

Minister
 Deputy Minister

BRIEFING NOTE

For Decision
 For Information

AR 37229

SUBJECT: Statement of Concern Rejection of Oil Sands Environmental Coalition

DATE: August 12, 2009

ISSUE:

Alberta Environment is rejecting the Oil Sands Environmental Coalition as a Statement of Concern filer for the Syncrude Southwest Sand Storage Conversion Project *Environmental Protection and Enhancement Act* and *Water Act* applications.

BACKGROUND:

The application for the Syncrude Southwest Sand Storage Conversion Project was advertised on January 14, 2009 with Statements of Concern due to Alberta Environment by March 20, 2009. The department received 21 submissions, only four met the Statement of Concern requirements. There was an obvious coordination amongst the environmental community to respond to the notice, with specific reference to the Energy Resources Conservation Board tailings Directive.

The Oil Sands Environmental Coalition has traditionally been accepted as a Statement of Concern filer for oil sands mine project applications. The Oil Sands Environmental Coalition is composed of three environmental groups: The Fort McMurray Environmental Association (with 40 members from Fort McMurray and Anzac); The Pembina Institute (with 56 staff & 31 members from across Alberta); and the Toxics Watch Society (with 3 staff & 15 members from across Alberta). The Pembina Institute has published documents about the oil sands for several years.

The Oil Sands Environmental Coalition has been a consistent Statement of Concern filer over the past decade, for most major mineable oil sands projects. There had at one point been an internal decision to accept them, setting some precedence for continued acceptance. Considerations for accepting them in the past included: the Fort McMurray Environmental Association was quite active in local multi-stakeholder groups like the Cumulative Environmental Management Association for the Wood Buffalo Region and the Wood Buffalo Environmental Association; many of the members of the Fort McMurray Environmental Association live in and around Fort McMurray; they have been relatively simple to work with as Statement of Concern filers (they've never appealed a decision); the Oil Sands Environmental Coalition has engaged in the Statement of Concern process since its early stages, when the "directly affected" test had not yet been fully established; and they were given the benefit of the doubt. The Oil Sands Environmental Coalition and its member organizations have since withdrawn completely from the Cumulative Environmental Management Association, and as reflected in the Pembina Institute's recent publications about the oil sands, are now less inclined to work cooperatively.

After consulting with Alberta Environment's legal team it has been concluded that information provided is insufficient for the Oil Sands Environmental Coalition to meet the test of directly affected. Alberta Environment is rejecting the coalition as a Statement of Concern filer. It has been decided that we should continue to ask the Oil Sands Environmental Coalition to prove how they are directly affected on future applications.

We have been more consistently applying the directly affected test to the groups or individuals who submit Statements of Concern. With more parties providing submissions, there is a need to identify the groups or individuals who are truly directly affected, and this test needs to be fairly applied between the stakeholders.

The Oil Sands Environmental Coalition may criticize this decision. Given their withdrawal from the Cumulative Environmental Management Association, and the Pembina Institute's publication of negative media on the oil sands, the following actions may result from this decision: the Oil Sands Environmental Coalition could make statements that Alberta Environment is pushing the public out of the Statement of Concern process; they could do a membership drive to gain more members in Fort McMurray and area who could then claim to be directly affected; it could trigger statements from groups such as Greenpeace or Sierra Club or it could trigger the Oil Sands Environmental Coalition to take a more legalistic approach where opportunities arise, including asking the Environmental Appeals Board to review its directly affected status.

Alberta Environment Executive, Communications, and other relevant staff need to be aware of the decision to reject the Oil Sands Environmental Coalition as a Statement of Concern filer on this application and why it was made, so that we are able to defend our position clearly.

The Fort McMurray Environmental Association may be able to meet the directly affected test on its own (outside of the Oil Sands Environmental Coalition banner) for some future projects.

RECOMMENDATIONS:

Executive and Communications should be prepared for any question raised by the Oil Sands Environmental Coalition and its member organizations by this decision.

For Minister's Use:

- Agree with recommendations
- Disagree with recommendations

MINISTER AND/OR DEPUTY MINISTER'S COMMENTS/DECISION:

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SUBMITTED BY: Environmental Management

- Requires legislative/regulatory change