

## NEXT STEPS FOR CUMULATIVE EFFECTS MANAGEMENT IN ALBERTA'S ATHABASCA OIL SANDS REGION

Article by Steven A. Kennett ♦

### Introduction

Interest in cumulative effects management for Alberta's Athabasca oil sands region can be traced back at least to public hearings before Alberta's Energy and Utilities Board (EUB) in 1997.<sup>1</sup> Faced with a significant increase in project applications and planned development, key players quickly recognized the limitations of a project-by-project approach to environmental regulation.

This broad consensus led to two related initiatives. The first was a process of multi-stakeholder collaboration that resulted in the establishment of the Cumulative Environmental Management Association (CEMA) in 2000. The second initiative was the Government of Alberta's Regional Sustainable Development Strategy (RSDS) for the Athabasca Oil Sands Area, released in 1999.

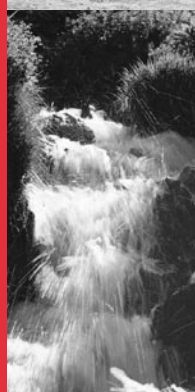
These initiatives were intended to address the challenges of managing the cumulative effects of large-scale oil sands development by identifying issues, developing work plans, establishing management frameworks, and harnessing the expertise and commitment of government, the private sector, Aboriginal organizations and other stakeholders.

Ten years after the original impetus for these initiatives, the pace, scale and intensity of oil sands development have vastly exceeded initial expectations and continue to increase rapidly. A

production target of one million barrels per day by 2020 that was set in 1995 was surpassed in 2004.<sup>2</sup> Estimates of future production vary, but a recent report by the Pembina Institute states that the current wave of development will likely push production past two million barrels per day by 2010-2012, with further increases to five million barrels per day by 2030 being a conservative projection.<sup>3</sup> The potential environmental implications of this massive increase in production over a relatively short time period are, to say the least, significant.<sup>4</sup>

At the same time, troubling questions are being asked about the effectiveness of both CEMA and RSDS. The EUB has expressed concern about slow progress in generating management frameworks for cumulative effects in a series of decisions beginning in 1999. According to the Board, these frameworks are needed to assist it in discharging its statutory mandate to ensure the orderly development of oil sands resources<sup>5</sup> and to determine whether or not proposed projects are in the public interest.<sup>6</sup>

Participants in CEMA from the federal government, Aboriginal organizations and environmental non-governmental organizations (ENGOS) have also raised concerns about the slow progress of CEMA in achieving tangible results. While CEMA has produced consensus recommendations in some areas, significant gaps remain and it has consistently failed to meet time





## RÉSUMÉ

Cet article décrit l'origine et le progrès accompli par deux initiatives qui avaient pour but de contribuer à la gestion des effets environnementaux dans la région des sables bitumineux d'Athabasca en Alberta. Il est évident que l'écart entre les attentes soulevées par ces initiatives et leurs résultats ne fait que grandir. Pour réduire cet écart, il faudrait améliorer le bon fonctionnement et l'efficacité de ces initiatives, renforcer le rôle de direction et de soutien du gouvernement de l'Alberta, et aborder les problèmes sous-jacents à la gestion des effets cumulatifs.

lines for key deliverables. The RSDS has not been updated since its release in 1999.

There are now compelling reasons to address the widening gap between expectations for cumulative effects management in the oil sands region and the results achieved by CEMA and RSDS. Participants in CEMA are increasingly vocal in their concerns and two Aboriginal organizations have recently withdrawn.

In a decision released in 2006, the EUB called on the Government of Alberta to review both CEMA and RSDS.<sup>7</sup> While this specific suggestion has not been acted upon, the government is conducting broad public consultations on all aspects of oil sands development.<sup>8</sup> A final report of the Multistakeholder Committee is expected in the spring of 2007.

