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AER declines request for an Environmental Impact Assessment of the Pathways Project

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Matter Commented On: [Letter Decision](#) by AER re: EIA of Pathways Alliance Carbon Capture and Storage Hub (25 October 2024)

The Pathways Alliance Carbon Capture and Storage Hub (Pathways Project) is set to be one of the largest carbon capture and storage projects globally. In late October, the [Alberta Energy Regulator](#) (AER) decided that the Pathways Project would not be required to undergo a provincial environmental assessment under the *Environmental Protection and Enhancement Act*, [RSA 2000, c E-12 \(EPEA\)](#). The AER's decision highlights how Alberta's largely discretionary approach to environmental assessments under *EPEA*, which has not been substantively updated since its enactment in 1993, is inadequate to properly and transparently assess the effects of new and emerging major technologies. This post argues that the legislation should be amended to require a transparent assessment for new forms of major projects with potentially significant environmental, social, economic, and cultural consequences. The undertaking of a comprehensive provincial impact assessment on major projects such as the Pathways Project would also help avoid an application of the federal impact assessment process under the *Impact Assessment Act*, [SC 2019, c 28, s 1 \(IAA\)](#) for projects wholly within the province.

AER's Decision

The Pathways Project is proposed by a consortium of Canada's largest oilsands companies, to capture carbon dioxide (CO₂) from 20 oilsands facilities and transport it through an approximately 400km pipeline to an underground storage hub in Alberta's Cold Lake region. The [Pathways Alliance](#) describes this as its foundational project:

“The Pathways Alliance members’ proposed CCS foundational project is a CCS network and pipeline that, when operational, would have the capacity to transport captured CO₂ from multiple oil sands facilities to a hub in the Cold Lake area of Alberta for permanent underground storage. The project proceeding is contingent upon obtaining sufficient fiscal and policy supports and regulatory approval.”

The Pathways Project proposal raised concerns from nearby Indigenous Nations, landowners, and NGOs, including the potential for groundwater contamination, CO₂ leakage, and impacts on Aboriginal and Treaty rights. On behalf of concerned parties, in May 2024 Ecojustice filed a request that the AER require the Pathways Project undergo an environmental assessment under *EPEA* (see Request for an environmental impact assessment (EIA) of the Pathways Alliance CCS Project [here](#)). The Ecojustice request explains the discretionary EIA regime under *EPEA* and

submits why the AER should exercise its discretion to require an impact assessment for the Pathways Project.

The AER responded to this request in a [two-page letter](#) dated October 25, 2024. The AER stated that the Pathways Project is not a mandatory activity under *EPEA*, and based on the provided information and a consideration of the factors under *EPEA* s 44(3), the AER stated it will not require further assessment in the form of a screening report or EIA report under *EPEA*. No further reasons for the AER’s decision are provided in the letter. As the public’s concerns are only one factor the AER must consider among many under *EPEA*, it is unclear how much weight the AER afforded to the May 2024 Ecojustice request letter. This limited justification provided by the AER is disappointing and is arguably unreasonable in light of the transparency and justification requirements for statutory decisions established by the Supreme Court of Canada in *Canada (Citizenship and Immigration) v Vavilov*, [2019 SCC 56 \(CanLII\)](#).

In the absence of a provincial environmental impact assessment, eight affected Indigenous Nations have asked for the Pathways Project to be designated for review under the federal *IAA* (see Impact Assessment Agency of Canada, “Pathways Alliance CO2 Transportation Network and Storage Hub Project” [here](#)).

Alberta’s Environmental Assessment Regime under *EPEA*

Activities List

As with most environmental assessment legislation in Canada, the *EPEA* uses a list approach to determine what types of activities or projects undergo an environmental assessment (see *Environmental Assessment (Mandatory and Exempted Activities) Regulation*, [Alta Reg 111/1993](#) (Activities List or Regulation)). Schedule 1 of the Regulation lists mandatory activities, which must undergo an environmental impact assessment (*EPEA* s 44(1)(a)), and Schedule 2 lists exempted activities, which are exempt from the EIA process. The May 2024 Ecojustice request letter explained that the Pathways Project is neither a mandatory nor an exempt activity under the Regulation and *EPEA*.

Discretionary Designation

If an activity is not included as a mandatory activity in the Activities List, s 44(1)(b) of *EPEA* provides the Director with discretionary authority to order an environmental assessment. In relation to activities under energy enactments, such as the *Oil and Gas Conservation Act*, [RSA 2000, c 0-6](#) or the *Pipeline Act*, [RSA 2000, c P-15](#), the AER serves as the Director for the purpose of these EIA decisions (see *Responsible Energy Development Act*, [SA 2012, c R-17.3](#), s 2(2)(c)). When deciding whether an energy project requires an environmental assessment under *EPEA*, the AER must consider the activity’s size, location, complexity, any concerns raised by the public that the AER is aware of, and similar activities in the same area (*EPEA*, s 44(3)). Neither the *EPEA* nor the *Environmental Assessment Regulation*, [Alta Reg 112/1993](#) require the AER to explain how it reached its decision or weighed each factor under *EPEA* s 44(3).

