

# **ALBERTA ENERGY AND UTILITIES BOARD**

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Calgary Alberta

**PRE-HEARING MEETING  
SYNCRUDE CANADA LTD.**

**Memorandum of Decision  
Application No. 960552**

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## **1 INTRODUCTION**

Syncrude Canada Ltd. (Syncrude) applied to the Alberta Energy and Utilities Board (Board) for an approval for the Aurora Oil Sands Mine which would be located east of the Athabasca River approximately 70 kilometres north of Fort McMurray within the Regional Municipality of Wood Buffalo. The development would include two separate mining areas, two extraction production systems, and related infrastructure. The four-phase development would initially produce 6 250 000 cubic metres of bitumen equivalent per year with ultimate production levels of 25 000 000 cubic metres of bitumen equivalent per year.

Following receipt of a number of letters expressing concerns with the application and a request from Syncrude to proceed expeditiously to a hearing, the Board held a pre-hearing meeting. The purpose of the meeting was to discuss: the potential for cooperative development in the region, completeness of the Aurora South portion of the application, need for filing of additional information, potential interventions, the proposed timing and location of the hearing, and procedural issues. The pre-hearing meeting was held in Fort McMurray, Alberta on 2 April 1997 before Board Members J. P. Prince, Ph.D., A. C. Barfett, and Acting Board Member H. O. Lillo, P.Eng.

The attached table lists the meeting participants and abbreviations used in this report.

## **2 COOPERATIVE DEVELOPMENT IN THE REGION**

Shell and Syncrude have entered into a cooperation agreement to enhance economic return and to mitigate any potentially adverse environmental, social, and cultural impacts of the separate projects. Mobil and Syncrude are actively pursuing a strategy to address Mobil's concerns, however, Mobil has reserved the right to participate in the hearing. Solv-ex stated it intends to work together with Syncrude to resolve its issues. Birch Mountain, holder of the metallic and industrial mineral permits in the area, stated that it is discussing a cooperative development plan with Syncrude and expects the discussion to be successful. Northland stated that Syncrude would be meeting with them to address a number of its concerns and that these issues could probably be resolved. Failing resolution, Northland would participate in the hearing.

The Department of Fisheries indicated that it had not been aware of the plans of Shell, Mobil, and others and, with those plans in mind, it might be worthwhile to consider the potential impact of all development in the region. Alberta Justice stated that it supports environmental approaches that are cooperative with respect to environmental protection and is content that stakeholders are proceeding to some kind of resolution.

### **3 COMPLETENESS OF APPLICATION AND FILING OF INFORMATION**

Syncrude stated that it would be filing additional information by 18 April 1997 to address primarily the concerns raised by Board staff regarding Aurora South. The Pembina Institute indicated that Syncrude had not provided satisfactory responses to its questions. Alberta Justice indicated that additional information was needed in relation to wetlands and forestry. Syncrude stated that the information to be filed on 18 April 1997 would not include any additional information on the Pembina Institute, wetlands, or forestry issues. Syncrude indicated that any additional information needed by Alberta Justice would be dealt with in a timely manner.

### **4 POTENTIAL INTERVENTIONS**

Various parties are currently negotiating with Syncrude as to appropriate cooperative development of the region. These parties reserved the right to participate in the hearing if negotiations are unsuccessful. Both the Pembina Institute and Toxics Watch indicated that they would participate in the hearing with respect to environmental issues. The Pembina Institute stated that it believed it should be granted local intervener status and afforded intervener funding. Because one of its members, Ms. Pat McInnes, is a resident of Fort McMurray, the Pembina Institute stated that the Board should consider its submissions as representing the interests of not only a broad-based group but also of a person, Ms. McInnes, who is potentially directly and adversely affected by this project. The Pembina Institute stated that Ms. McInnes supports its concerns but is unable to participate in the current process because of illness.

Syncrude stated that living in Fort McMurray may not give a person procedural rights with respect to this application. Syncrude was unaware of Ms. McInnes' support of the Pembina Institute and reserved the right to argue intervener status once interventions had been filed.

