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## COVID-19 and the Suspension of Environmental Monitoring in the Oil Sands

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**Decisions Commented On:** Alberta Energy Regulator Decisions [20200505A](#), [20200501C](#), [20200501B](#), and [20200501A](#)

Last week the Alberta Energy Regulator (AER) issued decisions [20200429D](#) (subsequently replaced with [20200505A](#)), [20200501C](#), [20200501B](#), and [20200501A](#), which suspend environmental monitoring requirements associated with oil sands mines operated by Canadian Natural Resources Limited, Suncor Energy, Fort Hills Energy Corporation, Syncrude Canada, and Imperial Oil Resources Limited. These decisions relieve the named operators from environmental monitoring on matters such as groundwater, surface water, sulphur emissions, wildlife, and wetlands. The suspension is in place until further notice. Similar to Order [17/2020](#) issued by the Minister of Environment and Parks under section 52.1 of the *Public Health Act*, [RSA 2000, c P-37](#), which suspended [routine environmental reporting](#) by industry, these AER decisions were made in response to COVID-19 but offer little justification for granting such extraordinary relief from regulatory requirements.

The monitoring requirements are set out in terms and conditions attached to oil sands approvals issued under the *Environmental Protection and Enhancement Act*, [RSA 2000 c E-12](#), the *Water Act*, [RSA 2000 c W-3](#), and the *Public Lands Act*, [RSA 2000, c P-40](#). For discussion purposes, I will only refer to the relevant provisions of EPEA. By virtue of section 24 of the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#), the AER serves as the responsible Director under EPEA for approvals under that statute issued in relation to oil sands mines. Section 70(3)(a) of EPEA provides the AER with unilateral power to amend the terms of the subject approvals.

The need for robust environmental monitoring in the oil sands cannot be understated given the significant adverse impacts which result from the mining and associated activities. As my colleague Martin Olszynski has [explained](#), effective monitoring requires continuity, and even gaps of a short duration can destroy the reliability of collected data. In turn, unreliable data has the potential to seriously impair the compliance and enforcement functions of the regulatory system. Therefore, it is very discouraging to see Alberta's energy regulatory authority turn off environmental monitoring in the oil sands with no advance notice, no public process, and no justification other than a stated need to balance monitoring of environmental conditions with the need to ensure safety of workers during COVID-19. The absence of any further reasoning in these decisions makes it impossible to decipher exactly what 'balancing' is taking place here.

The preamble to these decisions confirms that oil sands operators approached the AER with concerns about their ability to meet monitoring requirements in light of public health orders issued for COVID-19. This raises the question of why the AER did not require them to actually apply for

this relief under section 70(1) of EPEA. Presumably, an application would have at least required operators to substantiate, on the record, the need for this relief (as is normally the case for an application under EPEA to have a term or condition in an approval amended – see section 3 of the *Approvals and Registrations Procedure Regulation*, [Alta Reg 113/1993](#)). Instead of getting submissions from operators through an EPEA process, the public is getting statements from operators in response to [media](#) investigations.

The AER [website](#) tells us that “[a]s Alberta’s sole regulator of the energy industry, the AER keeps energy companies in check.” The AER rarely lives up to this promise, and the AER is most certainly not doing so here. These decisions are yet another entry on a very long list of disappointments in how the AER (including its predecessors) has administered its public interest mandate. The monitoring requirements suspended by these decisions were imposed by the AER, *acting on behalf of the public*, as measures to help ensure oil sands development proceeds in an environmentally responsible manner. Accordingly, the unilateral suspension of these requirements by the AER for an indeterminate period of time demands that the regulator provide the public with far more justification than what is offered in these decisions. At the very least, the public is entitled to know exactly how COVID-19 public health orders create insurmountable hardship for operators that justifies suspending each of these requirements.

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