Alberta Wilderness Association
"Defending Wild Alberta through Awareness and Action"

Delivered by email to:

Environment and Climate Change Canada
Regulatory Development and Analysis Section
Mining and Processing Division
351 boul. St-Joseph, Gatineau QC K1A 0H3
Email: sb-os@ec.gc.ca

Cc: The Honorable Minister Terry Duguid
Minister of Environment and Climate Change Canada
Email: ec.ministre-minister.ec@canada.ca

June 27, 2025

AWA Feedback Re: Path Forward for Evaluating Policy Options for Managing the Accumulation of Oil Sands Mine Water in Tailings Ponds

Dear Minister Duguid and Environment and Climate Change Canada (ECCC),

Alberta Wilderness Association (AWA) is an Alberta-based environmental conservation group with over 10,000 members and supporters in Canada and around the world. Founded in 1965, AWA seeks the completion of a protected areas network and good stewardship of Alberta's public lands, waters, and biodiversity for all Canadians.

AWA is writing you to provide feedback regarding the discussion paper titled: Path forward for evaluating policy options for managing the accumulation of oil sands mine water in tailings ponds, (hereafter the "discussion paper"), as part of the public engagement initiated by ECCC ending on July 9, 2025.

According to ECCC, the discussion paper was prepared collaboratively with members of the Crown-Indigenous Working Group (CIWG) to provide interested parties with an update on work completed by CIWG to date, an overview of the path forward, and an opportunity for public feedback on these items.

AWA has previously provided feedback to ECCC regarding the management of oil sands process-affected water (also known as tailings or tailings effluent), including a September 2023 letter on ECCC's consultation and engagement process to explore options for the management of tailings in the Athabasca oil sands region.

Since May 2023, AWA has served as a participating member of the Responsible Tailings Management Alliance (RTMA). The RTMA seeks to ensure that oil sands tailings and tailings reclamation are managed in a more responsible manner that meets specific criteria such as (but not limited to) industry covering the costs of reclamation and remediation, respecting the rights of

downstream Indigenous communities, incorporating Indigenous traditional knowledge into tailings management, and limiting the creation and expansion of tailings ponds until a scientifically proven approach for reclamation has been determined. As a member of the RTMA, AWA has a significant interest in the direction that ECCC pursues regarding the management of oil sands tailings.

We appreciate the opportunity to provide feedback on the discussion paper as part of this engagement. AWA believes that oil sands tailings effluent, treated or otherwise, must not be released into the watershed; that all costs must be borne by the polluter (industry), and that harmful impacts on the environment, health and Indigenous and non-Indigenous communities are minimized. Our feedback is outlined in the following sections, which have been structured and numbered in alignment with the discussion questions provided by ECCC in the discussion paper.

Section 3: Path forwards for evaluating oil sands policy options

- *Do you have suggestions and/or considerations for the scenario development that we should consider? If so, please detail for which scenario(s).*

Re: Scenario 2 – Federal government establishes a regulation to authorize releases of treated oil sands mine water.

As stated in our previous submissions to ECCC, AWA does not support the development and/or implementation of regulations and/or management plan(s) which may permit the eventual release of oil sands tailings effluent (treated or otherwise) into the Athabasca River watershed. ECCC should continue to prohibit the discharge of oil sands tailings effluent indefinitely while industry and other stakeholders develop an adequate solution for reclamation and remediation. Other non-release options for managing tailings wastewater need to be explored, considered, and prioritized.

AWA's feedback for the remainder of our submission will be focused on Scenario 1 – No federal regulation authorizing releases of treated oil sands mine water.

- *What are criteria or input that should be considered for assessing each scenario?*

High-level considerations:

- Contribution to cumulative effects on ecosystems, watersheds, and wildlife, particularly species at risk.
- Potential impacts on the health, safety, and well-being of downstream communities. (including impacts to residents of the Northwest Territories).
- Potential impacts on the health, safety, and well-being of Indigenous Peoples.
- Potential impacts to Indigenous inherent, Constitutional, Treaty Rights, and/or traditional land uses.
- Potential impacts to the Government of Canada's commitment to reconciliation with Indigenous Peoples.
- Potential impacts to Canada's ability to uphold the United Nations Declaration on the Rights of Indigenous Peoples and the principle of free, prior, and informed consent.
- Potential impacts to Canada's ability to successfully implement its 2030 Nature Strategy in accordance with the Kunming-Montreal Global Biodiversity Framework.

