub-objectives, performance criteria, application, operations and reclamation 	Non Consensus <i>AER response: RTR section concepts and expectations described in this section are aligned with the TMF policy intent</i>
	10.2 Objective	None	None	Consensus
	10.3 Sub-objective	<ol style="list-style-type: none"> 1. Remove capping as an example of future stages of activity under sub-objective 1 2. Add locally common to the sub-objective to make it consistent with the TMF 	Changes made to address recommendations	Non Consensus – TAC <i>did not have an opportunity to re-check for consensus based on final updates made</i>
	10.4 Performance	<ol style="list-style-type: none"> 1. Recommend including language on what is reasonable. Others indicate there are more 	<ol style="list-style-type: none"> 1. Added site-type bullet 2. Changes made to address 	Non Consensus – TAC <i>did not have an opportunity to re-check for consensus based on final updates</i>

Section	Subsection	Recommendations	Changes Incorporated in Draft Directive	Outcome
	criteria	<p>considerations than this one</p> <p>2. Use of the term “higher risk” was highlighted. Suggestion: Use “higher uncertainty or greater complexity”</p>	<p>recommendations</p>	<p><i>made</i></p>
	10.5 Application	<p>1. Move the description of performance criteria to one place as it is currently referenced under multiple sections</p> <p>2. Concern timelines and certainty, specifically with use of the term ‘conservative’. Suggestion to say “as accurate as possible” Suggestion to bring in the word “approved” to strengthen the phrase</p> <p>3. Suggestion for (a). to change “should” to “will” in the statement about indicators</p> <p>4. Reference to monitoring system does not fit in the section</p>	<p>1. Changed “should” to “will” in bullet (a)</p> <p>2. Did not change use of the term ‘conservative’ in this version</p> <p>3. Made minor edits to improve clarity</p>	<p>Non Consensus</p> <p><i>AER Response: Reference to monitoring system reference. This is intended to provide a fulsome picture</i></p>
	10.6 Operations	<p>Concern with tone surrounding a change in RTR (compliance oriented), and may inadvertently discourage companies from performing better than their profile if reintroduced tailings volumes appears to warrant AER response even if they remain better than their profile. Suggestion to pick up this conversation in 2016.</p>	<p>Made minor edits to improve clarity</p>	<p>Non Consensus</p> <p>Continue dialogue in 2016</p>
	10.7 Reclamation	<p>Include a diagram to show how RTR first in with reclamation stages</p>	<p>Changes made to address recommendations</p>	<p>Partial Consensus</p> <p>*Some TAC members wanted to see</p>

Section	Subsection	Recommendations	Changes Incorporated in Draft Directive	Outcome
				the updated schematic before shifting to consensus
	10.8.1 Temporary Locations	Clarify that RTR criteria are required for both interim and final locations.	Changes made to address recommendations	Consensus
	10.8.2 Water-Capped Fluid Tailings	Some members do not wish to single out water capping technology in this sections	None	Non Consensus <i>AER Response: this is consistent with existing regulatory decisions which have water capping as only conditional approvals pending successful demonstration of the technology</i>
11: Surveillance and Compliance Process		Not discussed	Added table from TMF – describing performance management levels and potential management actions	2016 Topic
12: Mine Financial Security Program		Not discussed		2016 Topic

Appendix 3 AER Decision: Requirement for an Amendment Application for Fluid Tailings Management Profiles and Plans

AER decision: Requirement for an amendment application for fluid tailings management profiles and plans

Intended Recipient: Fluid Tailings Regulatory Management (TRM) Technical Advisory Committee (TAC)

Issue

The draft directive on Fluid Tailings Management for Oil Sands Mining Projects (directive) contains a requirement that oil sands mining projects operating as of the effective date of the directive must submit an amendment application for fluid tailings management profiles and plans that show how the *Tailings Management Framework (TMF)* and intended outcomes will be met. The amendment applications will be submitted to AER by March 31, 2016.

At the TAC meeting on October 8, 2015, there was discussion about whether the directive should require that an amendment application be submitted for existing operations in all cases, or whether a submission will suffice in some cases. The TAC did not achieve consensus on this issue. The following describes the AER's decision and rationale for requiring an amendment application.

Background

- The AER believes that all current fluid tailings management plans and approvals for existing oil sand mine operators will require changes to ensure that the *TMF* and its intended outcomes are met.
- Under the *Responsible Energy Development Act (REDA)*, whenever approval of the AER is sought it is treated as an application and is subject to a formal application process, which includes statements of concern and a hearing.
- The *TMF* is clear that a high level of transparency is expected from the AER, including the involvement of others in such activities as the evaluation of fluid tailings profiles and thresholds. The AER believes an application enables a transparent process.
- There were different positions put forward by TAC members on whether an amendment application be submitted for existing operations in all cases, or whether a submission is all that should be required in some cases [see TAC October 8, 2015 meeting notes and enclosed attachments for details on TAC member interests and positions].

- The AER in addition to several other stakeholders support requiring an amendment application for existing oil sand mine projects. Some stakeholders felt that the directive should allow for a public comment period and statements of concern on fluid tailings profiles and plans given the limited confidence that tailings are being managed satisfactorily.
- Industry's position is that automatically treating every tailings management profile and plan submission for existing operations as an application is not required. Concern was expressed about the precedent that is being set for other plan submissions, potential for extended review and approval timelines, capacity and level of effort required by the AER and stakeholders, and how tailings are regulated during the interim. Proposed wording for inclusion in the directive was provided to clarify the AER's rationale for requiring an initial amendment application if the decision was to keep the requirement.
- As per the terms of reference for the TAC, the AER is the final decision maker and will provide decisions on non-consensus items.