This article is intended to contribute to the ongoing discussion about cumulative effects management in the oil sands region, focusing particularly on the roles of CEMA and RSDS. It is based on a longer paper published by the Canadian Institute of Resources Law.<sup>9</sup>

### Origins of CEMA and RSDS

The emergence of CEMA and RSDS between 1997 and 2000 was not simply a product of regional concerns and pressures emanating from project review and regulatory processes. These initiatives also complemented a broader policy on integrated resource management (IRM) that the Alberta Government was developing at the same time. In addition, CEMA and RSDS were consistent with efforts by the federal and Alberta governments to implement legal requirements and policy statements that required consideration of cumulative environmental effects within project-specific environmental assessment.

RSDS was initiated by Alberta Environment in September 1998. The terms of reference state that its purpose "is to ensure implementation of adaptive management approaches that address regional cumulative environmental effects, environmental thresholds, appropriate monitoring techniques, resource management approaches, knowledge gaps and research to fill gaps."<sup>10</sup> The policy document describing this initiative (the "RSDS Document") was released in July of 1999.<sup>11</sup> RSDS was also adopted as a 'pilot' regional strategy by the government's IRM initiative that was formally launched later in 1999.

Despite its title, the RSDS Document is not a complete and operational strategy for ensuring sustainable development or even for managing cumulative environmental effects in the oil sands region. Instead, it does two things that could constitute important first steps towards the development and implementation of this type of strategy. First, it sketches a broad conceptual outline for the development of a strategy and associated management framework. Second, it presents the results of an initial issue identification and scoping exercise and sets out a series of 'blueprints for action' describing the activities and tools that will be needed to address these issues.

Following the release of the RSDS Document in 1999, however, there was little or no progress within government to build the legal, policy and institutional framework for managing cumulative effects. What happened almost immediately was a decision to hand many of the key issues over to CEMA.

CEMA was established as a voluntary partnership of stakeholder groups, incorporated as a not-for-profit association in June 2000.<sup>12</sup> Its purpose is "to provide a multi-stakeholder, consensus-based forum for managing cumulative effects of oil sands development



in the Athabasca region.”<sup>13</sup> The specific objectives of CEMA were to:<sup>14</sup>

1. set up an effective and efficient stakeholder-driven regional environmental management system;
2. establish or recommend regional environmental guidelines, objectives and thresholds;
3. provide a basis for ongoing management of cumulative impacts of oil sands development, including setting priorities for monitoring and recommending option for mitigation;
4. respond to issues brought forward by stakeholders;
5. work co-operatively or link with other environmental management initiatives in the region (e.g., monitoring programs);
6. communicate the need, activities and results of CEMA to internal and external stakeholders;
7. Prepare an annual work plan and budget.

Membership in CEMA includes oil sands companies, conventional oil and gas companies, forestry companies, Aboriginal organizations, ENGOs, several departments from the Government of Alberta and the Government of Canada, the EUB, municipal government and other stakeholders. The membership list in March 2007 includes 46 organizations.<sup>15</sup>

CEMA adopted a participatory and consensus-based model for decision-making, following the example of the province’s Clean Air Strategic Alliance.<sup>16</sup> The intent of CEMA was to use an adaptive approach to cumulative effects management based on:<sup>17</sup>

1. establishing environmental capacity guidelines for each environmental parameter in the oil sands region,
2. setting environmental objectives (thresholds, limits) for each parameter,
3. identifying management actions for meeting the objectives, and
4. monitoring parameters and evaluating actions.

Other elements of CEMA’s approach to managing cumulative effects included a common framework for cumulative effects assessment, a regional database, a focus on priority issues and gap analysis, the identification of regional environmental thresholds, and a tiered approach to management that links management response to the intensity of environmental stresses as defined by thresholds.<sup>18</sup>

The emergence of CEMA and RSDS between 1997 and 2000 established a starting point for addressing

the cumulative environmental effects of oil sands development. While the operational management strategy itself was only embryonic at that point in time, the combination of government commitment to regional management and stakeholder involvement to address key issues seemed to be a plausible model. In practice, however, CEMA’s performance has consistently failed to live up to expectations.