### **5 TIMING AND LOCATION OF HEARING**

Syncrude proposed that the Board schedule a hearing for 21 May 1997. The Pembina Institute and Toxics Watch objected to the May date for a hearing because the application is not yet complete. Syncrude argued that any delay was unacceptable because the project has been underway for over 3 years, was announced through the preliminary disclosure process in 1995, and was applied for in June of 1996; therefore, there has been adequate time for public review. It also noted that similar applications, notably those of Cardinal River Coals and Suncor, had been handled in roughly the time frame Syncrude was proposing. Syncrude stated that it needs approval by the end of the year for several reasons:

- first, they need to ensure an adequate reserve base to justify investment plans;
- second, the Syncrude owners will not make the decision to invest without this approval in hand;
- and third, the engineering is already underway.

In order to ensure a timely decision, the evidentiary part of the hearing should be completed before summer. Syncrude stated that it believed its application is complete for the purpose of a public hearing. If required, the Board's Rules of Practice allow for additional information to be filed after notice of hearing has been issued. Syncrude suggested the hearing be held in Fort McMurray.

The Pembina Institute and Toxics Watch argued that the public should not be expected to review an application until it is complete. Toxics Watch noted that Alberta Justice has indicated that the Director of Environmental Assessment would not be determining if the Environmental Impact Assessment (EIA) is complete until the week of 14 April 1997. Toxics Watch also noted that Syncrude would be filing additional information on 18 April 1997. Toxics Watch believed the public needed a reasonable time frame to review the completed application and should not be expected to review a piece-meal application because a significant amount of time could be wasted. The Pembina Institute argued that once a completed application is received, the Board should allow 90 days for public review prior to the notice for hearing being issued.

The Pembina Institute believed that a hearing location in Edmonton might be better because of the remoteness of Fort McMurray and the availability of hearing facilities.

## **6 VIEWS OF THE BOARD**

The Board acknowledges the Pembina Institute's comment that a hearing location in Edmonton might be more efficient and somewhat less costly. However, there are advantages to holding a hearing near the location of the proposed project and the Board has decided that the hearing should be held in Fort McMurray.

Syncrude advised participants that if the Pembina Institute and Toxics Watch are the only outstanding interveners, and even if they represent a resident of Fort McMurray, Syncrude may argue that there should not be a hearing. As well, although several other participants are in discussion with Syncrude, it is not known whether any of them will be participating in the hearing. These facts introduce an element of uncertainty to the scheduling of events related to a hearing.

With respect to the timing of a hearing and the related events necessary to get to the hearing stage for this application, the Board is unable to concur with certain positions taken by Syncrude at the pre-hearing meeting for the following reasons:

- The characterization of the application as being underway for three years is not reasonable. Nor is it reasonable to consider the timing as having started with preliminary disclosure in 1995. Preliminary disclosure is a process that puts the government on notice about a project, but there is little information available at that stage to even begin considering a regulatory review. At best, the application was received initially in June of 1996, however, two separate deficiency requests resulted in submissions as late as March of 1997. Moreover, although Syncrude knew it intended to pursue approval for Aurora South during this proceeding, there remains a major information deficiency that will not be addressed until the submission on 18 April 1997.

- The comparison of the timing of processing this application with that of Cardinal River's Cheviot coal project and Suncor's Steepbank project is also questionable. In the former case the approval process is different making comparisons somewhat unreliable, but the Board had a complete application after one deficiency response and, in the latter case, Suncor worked with interested parties to resolve concerns to avoid a hearing. Neither of those things can be said about the current application. Although the Board recognizes and appreciates the work Syncrude has done to resolve issues with other parties active in the region, final agreements have not been reached and there remains a possibility that some of these parties may intervene. As well, although the Pembina Institute acknowledged that many issues have been addressed, a number of their concerns remain unresolved.

The Board acknowledges and accepts its responsibility to deal with applications as expeditiously as possible. However, applicants have a responsibility to assist that process by providing sufficient information in the first instance and by communicating with parties that have a legitimate interest in the project to enable them to understand the application and to resolve concerns they may have, if possible. Unresolved issues can then be handled expeditiously through the hearing or some other EUB process. In the case at hand, the Board does not yet have a completed application, does not know whether agreements will be reached with key parties, and has objections from parties who claim Syncrude's communication has been inadequate.

With the above as background, the Board has settled on a hearing schedule as set out below. The Board did not adopt the suggested schedule put forward by Syncrude at the meeting because, in the event there is a hearing, the Board would like to ensure it is fair to all parties, productive, and as useful as possible.