Decision and rationale

Given required changes to existing fluid tailings plans to ensure alignment to the *TMF*, and after reviewing feedback submitted by TAC members, the AER has confirmed its decision that an application to amend existing approvals for initial fluid tailings profiles and plans is required to be submitted by current oil sands mining operators because there will be substantive changes to existing fluid tailings management plans in order to meet the *TMF* policy. Changes from existing plans that must be submitted to the AER for approval include, but are not limited to:

- Fluid tailings volume profiles that meet *TMF* and directive requirements must include both legacy (not previously required) and new fluid tailings;
- Performance measures and objectives going from fines capture and strength to volume management within a specified timeframe, and ready-to-reclaim performance criteria;
- Project-specific thresholds (triggers and limit) that will be set by the AER for approved profiles; and
- Substantive changes to an activity or its related approval.

Additionally, the AER believes that requiring an amendment application:

- Provides a transparent process to the public, stakeholders, First Nations and Metis which is aligned to the *TMF*; and
- Adheres to the *Responsible Energy Development Act (REDA)* which outlines submissions to AER for approval are considered an application.

Based on this decision, existing operators will be accountable for filing applications to amend existing approvals that show how their fluid tailings management plans meet the *TMF* and its intended outcomes. The level of detail necessary in an amendment application will vary depending on the nature of the changes in an operator's fluid tailings management plan.

Oil sands projects that are approved but not yet operating must submit an amendment application aligned with the TMF at least one year before bitumen production. Oil sands mine projects currently under review by the AER must demonstrate that TMF outcomes will be met. New oil sands mine project applications must demonstrate that TMF outcomes will be met.

Material approved by

Tristan Goodman, Vice President, Transformation and Major Projects

Tania de Silva, Director, Tailings Regulatory Management

Prepared on

October 30, 2015

Attachments

Application vs. Submission positions:

- Industry
- Keepers of the Athabasca
- McMurray Métis
- Fort MacKay First Nation and Mikisew Cree First Nation

Application vs. Submission (AER) – Tania DeSilva, Andrea Larson, Karen McCallion

After reviewing feedback submitted TAC members, the AER believes-an application for initial fluid tailings profiles and plans submitted by current oil sands mining operators provides a transparent process while adhering to the REDA which outlines anything submitted to AER for approval is considered an application.

AER's position is that an application is required for all initial fluid tailings profiles and plans submitted by current oil sands mining operators new information related to thresholds and ready-to-reclaim status are required, and the application process allows AER to increase transparency, which is stressed in the TMF

For more information regarding the AERs view please refer to DAY 4 TAC meeting notes.

From: [Carey Patterson](#)
To: [Annemarie Trentham](#)
Subject: FW: Application vs submission
Date: Monday, October 19, 2015 5:06:10 PM

From: John Errington [mailto:jandperrington@shaw.ca]
Sent: Friday, October 16, 2015 3:17 PM
To: Carey Patterson
Subject: Application vs submission

I just am looking at the meeting notes and see that I am required to give my perspective on this issue by October 14th. Hope I'm not too late!

Because the TMF (and the new Directive) will be based almost entirely on a company's own tailings management plan, and that enforcement and compliance will also be based on following this plan, the profile and ready to reclaim criteria will need government's approval. All companies must be required to submit their plans which must be approved (or not) by AER otherwise the new directive becomes meaningless. If a company already has an approved plan that provides most of the detail, I would suggest that it need not repeat this in an application but can reference it.

I can't see it working any other way.

John

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From: John Errington [<mailto:jandperrington@shaw.ca>]
Sent: Friday, November 13, 2015 2:38 PM
To: Carey Patterson
Cc: Karla Buffalo; Carl.Braun@mcfngir.ca
Subject: RE: Tailings Management Plans, Application vs submission

Here are my additional comments which, I hope, will make it very clear that we want an application not just a submission:

Because the TMF (and the new Directive) relies almost entirely on a company's own tailings management plan, and that enforcement and compliance will also be based on a company following this plan, the profile and ready to reclaim criteria will need government's approval. All companies must be required to submit their plans which must be approved (or not) by AER otherwise the new Directive becomes meaningless.

To make this clear, any decision to approve a tailings management plan must be an "approval" within the meaning of the *Responsible Energy Development Act* –per s.1(1) (b) of the Act:

"approval" means, except where the context otherwise requires, a permit, licence, registration, authorization, disposition, certificate, allocation, declaration or other instrument or form of approval, consent or relief under an energy resource enactment or a specified enactment;

As such, the application for approval of the tailings management plan will be an "application" for which affected parties can file an SoC and any decision to approve a tailings plan would be an 'appealable' decision under Division 4 of Part 2 of the Act.