### Performance versus expectations

The growing gap between performance and expectations is documented most clearly in a series of EUB decisions between 1999 and 2007.<sup>19</sup> The EUB has repeatedly underlined the central role of CEMA in providing the management frameworks that are essential for managing the cumulative environmental effects of oil sands development. At the same time, it has expressed increasing concern with the failure of CEMA to generate results on key issues.

These comments have become more pointed in recent decisions, notably three oil sands approvals that were issued by the EUB and joint EUB-Canadian Environmental Assessment Agency (CEAA) panels in late 2006 and early 2007.

In its decision on Suncor’s North Steepbank Mine Extension and Voyageur Upgrader in November 2006, the EUB stated that it “does recognize stakeholder frustration with the pace of developing targets and timelines for IFN [instream flow needs], water quality, watershed integrity, wildlife, reclamation performance, ozone management, and acid deposition.”<sup>20</sup> Given these concerns about CEMA, the Board said that “it would be appropriate for Alberta to initiate a review of CEMA’s purpose, priorities, and timelines”; it also urged the Government of Alberta to revisit the RSDS, including “a review ... of the outstanding issues arising from the RSDS with a view to determining whether financial and other human resources are available in the timeframe required to address those issues within their set timelines.”<sup>21</sup>

Turning to the role of participants in CEMA, the Board stated that it “encourages CEMA members to outline their expectations and the resource allocation needed for such initiatives in order to determine whether the members’ goals and timelines are practicable and achievable.”<sup>22</sup> Finally, it expressed support for government action to enforce timelines through the use of “regulatory backstops, applicant responsibility, and other means acceptable to the applicant and stakeholders.”<sup>23</sup>





The importance of addressing cumulative effects in the oil sands region and the challenges facing CEMA were again raised in a joint EUB-CEAA decision on the Albian Sands Muskeg River Mine that was issued in December, 2006.<sup>24</sup> The Joint Panel began its discussion of environmental effects by stating that “a higher priority needs to be placed on regional cumulative effects, not only from a regional perspective, but also on an individual project basis.”<sup>25</sup> Later in the decision, when discussing impacts on water, the Joint Panel stated its belief “that cumulative effects is the biggest issue facing the oil sands region.”<sup>26</sup>

While reiterating its faith in CEMA as the best means of addressing key issues relating to cumulative effects, the Joint Panel noted that “oil sands development is proceeding, not waiting for the environmental management frameworks that CEMA is charged with developing.”<sup>27</sup> It also stated clearly that government has ultimate responsibility for regulating cumulative effects.

The Joint Panel concluded that CEMA needs to “make interim recommendations on appropriate environmentally precautionary measures” when it cannot deliver fully researched recommendations within target time lines.<sup>28</sup> Failing that, the Joint Panel recommended that the Government of Alberta implement interim policies, frameworks or regulatory controls.

The third recent decision that comments extensively on CEMA is the joint EUB-CEAA panel report on Imperial Oil’s Kearl Oil Sands Project that was released at the end of February 2007.<sup>29</sup> Like the Suncor and Albian decisions released in 2006, the Joint Panel enumerated a series of concerns and recommendations expressed by interveners.

Its own assessment of CEMA began by strongly affirming the importance of this organization for the project review process and for the longer term management of oil sands development. The Joint Panel then stated that it was “concerned about the capacity of CEMA to complete the management frameworks that have been assigned to it”.<sup>30</sup> Noting that CEMA “struggles to meet its deadlines”, the Joint Panel said that it was “troubled by the level of concern expressed by some of the interveners over the ability of CEMA to complete its work plan at all.”<sup>31</sup>

Turning to recommendations for solutions to this problem, the Joint Panel stated its belief “that the

efficiency of CEMA needs to be improved in order to keep pace with current development in the region and that there is a need for more definitive priority setting and adherence to deadlines.”<sup>32</sup> It then offered a series of specific suggestions to government and other members of CEMA that included updating the RSDS, revising CEMA’s work plans, ensuring effective participation in CEMA, addressing concerns of Aboriginal participants, and streamlining CEMA’s operations.