- Potential impacts to the "Outstanding Universal Values" of Wood Buffalo National Park, and Canada's ability to meet the recommendations outlined by the Joint World Heritage Centre and the International Union for the Conservation of Nature (IUCN) in its June 2023 Reactive Monitoring Mission report.
- Potential impacts to taxpayers in Canada and Alberta – Canada and Alberta need to uphold the Polluter Pays Principle and ensure that oil sands operators cover the full cost of tailings cleanup and reclamation. No public money should be used to pay for cleanup.
- Feasibility should not be prioritized over environmental outcomes, human health outcomes, or impacts to Indigenous Rights. Industry should have to bear the full cost of cleanup and reclamation to the highest possible standards.
- The failure of the Government of Alberta's Mine Financial Security Program (MFSP) to adequately collect security deposits from operators to cover the cost of decommissioning, cleanup, and reclamation of oil sands mines and associated environmental footprint.
- The Government of Alberta's overdue release of the State of the Environment (SoE) reports from the Oil Sands Monitoring (OSM) Program.
- Any and all tailings reclamation strategies must be paired with a commitment to a net reduction in the volume of tailings effluent on the landscape and cannot be used to justify continued (or increased) production of tailings in the oilsands.

Detailed considerations:

1. The Government of Alberta and the Alberta Energy Regulator (AER) are failing their own stated mandate to "provide safe, orderly, and environmentally responsible energy development".

   In 2020, it was reported that despite containment systems, millions of litres of tailing water were seeping into the environment daily[1]. Earlier this year, research from Dr. Kevin P. Timoney showed that AER was failing to gather credible and relevant environmental data, failing to conduct routine on-site inspections, and misreporting the extent, frequency, abundance, and severity of spill incidents from oil sands tailings in Alberta[2]. Dr. Timoney analyzed data from 514 tailings spills reported in the AER's database that occurred over 10 years between 2014 and 2023 and compared the reported information against supplemental data on those spills obtained from the AER by a freedom of information request. Results found that **97 percent of tailings spills were not inspected by the AER** – contradicting the AER's claim of routine spill inspections. The findings also show that for spill sites where photo documentation is provided, approximately 41-54 percent of the sites show evidence of environmental harm, refuting claims from the AER that none of the 514 spills caused environmental damage.

   These findings reveal a persistent failure by the Government of Alberta and the AER to effectively manage, monitor, and report the environmental impacts of oil sands tailings. This negligence endangers ecosystems, undermines the rights and well-being of Indigenous Peoples, and puts all Albertans at risk, while allowing oil sands operators to evade

[1] CEC. 2020. Alberta Tailings Ponds II. Factual Record regarding Submission SEM-17-001.Montreal, Canada: Commission for Environmental Cooperation. 204 pp. https://www.cec.org/wp-content/uploads/wpallimport/files/17-1-ffr_en.pdf

[2] Timoney, K.P. (2025). Regulatory failure to monitor and manage the impacts of tailings spills, Alberta, Canada. *Environmental Monitoring and Assessment*, 197, 125. https://doi.org/10.1007/s10661-024-13416-1.

accountability for repeated tailings spills. Therefore, the AER must fulfill its requirements to investigate, prevent and issue appropriate fines for spills to cover environmental cleanup and investigation costs.

2. AER operates without sufficient public transparency.

   Mounting evidence shows that the AER operates without sufficient public transparency and with minimal accountability, and that it has extraordinary discretionary powers which it uses to prioritize the interests of the industry it is responsible for regulating.

   In February 2023, 5.3 million litres of tailings spilled from a storage pond at Imperial's Kearl oil sands mine. Following this news, the AER issued a public notice stating that significant volumes of tailings had been leaking at the Kearl mine for nearly nine months, since at least May 2022. Neither the AER nor Imperial notified any of the Indigenous communities within whose territories the Kearl mine is situated, nor any downstream communities, while this leak was happening.