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Application vs. Submission:

Background: The Draft Directive on Fluid Tailings Management for Oil Sands Mining Projects (Draft Directive) contains a requirement that oil sands projects operating as of the effective date of the directive must submit an application to AER by March 31, 2016 that demonstrates that TMF outcomes will be met. For projects that are approved but not yet operating, an application aligned with the TMF must be submitted at least one year before bitumen production. The application must include a tailings management plan that addresses the entire life of the project and a fluid tailings volume profile for new and legacy tailings. New and legacy tailings must be treated and progressively reclaimed during the life of the project, with all fluid tailings ready to reclaim within 10 years of the end of mine life. If the volume profiles and tailings management plan are approved, the AER will set thresholds suited to the accepted profile and adhering to TMF policy and will amend existing approvals.

At the October 8 meeting of the TAC, the question was raised whether the Directive should require that an application be submitted in all cases, or whether in some cases a submission is all that should be required.

Keepers of the Athabasca's Position: Since October 8, Keepers of the Athabasca has considered both sides of this question, and takes the position that an application should be required by AER in all cases. Furthermore, in order to establish transparently that AER is operationalizing the TMF, we believe that it should make public how it has taken into account the mine plan and project bitumen levels, lease geography and geology, mining and extraction processes, tailings treatment processes, best available technology, existing infrastructure, and environmental and social impacts in setting thresholds and amending approvals (TMF, p. 24). (See, for example, 2013. Clinton Westman, "Social Impact Assessment and the Anthropology of the Future in Canada's Tar Sands." *Human Organization* 72.2: 111-120.)

In arriving at our position, we did not consider whether under REDA, anything submitted to AER for approval is considered to be an application.

Industry Position: The industry position was that if projects coming under the Directive for the first time would need to make changes that are comparable to those that require an amendment (see Draft Directive Section 3.1.5) in order to meet the objectives of the TMF (i.e. "substantive" or "significant" changes), then they should be required to submit an application: those projects that would not need to make changes that are comparable to those that require an amendment in order to meet the objectives of the TMF should be allowed to make a submission instead of an application. This would save expense, work that has already been done, and time, and would not require public review.

AER's Position: AER's position was that an application is required in all cases because it needs new information related to thresholds and ready-to-reclaim status, and the application process allows AER to increase transparency and public reporting, which are stressed in the TMF.

Rationale for Keepers Position: Tailings ponds are a significant issue for Keepers. Up to now, we have had little confidence that they are being managed satisfactorily. The Fluid Tailings

Management Directive is just the first of many policies and directives that the GoA and AER will develop in order to address all aspects of tailings management. If the Directive on Fluid Tailings does not allow for a public comment period and expressions of concern on certain profiles and plans, for example, with respect to potential alternative technologies, it would make for a very controversial start to this long process of policy and regulatory development. Our considered position is that we would like all projects to go through the process as prescribed in the current draft of the Fluid Tailings Directive for ensuring that they are meeting the objectives of the TMF.

In the above, we simply respond to the question about application vs. submission, and do not express a position on the Draft Directive as a whole.

Mary Richardson
Keepers of the Athabasca Watershed Society



October 14, 2015

Alberta Energy Regulator
Tailings Regulation Management
Tailings Advisory Committee
Via email: Carey Patterson <carey.patterson@aer.ca>

Re: McMurray Métis statement on Fluid Tailings TAC non-consensus item – Application vs. Submission for existing operations.

To Whom it May Concern:

Following the October 7 & 8, 2015, Tailings Regulation Management (TRM) Technical Advisory Committee (TAC) meeting, an action was issued to TAC members to provide a statement of non-consensus regarding the Application vs. Submission requirements for approval amendments for existing tailings management plans.

The issue of whether or not the tailings profile and tailings management plans for existing operations need to be provided via the application amendment process or an alternate submission process was discussed at length by the Technical Advisory Committee (TAC). The TAC did not achieve consensus on this matter.

Responsible and effective tailings management is one of the most important concerns to our community. Consequently, our interests are that the plans and profiles submitted under this directive are 1) held to most rigorous and comprehensive level of critical review and 2) open to input and review by Aboriginal groups.

McMurray Métis supports the proposed process outlined in the draft directive, in which all existing operations are required to proceed through the application process. The TAC had extensive debate and dialogue both about whether the process should have an exception if the proposed tailings plan was not 'substantively' different than that of existing approvals and about what constitutes a 'substantive' change. We further agree with the view expressed by AER that the defining of tailings profiles, the setting of thresholds, and the defining and providing justification of indicators and performance criteria for ready-to-reclaim status are substantive items that should be subject to the approval process.

Sincerely,
Alex Hall, Tailings Advisory Committee Representative, McMurray Métis

Cc: Gillian Donald, Environment and Land Advisor, McMurray Métis
Kyle Harrietha, General Manager, McMurray Métis
Carmen Wells, Heritage and Traditional Knowledge Advisor, McMurray Métis

Métis Nation of Alberta Association Fort McMurray Local Council 1935

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In Industry's view these initial submission of Fluid Tailings Management Plans will meet one of three levels of amendment;

- Submission with little or no change to existing tailings plans
- Amendments to existing plans
- Full application – a new tailings plan to be filed

Long-term investment decisions have been made in the oil sands mines on the basis of the certainty of the existing regulatory framework. All mining projects have undergone a comprehensive regulatory review, including hearings that considered the tailings facilities, their environmental effects and their management plans. For the purpose of filing submissions under the new Tailings Directive with the AER, industry submits:

1. Submissions requiring little or no change do not require an additional review process, as they have already undergone such an exercise. The change from Directive 74 to the New Tailings Directive with no other changes should be managed under the existing administrative process.
2. Submissions which have substantial changes to approved plans made by Operators should trigger an amendment application for which the AER already has regulatory tools available that could be used to implement the requirements of the New Tailings Directive within the existing legislative framework.
3. Plans which are new or have no previous approval would require fluid tailings management plans within a full application process.