The Joint Panel concluded by stating that the success of CEMA is “critical” because there is presently no “satisfactory alternative to CEMA for the development of environmental management frameworks to address cumulative effects in the oil sands region using a consensus-based approach.”<sup>33</sup> However, it reiterated that cumulative effects management is ultimately the responsibility of “the regulators” and it encouraged them “to take a more direct leadership role in all aspects of CEMA.”<sup>34</sup>

The record of EUB and Joint Panel decisions from 1999 to 2007 leaves no doubt about the chronic underperformance of CEMA and RSDS from the perspective of decision-makers charged with reviewing and regulating oil sands projects. This performance gap is confirmed by other commentators.

For example, a report published by the Pembina Institute in November 2005 states that CEMA “has been far less effective than originally envisioned.”<sup>35</sup> This report includes a table showing that the timelines for delivering many of CEMA’s management plans have been consistently revised between 2001 and 2005. Throughout this period, projects have continued to be approved and “the steady stream of applications for proposed oil sands projects submitted for regulatory and stakeholder review imposes a significant workload on the government and Aboriginal and ENGO members of CEMA, competing for their time and resources.”<sup>36</sup>

The Pembina Institute’s report also notes the lack of response by government agencies to the EUB’s concerns regarding CEMA and RSDS. It concludes that “an ongoing lack of human resources and limited government leadership has hampered CEMA’s ability to achieve its objectives.”<sup>37</sup>

The EUB and joint panel reports and the Pembina Institute’s analysis reflect a wide-spread recognition of a significant and growing gap between the expectations of many participants in CEMA and



the results achieved to date. Furthermore, there is increasing concern among some participants that the performance gap is widening because of CEMA's continuing slow progress in generating results and the accelerating pace of development in the oil sands region. It is therefore critically important to consider the reasons for this performance gap and how it might be addressed.

### Explanations for the performance gap

Possible explanations of CEMA's performance gap were explored in 16 interviews with participants in CEMA from the Government of Alberta, the Government of Canada, the oil sands industry, First Nations, ENGOS, the CEMA secretariat and private consulting firms. Two individuals from the Clear Air Strategic Alliance were also interviewed. While these interviews do not constitute a comprehensive survey of all interested parties, they covered a broad spectrum of participants in CEMA. Interviews took place between December 2006 and March 2007 and were conducted on a 'not for attribution' basis to ensure confidentiality.

The results of these interviews are summarized elsewhere<sup>38</sup> and can be touched on only briefly in this article. The interviewees addressed the following ten questions:

- Do CEMA's successes to date suggest that it is working and can deliver results?
- Are CEMA's objectives sufficiently realistic and focused?
- Is the performance gap linked to deficiencies in the design and implementation of CEMA's multi-stakeholder process?
- Does CEMA have sufficient financial and human resources to deliver on its objectives?
- Do participants in CEMA agree on the key attributes of cumulative effects management for oil sands development?
- Do participants in CEMA agree on the meaning and practical implications of the 'precautionary principle' and 'adaptive management'?
- Is CEMA responding appropriately to delays resulting from information gaps and value conflicts on key issues?
- Are the incentive structures for participants in CEMA contributing to the performance gap?
- Is CEMA's performance gap linked to its relationship with the EUB's project review and regulatory process?

- Is the Government of Alberta playing the appropriate role within CEMA and establishing the conditions for its success?

Not surprisingly, the interviewees did not agree on the answers to all of these questions. It is clear from the interviews, however, that the factors contributing to CEMA's performance gap may include the complexity of issues relating to cumulative effects management in the oil sands region, deficiencies in the design and implementation of CEMA's consensus-based process, divergence between participants on objectives and approaches to environmental management, incentives facing some member organizations that impede progress towards consensus, and the lack of government leadership within CEMA.