The Board proposes to follow this schedule:

<b>EVENT</b>	<b>DATE</b>
Syncrude submission on Aurora South	18 April 1997
Notice of Hearing	5 May 1997
Submission of Interventions	23 June 1997
Hearing	15 July 1997

Syncrude's submission is expected on 18 April 1997. The Board will require at least two weeks to determine whether the application is complete, and, assuming it is, a notice of hearing will be issued on or about 5 May 1997. The notice will specify 23 June 1997 for interventions. This should allow sufficient time for the interveners to prepare their submissions. The 15 July 1997 date was chosen with regard to the need for a fair period of time for preparation for the hearing

to ensure a useful result and to the Board's own schedule. The Board acknowledges the importance to Syncrude of knowing the status of this project as soon as possible and is confident that it will be able to reach a decision in a timely manner following a July hearing.

The Board would like to emphasize that whether or not there is a public hearing of the application, the Board will be seeking considerably more information than it now has regarding the plans and potential for regional development. In this connection, a brief review of the terminology Syncrude has used may be helpful. The Board understands Syncrude and others to use the term "co-development" to refer to private negotiations respecting the possible joint development of specific leases. "Cooperative development" denotes private agreements that ensure the interests of one party are considered by other parties as they develop their leases. Such agreements do allow consideration of public-interest issues such as those related to conservation and the environment. However, neither of these approaches provide a guarantee that the overall interests of the public are necessarily considered or protected, particularly with respect to efficient development of the resource base or to environmental impacts. The Board understands that Syncrude and Shell had studied co-development but that an agreement was not reached and separate developments are now planned by each operator. Syncrude also anticipates a separate agreement with Mobil. If each leaseholder develops a separate stand-alone operation, a number of negative impacts could result including greater resource sterilization, greater environmental impacts, higher costs for each operator, and lower provincial royalties.

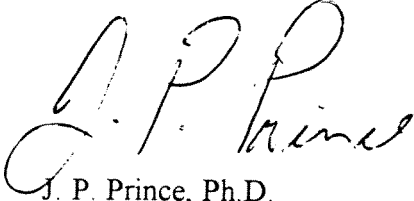
The Board has used the term "regional development" to refer to a broad-based approach to developing all of the leases in the region in a way that will ensure conservation and environmental objectives are considered and incorporated in the development plan. The Board has a responsibility under its mandate to address these matters.

While the Board acknowledges Shell's view that it would not wish the Board to insert itself into the commercial negotiations of the companies currently intending to develop various leases, neither can the Board allow the commercial negotiations to override the interests of the public, as owners of the resource. The panel will require sufficient information on specific aspects of the planned development to allow it to discharge its responsibilities with respect to both the conservation of the oil sands resource and the environment. The Board will be expecting participants to provide advice and comment on these matters and on how the required information might best be obtained, either as part of the hearing or, in the event no hearing is held, as part of the Board's internal approval process.

The Board will advertise the hearing notice to ensure all who may be interested have an opportunity to participate.

Issued at Calgary, Alberta on 15 April 1997.

**ALBERTA ENERGY AND UTILITIES BOARD**



J. P. Prince, Ph.D.  
Presiding Member



A. C. Barfett  
Board Member



H. O. Lillo, P.Eng.  
Acting Board Member

Attachment

## **THOSE WHO APPEARED AT THE PRE-HEARING MEETING**

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<b>Principals (Abbreviations Used in Report)</b>	<b>Representatives</b>
Syncrude Canada Ltd (Syncrude)	F. Saville, Q.C. R. Neufeld
Shell Canada Limited (Shell)	D. Low
Mobil Oil Canada (Mobil)	K. Miller
Solv-ex Corporation (Solv-ex)	A. Corti
Birch Mountain Resources Ltd. (Birch Mountain)	J. Houghton
Northland Forest Products Ltd. (Northland)	G. Ehrentraut
Pembina Institute for Appropriate Development (Pembina Institute)	D. Smith
Toxics Watch Society (Toxics Watch)	M. Kitagawa
Government of Canada Department of Fisheries and Oceans (Department of Fisheries)	F. Hnytko
Alberta Justice for Environmental Protection, Transportation and Utilities, and Community Development and Health (Alberta Justice)	S. Rutwind
Alberta Energy and Utilities Board	R. Heggie, Counsel T. Donnelly, Counsel A. Larson, P.Eng. M. Dmytriw, R.E.T. A. Sellick, P.Eng. J. R. Creasey, P.Biol.

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