Existing Regulatory Mechanisms

Of importance to this issue is the fact that the current oil sands operations have all previously been subject to an application process with appropriate consultation hearings and approved in the public interest (OSCA, AEPEA etc.). The respective plans for each mine was reviewed and approved as either part of the initial application process or subsequently, in the context of fulfilling filing requirements.

The existing framework provides that when Operators make substantial changes to their approved plans, applicable regulations and rules are triggered. Depending on the extent of changes, an application to amend the approval(s) may be required under the Responsible Energy Development Act (REDA).

Industry believes that automatically treating every Tailings Directive tailings plan submission as an "application" is not required. Many regulatory approvals issued by the AER already contain conditions which require the proponent to submit plans for approval. Following a comprehensive technical review by the AER, these approvals are issued administratively and

do not unnecessarily trigger the processes established pursuant to REDA that are in place for public interest decisions. Industry submits that this existing administrative approach is more appropriate for the implementation of the new thresholds instead of the formal approval process established under REDA.

Concerns Regarding the AER's Implementation of an Application Requirement

Further, Industry has the following concerns regarding the implementation of a requirement that the initial plans be submitted as an application:

- Requiring the plans to be submitted as applications may be precedent-setting for other “plan” submissions;
- Potential extended review and approval timelines – several months per application is likely, the AER's capacity to review these applications and move them through the review process simultaneously is questionable, particularly if statements of concerns are filed or hearings are called;
- AER's capacity to support the level of effort expected for a public review of each plan (all operators submitting applications at the same time);
- Concerns with how tailings are regulated during the interim, review period; and
- Concerns regarding stakeholder capacity and risk of stakeholder fatigue, especially considering the AER is currently consulting stakeholders regarding the new Tailings Directive, the same stakeholders that have been consulted during the development of the TMF.

Given the the tools that are already available to AER and these concerns, Industry believes that the submissions can be transparently and appropriately reviewed and approved.

Industry feels that the following revisions should be made to the draft Directive:

- Remove all references to the tailings plan submission being an “application”;
- In the section “Profiles and Tailings Management Plan Application Requirements”, replace the references to “applicant” with “proponent” and “application” to “proposal” or “submission”;
- Change the section title from “Profiles and Tailings Management Plan Application Requirements” to “Profiles and Tailings Management Plan Requirements”; and
- When initiating the change required for the New Tailings Directive, industry suggests a change to OSCR section 30, as follows:
 - (5) For clarity, all plans, summaries, information and reports filed under this section 30 are filings required for the purposes of maintaining and complying with the conditions of a scheme approval and are not considered “applications” under the Responsible Energy Development Act.

However, should that not be acceptable to the AER, we would suggest the following paragraph be included in the Directive at the beginning of section 3:

Each operator is accountable for filing information showing how their Fluid Tailings Management Plan meets the policy and the intended outcomes of the Tailings Management Framework (TMF). The AER has reviewed the TMF and believes that all current Fluid Tailings Management Plans will likely require changes to ensure that the policy and its intended outcomes are met. Based on the nature of the change in an operator's fluid tailings management plan, the AER will determine, in discussion with each operator, the type of filing required. Project applications that are currently in progress, or new project applications, will be required to demonstrate how the policy and the intended outcomes of the TMF will be met by the project. Decisions regarding existing and new applications will ensure they are consistent with the policy and its intended outcomes.

Appendix 4 TAC Participant Submissions



November 16, 2015

Alberta Energy Regulator
Tailings Regulation Management
Tailings Advisory Committee
Via email: Carey Patterson <carey.patterson@aer.ca>

Re: Métis Participation in the Fluid Tailings Application Process

To Whom it May Concern:

The purpose of this letter is to outline the view of the McMurray Métis with respect to Métis participation in the application process under the Fluid Tailings Management directive.

CONSULTATION WITH MÉTIS ORGANIZATIONS

Direct one-on-one Consultation with Métis organizations needs to be made a requirement in the directive.

One-on-One Consultation

The McMurray Métis want direct, one-on-one Consultation with each company during the preparation and review of applications. Testing the implementation of the Tailings Management Framework through the Fluid Tailings Management directive is a new process and therefore appropriate Consultation should be a major priority for industry and the government. By comparison, the existing process does not provide McMurray Métis with adequate opportunity for consultation or participation.

Context

The Government of Alberta (GoA) does not have a Métis Consultation policy, despite the constitutionally protected rights of Métis communities. We do not agree with industry's position that no further consultation is required on the tailings management plan application because consultation was conducted for the overall project application. It is the experience of McMurray Métis that Consultation with the community is inadequate on oil sands mine applications. Given that this is a new directive under the new Tailings Management Framework we request one-on-one consultation for each application submitted.

Requirement for Consultation

The Aboriginal Consultation Office of GOA should be supporting a Consultation process that includes Métis organizations for the tailings management plan applications. We therefore request that the Fluid Tailings Directive include the following direction to operators:

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First Nations and Métis Consultation

To ensure that consultation feedback is incorporated into the application, the AER strongly encourages companies to have received a decision on the adequacy of First Nations and Métis consultation before submitting any applications. The AER will not make a decision on the tailings management plan application until the ACO decides on the adequacy of First Nations and Métis Consultation.