### Next steps

Although the interviewees from CEMA differed on some explanations of the performance gap, there was broad agreement that CEMA needs to be more rigorous in setting and adhering to time lines and maintaining focus on key issues. Many interviewees also agreed that procedures must be in place to determine when 'enough is enough' – in terms of the information required for decision making and the time that should be devoted to consensus building. If consensus decisions cannot be reached in a timely manner, most interviewees suggested that issues should be moved forward by handing off the work accomplished at that point to regulators. Finally, there was virtual unanimity that the Government of Alberta has an important role to play in closing the performance gap.

These areas of consensus suggest that agreement on measures to close the performance gap may be easier to achieve than full agreement on its causes. Several options could be pursued to create favourable conditions, establish benchmarks and accountability mechanisms, and align incentives so that CEMA will be more likely to generate deliverables in a timely fashion. Furthermore, uncertainty about the objectives, interests and incentives governing the behaviour of CEMA members may be resolved in practice by putting the process to the test.

Suggested next steps for addressing the performance gap can be grouped into three categories: (1) improving CEMA's efficiency and effectiveness; (2) strengthening the Alberta government's role in support of CEMA; and (3) addressing underlying obstacles to cumulative effects management.





### *(1) Improving CEMA's efficiency and effectiveness*

Options for closing the performance gap through improvements to CEMA could focus on ensuring that expectations are realistic, increasing CEMA's capacity to generate results in a timely manner, and focusing attention and effort more narrowly in order to accomplish more in key areas. Specific suggestions include:

- Reconfirm agreement among CEMA's members on strategic objectives and the overall vision for cumulative effects management in the oil sands region;
- Set clear and realistic timelines for delivery of key recommendations, backed with oversight, support and accountability mechanisms;
- Issue interim recommendations when scientific uncertainty makes some participants reluctant to sign off on final recommendations within defined time periods – and build in adaptive management processes to allow these interim recommendations to be systematically revisited;
- Clearly define 'interim recommendations' as recommendations based on the best available scientific information, risk analysis and professional judgment of CEMA participants at a specified point in time – in order to avoid circular discussions about how much information is needed to move forward with these recommendations;
- Establish a clear protocol for moving forward with non-consensus recommendations (e.g., identification of issues and options) when consensus cannot be reached within a reasonable period of time;
- Streamline decision making within CEMA and improve processes for identifying issues, drafting terms of reference, and tracking work;
- Clarify and formalize expectations regarding members' participation in CEMA (e.g., seniority, time commitment, etc.);
- Define expectations regarding information sharing among CEMA members;
- Establish an internal tracking and public reporting process to improve transparency and accountability by measuring results against benchmarks; and
- Undertake periodic and public evaluations of CEMA, either through an internal review by the CEMA Board or through an audit conducted by independent experts.

There are no guarantees that implementing some or

all of these suggestions will succeed in closing the performance gap. Nonetheless, these measures could create significant incentives and opportunities for improving CEMA's efficiency and effectiveness.

### *(2) Strengthening the Alberta government's role*

The Government of Alberta's ultimate responsibility for managing the cumulative effects of oil sands development stems from its authority to set policy on land and resource use and its role as the owner and primary steward of public land and resources. Interviews for this study suggest that there is a broad consensus among CEMA participants that the government can and should assume a leadership role in closing CEMA's performance gap.

In particular, the Government of Alberta could:

- Update the priorities and timelines in the RSDS and fill in the gaps so that it constitutes a more complete strategic framework for managing the cumulative effects of oil sands development;
- Provide leadership to CEMA by setting specific objectives and timelines, backed by a firm commitment to regulatory action if CEMA fails to deliver recommendations on time;
- Make a clear commitment that government departments will act as champions in policy, legislative and regulatory processes for the implementation of consensus recommendations from CEMA;
- Establish a protocol for moving forward with regulatory and management decisions when CEMA fails to reach consensus;
- Establish a transparent and predictable process for adaptive management, including opportunities for CEMA to remain engaged on issues where it makes interim recommendation or fails to reach consensus;
- Make participation in CEMA a priority in terms of staff time and resources, including a commitment to senior representation from government departments; and
- Work with CEMA to provide support in areas such as independent facilitation and capacity building for Aboriginal participants.