The May 2024 Ecojustice request letter submits the AER should require Pathways Alliance to prepare and submit an environmental impact assessment on the Pathways Project, based on the factors set out in s 44 of *EPEA*, including the following:

- Location, size and nature of the project: The project will capture CO₂ from oil sands facilities located in a large area of the Lower Athabasca region and transport it over a pipeline that is approximately 400 km in length to the injection site in the vicinity of several Indigenous Nations, municipalities and habitat for boreal woodland caribou;
- Complexity of the project: The project will separate 10 – 12 Mt of CO₂ per year and compress it into liquid form for transportation over hundreds of kms through boreal forest, caribou habitat, and traditional territories of Indigenous Nations and inject the CO₂ in nearly 20 different well sites (for additional evidence of complexity, see the requirements set out by the AER in Directive 065 – [Resource Applications for Oil and Gas Reservoirs](#));
- Concerns raised by the public: Indigenous Nations, NGOs, scientists, and the public generally seek additional information on the Pathways Project, as very little information is available on the impacts of the Pathways Project, and concerns include the risks associated with transporting compressed liquid CO₂ over a vast area and the uncertainties associated with potential for CO₂ contamination of groundwater.

None of these factors and concerns are addressed by the AER in its decision to deny the request for an EIA under *EPEA*.

Public Consultation

When projects undergo an environmental assessment, the proponent must consult with the public and present the results in their environmental assessment report (*EPEA*, s 49(1)). In contrast, public participation or engagement on project applications before the AER is entirely within the discretion of the AER. The AER publishes notices of proposed projects on their Public Notice of Application website (see [here](#)), however the AER receives approximately 40,000 applications annually and notices are only available online for 30 days. Any person interested in commenting on a project application at the AER must file a Statement of Concern, and unless that Statement leads to a regulatory appeal hearing, the extent of public engagement is limited to the AER's response to the Statement. For some discussion on difficulties faced by Indigenous communities to meet the AER's test for public participation on project applications see Amy Matychuk's comment, [The Alberta Energy Regulator Grants Rare Participation Rights to Three Indigenous Groups](#).

A related concern with the AER project application process is that it allows project proponents to “project split” a larger project into a number of smaller ones, making it difficult if not impossible for the public to understand or engage on the full extent of the application. This was also a concern raised by Ecojustice in its request for a comprehensive EIA under *EPEA* for the Pathways Project:

The oil sands companies that are part of the Pathways Alliance came together to develop a single CCS project. These companies set up the corporate entity that is Pathways Alliance to develop the Project on their behalf with the shared goal of reducing GHG emissions in the oil sands. The majority of the project infrastructure is

shared by all participating companies and the constituent activities are meant to operate as part of a single CCS system.

However, despite pitching this endeavour to the public and governments as a single project, Pathways Alliance intend to split the project up and submit a large number of separate applications for the different activities associated with the Project: the carbon capture infrastructure at each participating oil sands facility, the lateral pipelines, the Transportation Line, the Hub Distribution Line, the CO₂ injection wells, and the carbon storage area.

A schedule of planned regulatory submissions for the Project indicates that there will be at least 126 separate applications for more than 20 different activities over the coming months. CNRL has already submitted several applications to the AER to construct a lateral pipeline and to do work associated with the Project. (These applications are difficult to search on the AER's Public Notice of Application website because they do not use terms such as "Pathways Alliance," "carbon dioxide," or "carbon capture" in their title and description; this should be corrected.)

This piece-meal approach is known as "project splitting," an undesirable practice designed to circumvent rigorous environmental assessment. This approach is problematic because each of the applications and associated activities will be considered in isolation without any assessment of the cumulative and regional impacts of these activities together, let alone as a single Project. As a result, this will impair AER's ability to adequately identify and assess the Project-specific, cumulative, direct, and indirect impacts of the Project as it considers the various applications. It will also undermine the rigour of AER's individual assessment of the 126 separate applications for the Project activities. (Ecojustice letter at p 10; footnotes omitted)

Conclusion

The AER's Pathways Project decision demonstrates how the *EPEA*'s regime is outdated and leaves the assessment of major new technologies up to the discretion of the Director (the AER in relation to energy projects). Emerging technologies, including the Pathways Project carbon storage proposal, small modular reactors, and energy storage projects will only undergo an environmental impact assessment if the decision-maker uses their discretion to require one. This list of activities which requires an EIA under *EPEA* is badly in need of an update. When the Director decides that an environmental assessment is not required, the public is given very little information or opportunity to participate in the decision-making process. In relation to an energy project, the AER hearing process is a poor substitute for a transparent, comprehensive environmental impact assessment. The quality of public participation in an environmental impact assessment can vary, but this participation is important for government and the proponent to understand how the public views the benefits and risks of new and emerging technologies near their communities.

Additionally, when a project does not undergo a provincial EIA despite public calls for one, a door opens for concerned parties to request that the project undergo the more intensive and transparent review under the federal impact assessment process. This is all the more reason for Alberta to

ensure environmental impact assessment requirements under *EPEA* are comprehensive, up-to-date, transparent, and responsive to the public interest in having a full understanding of potential environmental, social, cultural, or economic impacts of major projects, including contributions to cumulative effects.

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