Companies are encouraged to contact the ACO well before submitting a tailings management plan application to ensure that First Nations and Métis Consultation is adequate for the extent of the applied-for tailings management plan.

Timeline for Consultation on Applications

Present Applications

In order to allow sufficient time for effective Consultation with Métis organizations during the preparation of applications, the deadline for submitting applications may need to be extended from the proposed date of March 31, 2016.

We acknowledge that Consultation on six applications during this time frame would be a major time demand on the McMurray Métis office resources; however, this is a critical issue to the community and members want to be well-informed about tailings management.

Future Applications

It is expected that the timelines for future applications would allow a more generous time period over which Consultation would occur with Métis organizations.

MULTI-STAKEHOLDER REVIEW

A multi-stakeholder review committee or an expert panel cannot replace the Consultation requirements to address Métis constitutional rights under Section 35. However, a multi-stakeholder committee would continue to be appropriate and valuable for reviewing the annual performance of operators and the implementation of the directive on an ongoing basis. Additionally, a multi-stakeholder process should be used for the continual development of the directive.

Sincerely,

Alex Hall, Tailings Advisory Committee Representative, McMurray Métis

Cc: Gillian Donald, Environment and Land Advisor, McMurray Métis

Kyle Harrietha, General Manager, McMurray Métis

Carmen Wells, Heritage and Traditional Knowledge Advisor, McMurray Métis

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First Nations, Métis, Stakeholder Participation In the Fluid Tailings Application Process

INTRODUCTION

In addressing this topic, Keepers of the Athabasca is guided by the following key principle of the TMF:

Section 3.5.9 Transparency:

The Framework recognizes the need for increased transparency between Government, industry and Albertans regarding tailings management. It is the responsibility of the Government of Alberta and the Alberta Energy Regulator to ensure transparency is enhanced through increased monitoring, evaluation, and reporting requirements, and to provide assurance to Albertans that fluid tailings are being managed responsibly. This necessitates the involvement of others in such activities as the evaluation of fluid tailings profiles and thresholds, reporting, and the review of the Framework.

KEEPERS POSITION

The transparency principle quoted above addresses both transparency and participation in decision-making, both of which are highly valued by Keepers. We believe it indicates that a mechanism must be created and implemented to involve individuals other than AER personnel in the evaluation of applications and reports related to fluid tailings. The question is, what mechanism should be created for this purpose?

Keepers could support the creation of either a multi-stakeholder committee that would function similarly to the TAC or an expert review panel. Both types of committee would review industry applications and reports related to fluid tailings, as well as AER directives, and provide advice to the AER. Our position also includes the creation of a mechanism similar to the one currently available for interested parties to provide advice on these documents to the AER on its web site. We favour the multi-stakeholder option, but would consider the expert review panel option.

RATIONALE

With respect to how parties are to be involved, we believe that in order to apply the transparency principle adequately, AER must go beyond providing information to Albertans. Involvement implies a two-way flow of information and action.

TAC and the AER have already gone some way toward enhancing transparency by clarifying statements in the draft directive on fluid tailings to the effect that AER will make available applications, monitoring results and reports related to fluid tailings, including on its web site. Also,

AER's decision to post documents related to TAC's deliberations will increase transparency. But this is not enough.

TAC, together with the process whereby interested parties can provide comments on the draft directive to AER through its web site, is a good model to follow for the future involvement of others in decision-making, while maintaining AER's authority to make final decisions. Such a committee, together with the ability of all interested parties to provide advice to the AER, could improve its decision-making and its credibility, as well as the credibility of fluid tailings management in Alberta. TAC, which has tackled a very difficult task in a very short time, has demonstrated how such a committee can improve a key document by providing additional information and a variety of perspectives. The ability of all interested parties to provide comments to AER expands the directly and adversely impacted test for involvement in decision-making, which is important given the high profile and widespread concerns about tailings management. We believe, based on experience, that this is a practical proposal.

Keepers values both efficiency and effectiveness. The two go together to promote good decision-making and credibility in a timely manner. TAC has shown that it can work to deadline while considering a variety of perspectives and attempting to reach consensus on them.

In short, a process modeled on the TAC multi-stakeholder committee, together with a mechanism for public involvement through the AER web site, could promote increased knowledge about tailings management and improved results and credibility in this area.

Mary Richardson
Keepers of the Athabasca

November 17, 2016

Alberta Energy Regulator
Fluid Tailings Regulatory Management Technical Advisory Committee
Suite 1000, 250 – 5 Street S.W.
Calgary, AB
T2P 0R4

Re: Pembina Institute perspective on a credible public review process for amended tailings plans under the draft Directive on *Fluid Tailings Management for Oil Sands Mining Projects*

The Pembina Institute, in collaboration with ENGO peers and the AER's Technical Advisory Committee (TAC) for tailings management, has conducted a comprehensive review of the draft *Directive XX: Fluid Tailings Management for Oil Sands Mining Projects* (henceforth the draft Directive). The draft Directive is to be finalized before year-end, and will provide immediate implementation of the *Tailings Management Framework for the Mineable Athabasca Oil Sands* (henceforth the Framework).