Leadership and direction from the Government of Alberta is critical to closing CEMA's performance gap. Government is ultimately responsible for oil sands regulation and its more active engagement in and support for CEMA would send a clear message to stakeholders that this process is important. For CEMA



members who are suspicious that government is using CEMA to deflect issues and defer decisions and who doubt the government's commitment to managing cumulative environmental effects in the oil sands region, actions such as those enumerated above might be more persuasive than words as they decide whether or not to continue participating in this process.

### *(3) Addressing underlying obstacles to cumulative effects management*

The final approach to narrowing or closing CEMA's performance gap is to address underlying problems that make it extraordinarily difficult to manage cumulative effects in the oil sands region. While a detailed discussion of these problems is beyond the scope of this article, three issues are highlighted here.

First, the pace of development is a key factor in CEMA's widening performance gap. Many interviewees argued that progress in developing the regulatory framework for cumulative effects management is slow, while growth in the oil sands industry is accelerating.

A logical solution from the perspective of environmental management is to slow the pace of project approvals and development until scientific research, cumulative effects modeling, and stakeholder discussion of management options have yielded a more complete framework for addressing cumulative effects. If CEMA is perpetually playing catch-up, limits of acceptable ecological impacts may be crossed before they are even identified and opportunities to identify important environmental values, evaluate trade-offs and direct development in ways that are less environmentally damaging may be missed.

Several ENGOs and Aboriginal groups participating in CEMA are calling for a pause or temporary moratorium on the sale of oil sands leases and on new approvals by the EUB because they view this option as the only realistic way that environmental management can get ahead of development. The Regional Municipality of Wood Buffalo asked the EUB to delay new project approvals at several hearings in 2006 because of the adverse socio-economic consequences of rapid growth. The pace of development was also a principal theme in many submissions to the government's oil sands consultations in the fall of 2006.<sup>39</sup>

The second area of where obstacles to cumulative

effects management could be addressed is the legal, institutional and policy structure of decision making for land and resource use. Cumulative effects management in Alberta is difficult because of a policy and planning vacuum and because the processes for issuing mineral rights and approving individual projects are not well designed to take account of cumulative effects.

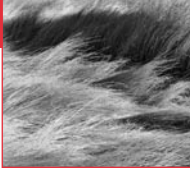
CEMA is charged with developing regional frameworks for cumulative effects management, but it remains unclear how these 'outputs' from CEMA will contribute to an integrated regime for land and resource management. The existing arrangements are incomplete and may not be effective in supporting CEMA and incorporating its recommendations into decision making.

Measures to address underlying obstacles to cumulative effects management and assist CEMA in closing its performance gap could focus on establishing integrated land-use planning, reforming the oil sands tenure regime, and modifying the EUB's existing project-by-project review process to include a longer term, regional perspective. The need for structural reform in these areas is widely recognized. For example, consideration of periodic regional hearings to examine the cumulative effects of oil sands development was recommended by EUB Chairperson Neil McCrank in a speech delivered in March, 2007.<sup>40</sup>

The third major set of structural issues relates to the legal and policy framework for government consultation with Aboriginal people. While CEMA does not constitute a consultation process from the perspective of Aboriginal representatives interviewed for this study, government's legal duty to consult with Aboriginal people regarding infringements of their constitutional and treaty rights is a central issue for the Aboriginal organizations and communities affected by oil sands development.

Steps to improve consultation could yield benefits for Aboriginal participation in CEMA. Aboriginal consultation and oil sands development raises a distinct set of issues that are examined by Monique Passelac-Ross in a paper to be published by the Canadian Institute of Resources Law in the spring of 2007.





## Conclusion

Concerns with CEMA's performance gap are evident in EUB and joint panel decisions and are clearly shared by representatives from a range of member organizations who are frustrated with the slow pace of their work when compared with the flood of new mineral leases, project approvals and development in the oil sands region. If rapid growth in oil sands development continues, there is a real risk that CEMA's performance gap will widen further.