   Taken together, these incidents represent a dereliction of duty by the AER to regulate Alberta's energy industry in a safe and environmentally responsible manner. As other legal experts have previously concluded, the AER and its decision-making record bear the hallmarks of a captive regulator, which "has prioritized its relationship with the oil and gas industry over accountability to the public."[3]

   Therefore, ECCC must establish suitable accountability mechanisms to ensure that the Government of Alberta and AER's operations concerning oil sands tailings are appropriately monitored and publicly reported, safeguarding the health and well-being of communities, ecosystems, and Indigenous Peoples.

Section 4: Initial considerations for a potential regulatory framework

4.2. Co-management

While AWA does not support the development of a regulatory framework that would permit the release of oil sands tailings effluent (treated or otherwise) into the Athabasca River watershed, we have provided feedback on a few of the discussion questions below.

- *Is there another mechanism that could achieve the same outcome as a co-management board?*

As a signatory to the United Nations Declaration on the Rights of Indigenous Peoples, Canada has committed to upholding the principle of Free, Prior, and Informed Consent—an essential right that ensures Indigenous Peoples have a meaningful voice in decisions that affect their lands, resources, and communities. As such, Indigenous Peoples need to be included as full participants in government legislative and policy initiatives that will directly impact the land and watersheds they live within and rely upon.

[3] Yewchuk et. al. . (2023). A Made-in-Alberta Failure: Unfunded Oil and Gas Closure Liability. *The School of Public Policy Publications*, 16(1).1.https://doi.org/10.11575/SPPP.V16I1.77468.

AWA also recommends that the ECCC adopt the Healthy Country Planning approach[4]—an Indigenous-led framework developed by Nature United for land and water stewardship. This approach has been successfully implemented in regions across Canada, including Manitoba, Alberta, and the Northwest Territories, and it is recognized globally for its effectiveness in centering Indigenous values, knowledge, and leadership in environmental planning.

- *How could we ensure Indigenous communities are well-supported in their participation of a board given capacity constraints?*

While AWA cannot speak on behalf of Indigenous communities, we urge ECCC to engage in transparent, Indigenous-led consultations. These discussions must prioritize the voices of communities who live on, use, or depend on the lands and waters of the Athabasca watershed. It is essential that these communities fully understand the reasons behind ECCC's exploration of potential management approaches and policy scenarios for oil sands tailings effluent regulations, as well as the possible health, environmental, and cultural consequences.

This engagement should include, but not be limited to:

a. Clarifying that this regulatory process was initiated at the request of industry operators seeking permission to treat and release effluent into the environment.
b. Presenting evidence that the Government of Alberta and the AER have repeatedly failed to uphold their mandate to ensure safe, orderly, and environmentally responsible energy development (see response to the discussion question: "What are criteria or input that should be considered for assessing each scenario?").
c. Acknowledging the current limitations of effluent treatment technologies.
d. Explaining that ECCC and Health Canada—responding to concerns raised by nearly 40 leading toxicologists, scientists, health experts, First Nations, and environmental organizations[5]—are currently assessing whether naphthenic acids, a compound widely present in oil sands that has acute and long-lasting adverse effects on invertebrates, fish, amphibians and mammals[6], should be classified as toxic under federal law. If deemed toxic, the federal government will be obligated to implement risk management measures, including potential regulation or restriction of these compounds.

Finally, to support meaningful and inclusive engagement with Indigenous Communities, ECCC must allocate sufficient financial and logistical resources to enable the full and equitable participation throughout the process: Indigenous communities must be involved in every step of the decision-making process.

[4] Nature United. https://www.natureunited.ca/what-we-do/our-priorities/indigenous-led-conservation/healthy-country-planning/
[5] https://ecojustice.ca/wp-content/uploads/2024/03/2024-03-11-Letter-to-Minister-Guilbeault-re-s.-76-request-to-assess-OSPW-NAs.pdf
[6] Li et. al.(2017). The toxicity of oil sands process-affected water (OSPW): A critical review. *Science of The Total Environment*, 601, 1785–1802. https://doi.org/10.1016/j.scitotenv.2017.06.024

4.4. Stringent effluent quality limits

- *Are there criteria that you think should be included in our review of substances and development of protective limits?*

Given that the ECCC and Health Canada are currently assessing whether naphthalic acids should be treated as toxic under the Canadian Environmental Protection Act (CEPA), AWA urges the ECCC not to make any decisions about establishing protective limits until this evaluation is complete and their potential impacts on people and the environment are better understood.