Following discussions held on committee days six, seven and eight, it became clear to all members of the TAC that a consensus position on a credible review process for incoming tailings management plans would not be achieved. To that end, TAC members agreed to provide written submissions on this topic.

The Pembina Institute's interest in this topic is to ensure that the AER has credible and complete information at its disposal as it seeks to assess each tailings plan's likelihood of success as a means to reduce economic and environmental liabilities in the oilsands. To this end, the Institute has identified areas of the draft Directive's approach to applications that require modification and/or clarification prior to its implementation.

Position statement on tailings plan applications

The draft Directive, at Section 4.2, contains a requirement that oilsands projects operating as of the effective date of the directive must submit an application to the AER by March 31, 2016 that demonstrates that Framework's outcomes will be met. The draft Directive proposes that those applications follow the established *Oil Sands Conservation Act* (OSCA) application review process. Further, the draft states the OSCA process "will be supplemented as appropriate", however it does not specify the ways in which this supplemental process would be conducted, or under what conditions it might be required.

We recommend that, as a default, all tailings management plans and profiles be reviewed through a regulatory hearing process. Regulatory hearings are necessary and justified in these circumstances because the Framework represents a significant deviation from previous legislative and regulatory expectations on tailings management for the oilsands sector. At the point of first approval for existing oilsands mines, tailings plans were reviewed and in some cases, a federal-provincial Joint Review Panel offered additional

conditions to be achieved over the life of the project. Given that those approvals are being rescinded and replaced with new approvals under the Directive, it is appropriate to replicate the same level of scrutiny and review as was deemed appropriate for the original tailings applications.

Our caucus' view is that a regulatory hearing process is the most efficient and credible means through which the AER can provide public assurance that the environmental and economic impacts of tailings are being addressed, as per policy direction from the Framework.

From a participation standpoint, we recommend this hearing process assume a standing test that allows all stakeholders with a genuine interest to participate, rather than the more narrowly interpreted “directly and adversely impacted” test sometimes used by the AER. Further, the Government of Alberta and the Alberta Energy Regulator should provide resources to support an effective and efficient intervention from all stakeholders.

In addition to regulatory hearings, a pre-hearing process could be designed to resolve issues in advance of the hearing process in a timely manner. A pre-hearing committee could be established to review each tailings management plan and profile submitted to the AER on March 31, 2016. The AER, as provided in Section 15 of its Rules of Practice, should establish and administer the process through which this pre-hearing committee assesses company-specific profiles.

The mandate of this pre-hearing committee could be to review all plans, on their own merit and in aggregate, to determine the extent to which they are likely to achieve the intent of the Framework.

This pre-hearing process should include AER participation and facilitation to increase the likelihood of productive dispute resolution. Further, a regulatory hearing should be viewed as a last resort mechanism to resolve concerns for the sub-set of issues that cannot be settled by the pre-hearing committee.

A pre-hearing committee process could include the following stages:

1. **Information sessions:** A pre-hearing committee could conduct transparent multi-stakeholder information sessions for each tailings management plan and profile, in order to ensure all interested parties have the necessary information to make informed submissions to the pre-hearing committee. At this time, the committee could ask questions of the proponent and/or the AER in writing and in face-to-face meetings.
2. **Determination of interests and dispute resolution, as required:** At this stage, the committee could review all plans to assess their likelihood of compliance with the Framework. The committee should be expected to report back to the AER with its findings and recommendations for each tailings plan. This report could be used by the AER to establish to binding approval conditions.

3. **Documentation of areas of consensus and non-consensus:** The pre-hearing committee should transparently document the areas of agreement and disagreement heard at the committee table, and should make recommendations to the AER on its proposed path forward. Interveners with unresolved issues may wish to request a hearing.

Our support for the pre-hearing committee approach to seeking resolution outside of a formal hearing process is contingent upon securing a commitment from the AER that standing and resources will be available to interveners.

In addition to the above considerations, we recommend the following design elements be considered when establishing a pre-hearing process through which all tailings management applications are reviewed:

1. All tailings plans should be made available for public comment for a minimum of 30 days.
2. All tailings plans should be assessed by an independent committee supported by experts composed of members from industry, First Nation and Métis communities, the AER, academia, municipalities and civil society.
3. All company applications should be made public immediately upon receipt by the AER.
4. Following the approval of a tailings management plan, a decision report explaining the AER's rationale for approval, approval with conditions, or rejection should be made public. The AER must work with stakeholders to ensure this reporting mechanism meet the informational needs of all interested or affected parties.

In order for the AER to achieve its intentions regarding “best-in-class” regulation, it must ensure that its application process for tailings plans generates rigorous, balanced, holistic evidence to support approval of such plans.

Our understanding is the Government of Alberta's intention is not to limit participation in application reviews to directly and/or adversely impacted stakeholders as outlined in the *Responsible Energy Development Act*. This intent would not be met with the OSCA process currently articulated in the draft Directive.

We applaud the AER for seeking participation from a broad group of stakeholders in the creation of its Directive.¹ However, the existing TAC process alone does not achieve the Government of Alberta's policy direction of enhanced transparency for tailings management. It is in itself is not a sufficient or appropriate vehicle to achieve transparency on tailings management plans. Further, the TAC cannot provide assurance that the AER's obligation to administer a process that achieves the objectives of the

¹ The TAC achieves the interest of building knowledge and capacity across sectors on the direction and intentions of the AER and the Government of Alberta on tailings management. Further, the TAC process has been successful in ensuring that a variety of perspectives are heard and documented through the Directive review process.

