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$120,000 Penalty for the 2023 Kearl Tailings Overflow

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Regulatory Decision Commented On: AER News Release 2026-06-11, Imperial pleads guilty to EPEA violation in Crown's summary disposition on Kearl

On 29 May 2026, Imperial Oil Resources Limited (Imperial) entered a guilty plea to a charge of contravening a term or condition of its *Environmental Protection and Enhancement Act,* RSA 2000, c E-12 (*EPEA*) approval by releasing a substance from the Kearl oilsands mine in early 2023, and on 11 June 2026 the Alberta Energy Regulator (AER) posted a news release publicizing that Imperial would pay a $120,000 penalty, $118,000 of which will go to a creative sentencing project.

This post reviews the background to the penalty and the Agreed Statement of Facts entered by Imperial and the AER.

Kearl's Seepage, Overflow, and the Related Regulatory Processes

The fine is part of a chain of events that began in May 2022, when the AER was informed that mine tailings were seeping out from a tailings pit at Kearl. This became public knowledge on 4 February 2023 after the AER informed the public that Kearl's Draining Pond 4 (a wastewater storage pit) being used to intercept and hold seepage had overflowed from 28 January 2023 to 4 February 2023, supposedly releasing 5,193 cubic metres of industrial wastewater off the mine site.

The initial seepage from May 2022 to February 2023 was the subject of a set of a $50,000 administrative penalty and regulatory conditions in September 2024. As I explained in a post here, the explanation for the penalty contained bizarre errors, omissions, and irrational jumps in reasoning.

The prosecution that is the subject of this post relates to the overflow of Kearl's Draining Pond 4 from 28 January 2023 to 4 February 2023. The AER decided to take the prosecution route rather than the administrative penalty route in January 2025 (see my post here).

There are three other outstanding issues relating to events at Kearl:

(1) In 2024, the AER also acknowledged that there was "seepage at the Kearl site through deep pathways that is unrelated to the incident described in the Director's Decision" (August 2024 administrative penalty decision, at 2). The AER is treating the deep pathway seepage as distinct from the shallow pathway seepage, and the AER has not provided the public many details of the

deep pathway seepage problem. There have not been any updates or information provided to the public by the AER about that large and ongoing problem, which had been previously recognized by the 2020 Commission for Environmental Cooperation report.

(2) The Office of the Information and Privacy Commissioner is investigating whether the AER fulfilled their duties to disclose without delay risks of significant harm to the environment or to health under the *Freedom of Information Act*, RSA 2000, c F-25 (which has since been repealed and replaced with the *Access to Information Act*, SA 2024, c A-1.4, but the relevant provision of the new law (section 37) has the same requirements as the previous law). The Office of the Information and Privacy Commissioner indicated that a public report was being prepared, but it has yet to be posted.

(3) The Athabasca Chipewyan First Nation is suing the AER relating to its handling of Kearl tailings, with an initial court hearing in late 2026.

The Agreed Statement of Facts Between the AER and Imperial

In short, an agreed statement of facts is a statement of facts agreed on by both parties to litigation that sets out the facts not in dispute before the court. In this case, the Agreed Statement of Facts left no remaining factual issues for the judge to settle, since the prosecutors and Imperial had reached an agreement on all facts important to the charge, and Imperial had agreed to plead guilty and seek a penalty of $120,000 (at para 34).

The Agreed Statement of Facts contains some superfluous information likely inserted by Imperial about the number of employees and contractors employed at Kearl (at para 4). The AER agreed they did not have evidence of impact to the Firebag River (at para 13). The specific water containment area that overflowed was Kearl's Drainage Pond 4 (at para 7). Imperial had challenges with reliable operation of the sensors and automatic pumping system at Draining Pond 4 and had partially switched to visual inspection and manual control of the pumps overriding the automatic system (at paras 14-18). As part of the initial remediation order, Imperial remediated 0.576 hectares of land (at para 27) and removed 14,500 cubic metres of snow, ice, and soil from the impacted area (at para 25), at a cost of approximately $2 million (at para 30). Imperial spent at least $21 million improving their wastewater management systems in 2023 and 2024.

Imperial pled guilty to only one of the nine charges initially laid, relating to releasing a substance from the plant to the surrounding watershed in contravention of their approval and therefore section 227(e) of *EPEA*. All other charges, including those relating to failing to report the release to the AER as soon as Imperial became aware of it and failing to take reasonable measures to remediate or manage the release were withdrawn (see the initial list of charges here).

Conclusion

The Agreed Statement of Facts does not explain how the volume of the leak – Imperial reported 5,193 cubic metres (at para 22) – was calculated. More importantly, neither the Agreed Statement of Facts nor the AER News Release provide any explanation how the $120,000 fine was calculated of determined. A $120,000 fine, or a $170,000 fine (if the 2024 and 2026 penalties are added

together), appears trivial relative to the size of Imperial or the Kearl Mine. Perhaps the AER and prosecutor relied on the remediation costs (which were an order of magnitude larger) as the deterrent, but that risks treating an operating cost of the mine as a penalty. Whatever the AER and the prosecutor were thinking, they should have explained to the public why they thought this apparently tiny penalty was fair and would be an adequate deterrent.

The secrecy around how environmental penalties are determined causes a democratic deficit, but keeping information about these penalties secret, Albertans are excluded from an informed and meaningful policy discussion of environmental penalty policies. I have attempted to use access to information laws to obtain records relating to fine amounts for environmental offences, but with no success – the Alberta government takes the position that any discussions are subject to settlement privilege (See *Re: Justice*, F2025-16).

The next step is the distribution of the $118,000 to a creative environmental sentencing project – a process that has been opaque and troubled in Alberta. The University of Calgary's Public Interest Law Clinic has an ongoing project of increasing public scrutiny of the environmental sentencing process – see also the 2019 paper by Shaun Fluker, Janice Paskey, and Fiona Balaton. The court order for the penalty sets some requirements for the use of the funds: that they be spent significantly for the Lower Athabasca Sub-Watershed or the Lake Athabasca Sub-Watershed, that the projects be selected within three months, and the beneficiaries must have no conflict of interest from other work for Imperial Oil (see the court order, at paras 4,5, and 9).

Expect a future ABlawg posts relating to the creative environmental sentencing project.

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