4.5. Monitoring and reporting

- *Are there additional monitoring activities in the oil sands region that we should be aware of to inform possible regulatory monitoring activities?*

Several Indigenous communities located in or downstream of the oil sands region are actively engaged in long-term environmental monitoring initiatives focused on water and air quality. These include the Athabasca Chipewyan First Nation, the Fort McKay First Nation, and the Fort McKay Métis Nation. In addition, the Mikisew Cree First Nation is conducting a dedicated study on fish health in the Athabasca River.

The Alberta Biodiversity Monitoring Institute[7], as part of their provision to provide ongoing, relevant and scientifically credible information on Alberta's living resources, maintains 350 monitoring sites in the oil sands region. At each site, they record species present, human footprint and habitat used, to establish the relationship between human land use and species abundance[8].

- *Are there monitoring challenges or opportunities you think should be considered in any regulatory monitoring and why (e.g., additional confounding factors, novel environmental indicators)?*

See comments in *"Detailed considerations"* section under discussion question "What are criteria or input that should be considered for assessing each scenario?" regarding the Government of Alberta and AER repeated failure to effectively manage, monitor, and publicly report the environmental impacts of oil sands tailings.

- *Which cumulative effects should be considered in determining if more stringent control measures on authorized releases would be needed? Please provide a definition of the cumulative effects and how they would be related to the authorized releases.*

While the discussion paper suggests that ECCC is considering alternatives to the treatment and release of oil sands process water, the framing of this question demonstrates that the ECCC has already accepted treated water release as inevitable, without first proving it can be done safely. This approach, seemingly aligned with industry interests, undermines the integrity and credibility of the entire consultation process.

[7] www.abmi.ca

[8] Alberta Biodiversity Monitoring Institute (ABMI). 2024. Status of Land Cover & Biodiversity in the Oil Sands Region, Alberta, Canada: Supplementary Report. Report available at: https://abmi.ca/publication/652

At present, we lack a comprehensive assessment of contamination across the Athabasca watershed. We also do not fully understand the effectiveness of available treatment technologies in removing the wide array of toxic substances associated with oil sands operations[9]. Critically, there is no exhaustive list of these toxic substances[10], making it impossible to evaluate cumulative impacts on human health, wildlife, and ecosystems.

Given these significant knowledge gaps, the precautionary principle should prevail here. Instead of yielding to industry pressure, the ECCC should follow the advice of health experts and scientists by adopting a "no further exposure" approach, prioritizing the protection of people and the environment over expedient solutions.

Concluding Remarks

Oil sands tailings effluent represents a financial and reputational risk to industry. By seeking federal and provincial regulations to treat and release tailing waters, the industry is transferring the risk to present and future generations of people living in the Athabasca Watershed. Rather than giving in to industry demands, the ECCC should enforce existing legislation[11] to actively fill the knowledge gap in seepage and toxicity of oil sand mine water operations and surrounding areas, and conduct more frequent inspections, making the results available to the public in a timely manner. The ECCC should also make the safe treatment and disposal of oil sands tailings effluent and complete reclamation of the mining site a precondition for new and existing operations.

Thank you for considering these comments and recommendations. We hope to see our concerns addressed as this engagement process proceeds.

Sincerely,

ALBERTA WILDERNESS ASSOCIATION

David Fernández, Ph.D.
Conservation Specialist
cs3@abwild.ca

[9] Sandhu et. al. (2024). Evidence-based approaches to managing Canadian oil sands tailing pond waste: tighter regulations and greater transparency are needed. *Evidence-Based Toxicology*, 2, 2399944. https://doi.org/10.1080/2833373x.2024.2399944.
[10] Olsgard et. al. (2023). Lower Athabasca Surface Water and Sediment Quality Criteria for Protection of Indigenous Use. https://acfn.com/wp-content/uploads/2023/10/wqciu_report.pdf
[11] Government of Canada. (1999). Canadian Environmental Protection Act, 1999. Ottawa: Government of Canada. https://laws-lois.justice.gc.ca/PDF/C-15.31.pdf