Framework is being met. Transparency on these issues can only be achieved at the application stage for new tailings management plans and profiles.

Benefits of a transparent multi-stakeholder review process

We see the following benefits stemming from a transparent review process:

1. **Credibility:** Dialogue among proponents, the regulator and individuals and/or organizations with a genuine interest in tailings management will build understanding across sectors of the opportunities and threats to progress on oilsands tailings in Alberta. Inclusive discussions can build credibility for Alberta and the industry. Non-industry stakeholders have a legitimate interest in this process and provide value – credibility hinges on involvement and validation by third parties. The AER must seek and consider non-industry perspectives as it attempts to answer questions regarding each tailings plan's adherence to the goals identified in the Framework.
2. **Assurance:** In practical terms, the ambition and stringency of the Framework will depend on the content of each tailings plan submitted under the purview of the new Directive. In order to build public confidence that the AER is holding industry to the standard of the Framework, the AER must include a multi-stakeholder process in the application review stage. This process could provide assurance and validation to the public that the intent of the Framework is likely to be achieved.
3. **Vision:** Albertans expect the AER to actively communicate out the status of tailings in the oilsands industry, the cumulative volume forecast. To this end, the AER must publicly affirm timelines – both for review process of new tailings plans, and for reduction of liability in the long-term. Communications of this nature would build confidence that the AER is holding industry to the standard of the Framework. These communications could build from, and be bolstered by, a multi-stakeholder review at the application stage for all tailings management plans.

Conclusion

Concern about the implications of rapid growth of tailings in the oilsands has received local, provincial, national and international attention. These concerns have been exacerbated by a lack of success in previous attempts by regulators to stop the growth of tailings and to achieve net reductions on the landscape. This situation calls for above-average measures on the part of the AER to emphasize transparency and stakeholder engagement in its implementation of the Framework through a new Directive. This implementation must include broad stakeholder engagement on all submitted applications, including through regulatory hearings as required.

Notwithstanding research and investments, there is a growing, material risk that environmental liabilities related to tailings will be assumed by taxpayers and transferred to future generations. It is critical that Albertans are not required to subsidize oilsands operations by bearing the growing and unacceptable social, environmental and economic cost of tailings liability.

Clear, measurable and transparent progress is essential to rebuild public confidence in the oilsands sector's tailings practices. The draft Directive, as the tool to implement the Framework, represents an opportunity to break from past performance, and to build the reputation of the Alberta Energy Regulator as an independent voice protecting the interests of all Albertans.

Yours sincerely,

Chris Severson-Baker
Alberta Director
Pembina Institute



Regional Municipality of Wood Buffalo
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Engagement Specialist
Alberta Energy Regulator
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RE: Technical Advisory Committee – Stakeholder Submission, Participation in Application Process

Greetings Carey,

The Regional Municipality of Wood Buffalo supports a process that balances environmental, social, and economic considerations, such that the following outcomes are achieved or enabled:

- Local and provincial governments operate effectively and efficiently, in a manner that demonstrates accountability, integrity, and transparency; and,
- Quality of life is improved throughout the region; and,
- The environment is valued as the natural, community, and economic foundation of our region.

The Municipality is committed to its role as a steward of sustainable practice. Working together with stakeholders, such as (but not to the exclusion of others) AER, First Nations, and Industry, we will strengthen our image as a responsible government by making balanced decisions with respect to the environment, local community, and economy. Our successes in this area are to be shared by all.

As a community, our vision is simple: “A balanced future with opportunity for all”. We continue to advocate our position that all processes should:

- Engage our citizens
- Enable effective collaboration
- Promote accountability and integrity
- Balance economic, social, and environmental considerations

We are concerned that expanding the “directly and adversely impacted test” specifically for this process may ultimately shift control, engagement, and responsibility out of our community, and our province. Stakeholders that are not within our community may have valid concerns, however, those concerns may not be properly balanced within a sustainable framework (economic, environmental, and social/community).

While we do not have any suggestions or changes to be made to the existing process, we request that any changes be aligned with the aforementioned outcomes and position.

Sincerely,

Travis Kendel
Manager, Sustainable Operations
Regional Municipality of Wood Buffalo

Transparency of Fluid Tailings Management Approvals

In recent meetings of the Technical Advisory Committee (TAC) established by the Alberta Energy (AER) in relation to the draft Fluid Tailings Management Directive, the AER has advised that it intends to require operators to submit applications in relation to how they intend to address their fluid tailings. Although industry's view is that such plans are more appropriately dealt with by way of submission, industry respects the authority of the AER to instead require operators to submit applications in this regard.

