

# transition

CLEAN ENERGY COMMENTARY FROM THE PEMBINA INSTITUTE



## Earning social licence the traditional way: why public engagement in the oilsands regulatory process matters

BY JENNIFER GRANT, OILSANDS DIRECTOR, PEMBINA INSTITUTE

**I**t was a court ruling that didn't mince words. Terms such as "tainted," "fatally flawed" and suffering from a "direct apprehension of bias" are deeply damaging to the oilsands industry at a time when Alberta is desperately seeking social licence for its primary industry. Alas, this is exactly what a judge concluded about the Government of Alberta's decision to bar an environmental organization from participating in the regulatory process for a proposed in situ oilsands project.

This story begins in March of 2012 when the Oil Sands Environmental Coalition (OSEC)—comprised of the Fort McMurray Environmental Association, the Pembina Institute, the Alberta Wilderness Association and the Toxics Watch Society of Alberta—filed a Statement of Concern to Alberta Environment and Sustainable Resource Development regarding Southern Pacific Resource Corp.'s STP-McKay Phase 2 in situ project. In particular, Southern Pacific has proposed to construct and operate a steam assisted gravity drainage (SAGD) project near the MacKay River that would require up to 1.7 million litres of fresh groundwater daily, impact air and water quality in the Wood Buffalo region, and contribute to the expected disappearance of the declining west side of the Athabasca caribou herd.

The Government of Alberta stated that it rejected OSEC's Statement of Concern on grounds that none of the member organizations were directly affected by the proposal and thus not entitled to provide input to the process.

The Pembina Institute and the Fort McMurray Environmental Association appealed the decision. After all, OSEC had described their connection to the area as well as concerns about potential cumulative impacts. In past applications, OSEC was accepted as being directly affected, but in this particular case, the director decided that it was not.

Fast forward to October 2013, when Alberta Court of Queen's Bench Justice Richard Marceau found that Alberta failed to honour its already restrictive provincial rules for public participation in the energy regulatory process and granted victory to the Pembina Institute and the Fort McMurray Environmental Association.

Key to the judge's ruling was a 2009 government briefing note that was uncovered as a result of the court case suggesting that Pembina was rejected for political reasons, rather than on the basis of the rules that govern public participation. Specifically, the note said that our "recent oilsands publications," along with the government's perception that we are "less inclined to work cooperatively," were reasons for rejecting our Statement of Concern. Justice Marceau saw this as a major violation of the province's own environmental legislation and the basic principles of natural justice.

### LONG-TIME ADVOCATE FOR RESPONSIBLE OILSANDS DEVELOPMENT

Pembina advocates for responsible oilsands development, which we define as development that does not exceed the limits of what science shows the regional

ecosystem and our global climate can support. It means shrinking the environmental footprint of oilsands development for every barrel produced while ensuring a meaningful portion of the benefits are used to support Canada's transition to a clean-energy future.

As a member of OSEC, the Pembina Institute has provided evidence and expert testimony at 14 previous oilsands environmental hearings, and not necessarily by choice. We would far rather live in a province where meaningful air, land, climate and water policies guide the pace and scale of oilsands development.

### FULSOME PUBLIC PARTICIPATION IS TO EVERYONE'S BENEFIT

Limiting public engagement or the development of new policies poses risks to industry in gaining the social licence needed to operate, and encourages regulatory uncertainty in an already dynamic and costly industry environment. On the other hand, encouraging a fair regulatory process that improves public dialogue and input benefits all. If stakeholders have reason to believe the regulatory process is biased and stacked against them, and the regulator is not perceived to be fair, it is reasonable to expect that their concerns will be expressed in other venues that will pose even greater risks to oilsands proponents. **OSR**

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