However, the AER has also recently advised industry via the TAC that it is considering the introduction of new and additional regulatory process/requirements relating to stakeholder review of applications for fluid tailings. The Tailings Management Framework policy has the following statements that the TAC believes can be satisfied through the current application/approval process:

- Section 3.5.9: *“The Framework recognizes the need for increased transparency between Government, industry and Albertans regarding tailings management. It is the responsibility of the Government of Alberta and the Alberta Energy Regulator to ensure transparency is enhanced through increased monitoring, evaluation and reporting requirements and to provide assurance to Albertans that fluid tailings are being managed responsibly. This necessitates the involvement of others in such activities as the evaluation of fluid tailings profiles and thresholds, reporting and the review of the Framework.”*
- Section 5.4: *“Further, in addition to and in support of processes administered by the AER, the evaluation of project volumes profiles; the assessment of established target, threshold, and associated management actions; and, project tailings management reporting may be subject to external review and guidance in order to strengthen assurance and transparency within the system”*

Industry views the implementation of any additional review/engagement beyond what is already incorporated in the current application/approval process to be problematic and unnecessary for the following reasons:

- Given the AER has advised that operators are required to submit applications in respect of their fluid tailings plans, industry's view is that the current regulatory process under the *Responsible Energy Development Act* (REDA) governing applications and approvals provides full transparency. All applications are published on the AER's website for public review, engagement is required with affected stakeholders, and stakeholders have the ability to intervene and participate in the process provided they meet the established legislative requirements. The AER must analyze the information with which it is presented in respect of any application, and the decision as to whether that application is approved or not should rest solely with the AER.
- The current application/approval process under REDA also establishes regulatory timelines for all procedural steps, which creates certainty for all participants, including stakeholders, in the regulatory process. If a new process/requirement is introduced, this raises issues relating to the effectiveness of a process that will now require duplication of efforts which in turn will create scheduling, resourcing and cost issues for participants. Additionally, significant uncertainty may be created and as a result, the perceived legitimacy of the regulatory process may be compromised in the eyes of some or all participants.
- The current application/approval process under REDA incorporates a scientific and risk-based approach to engagement with, and engagement by, affected stakeholders. If additional regulatory review is implemented, the potential exists that such review would not similarly incorporate such a scientific and risk-based approach, which is important to the process.
- The AER has not articulated the rationale for this proposed additional regulatory review/engagement process, nor has it identified any legislative basis for these new requirements. If additional processes/requirements are established in the absence of any legislative authority, issues of procedural fairness are created, along with the introduction of additional future uncertainty by way of potential legal challenges by some or all participants. Further, industry does not understand the rationale for requiring additional review/engagement specific to fluid tailings applications, as this is inconsistent with the manner

in which other types of applications are handled by the AER, and has the potential to establish a negative and unwarranted precedent in this regard.

For the reasons stated above, industry, as represented in TAC, strongly urges the AER to reconsider its proposal to introduce additional review of applications for fluid tailings, and welcomes the opportunity to discuss in more detail.

First Nations, Metis, Stakeholder Participation in the Fluid Tailings Application Process

We have been asked to provide written submissions on First Nation and Metis participation on reviewing new fluid tailings management plans which will be submitted as an application for approval under the terms of a revised tailings management directive.

As oil sands mining has directly affected the ability to hunt, fish and trap on their traditional territories, all aspects of mine development, environmental protection and restoration of the boreal forest and wetlands continues to be a major issue for Fort McKay and the Mikisew Cree. The buildup of fluid tailings in addition to the taking up of land and the scarcity of tailings reclamation is and has been a critical issue since oil sands mining commenced.

Because each tailings management program for each mine will be approved individually with unique thresholds and indicators of success proposed by industry, and the lack of firm direction by AER on what constitutes ready-to-reclaim or ready for reclamation performance indicators, that especially pertain to culturally important species, it is very important we have a say in the approval of each program.

Fort McKay First Nation

Fort McKay would like to continue with the existing application process for all tailings submissions. In this process, Fort McKay would technically review submissions with companies consistent with FPIC (Free, Prior and Informed Consent) and UNDRP (United Nations Declaration on the Rights of Indigenous Peoples) principles.

We would favour the existing process with the proviso that if our recommendations were not acceptable to AER then AER's technical committee would clearly state why not.

The overriding objectives of Fort McKay are: Reclaim more quickly so that we can resume traditional activities on the landscape and put it back the way it was. In addition, we have long opposed water covers as a way of final tailings management.

Mikisew Cree

Although Mikisew would be prepared to continue with the existing application process for tailings submissions, we would like to see the following improvements/clarifications:

- (1) Recognition by the AER that the buildup of fluid tailings on the landscape and the scarcity of tailings reclamation has directly and adversely affected First Nations' traditional use of the land and continues to pose a risk to the exercise of First Nations' rights. This should ensure that there are no fights over the standing of First Nations to participate in the review of applications involving tailing submissions.

- (2) Clear commitment that applications involving tailing submissions will undergo reviews and that such applications will not be deemed complete without technical review submissions from potentially affected First Nations or the expert panel discussed in the next point.
- (3) A wider, more inclusive process, including other First Nations, for reviewing applications involving tailing submissions in order to increase confidence that reviews of tailings submissions are done thoroughly and independently of both AER and industry. This could involve the creation of an expert panel to review applications of behalf of First Nations communities.
- (4) An obligation for the AER's technical committee to provide clear, public, written reasons if it decides that any recommendations made by First Nations are not acceptable to the AER.
- (5) Clarity that any decision to approve a tailings plan would be an 'appealable' decision under Division 4 of Part 2 of the REDA.

There is a concern from both groups that First Nations and Metis participation process that will be decided under the TAC review will set a precedent for other applications and both First Nations would like the opportunity to negotiate this process at a non-technical level.

Dr. John C Errington

On behalf of Fort McKay First Nation and Mikisew Cree

November 17, 2015