There are, however, a range of options for enhancing and testing CEMA's capacity to contribute to cumulative effects management. Improvements to CEMA's process, a renewed and tangible commitment by the Government of Alberta to participate in and support this initiative, and attention to the underlying obstacles to managing the cumulative effects of oil sands development could together create conditions for success.

If CEMA's performance gap is not addressed, more intense conflict around oil sands development is likely and CEMA itself may eventually collapse. That outcome might create new opportunities, but at least in the short term it would also give rise to significant challenges for all interested parties. The magnitude of these challenges and the uncertainty about how they would be resolved constitute strong arguments for rapid and decisive action to close CEMA's performance gap.

- ◆ Mr. Kennett was a Research Associate at the Canadian Institute of Resources Law when he wrote this article. He is now a Senior Policy Analyst with the Pembina Institute. Research for this article was funded by a grant from the Alberta Law Foundation.

## Notes:

1. EUB, Application by Syncrude for the Aurora Mine, EUB Decision 97-13, 24 October 1997, pp. 26-29.
2. Dan Woyntonowicz, Chris Severson-Baker & Marlo Reynolds, *Oil Sands Fever: The Environmental Implications of Canada's Oil Sands Rush* (Drayton Valley, Alberta: The Pembina Institute, 2005) (available at [www.pembina.org](http://www.pembina.org)), p. vii.
3. *Ibid.*, p. 5.
4. *Ibid.*, pp. 27-57; Richard Schneider & Simon Dyer, *Death by a Thousand Cuts: The Impacts of In Situ Oil Sands Development on Alberta's Boreal Forest*, (Drayton Valley and Edmonton, Alberta: The Pembina Institute and the Canadian Parks and Wilderness Society, Edmonton) (available at [www.pembina.org](http://www.pembina.org)).
5. *Oil Sands Conservation Act*, R.S.A. 2000, c. O-7, s. 3(b).
6. *Energy Resources Conservation Act*, R.S.A. 2000, c. E-10, s. 3.
7. EUB, Suncor Energy Inc., Application for Expansion of an Oil Sands Mine (North Steepbank Mine Extension) and a Bitumen Upgrading Facility (Voyageur Upgrader) in the Fort McMurray Area, EUB Decision 2006-112, 14 November 2006, p. 68.
8. See: [www.oilsandsconsultations.gov.ab.ca](http://www.oilsandsconsultations.gov.ab.ca).
9. Steven A. Kennett, *Closing the Performance Gap: The Challenge for Cumulative Effects Management in Alberta's Athabasca Oil Sands Region*, CIRL Occasional Paper #18 (Calgary: Canadian Institute of Resources Law, 2007).
10. Alberta Environment, *Regional Sustainable Development Strategy for the Athabasca Oil Sands Area*, July 1999, p. 39.
11. *Ibid.*
12. Harry Spaling *et al.*, "Managing Regional Cumulative Effects of Oil Sands Development in Alberta, Canada" (2000) 2 *Journal of Environmental Assessment Policy and Management*, p. 513.
13. *Ibid.*, p. 512.
14. Reproduced in Spaling *et al.*, *Ibid.*, pp. 512-513.
15. [www.cemaonline.ca/members.html](http://www.cemaonline.ca/members.html).
16. Spaling *et al.*, *supra* note 12, p. 513; see also, [www.casahome.org](http://www.casahome.org).
17. *Ibid.*, p. 514.
18. *Ibid.*, pp. 516-520.
19. See, for example: EUB, Shell Canada Ltd. Muskeg River Mine Project, EUB Decision 99-2, 12 February 1999, p. 39; EUB, Petro-Canada Oil and Gas Steam-Assisted Gravity Drainage Project, Mackay River Project, Athabasca Oil Sands Area, EUB Decision 2000-50, 14 July 2000, p. 14; EUB, TrueNorth Energy Corporation Application to Construct and Operate an Oil Sands Mine and Cogeneration Plant in the Fort McMurray Area, EUB Decision 2002-089, 22 October 2002, p. 55; EUB and Government of Canada, Canadian Natural Resources Limited Application for an Oil Sands Mine, Bitumen Extraction Plant and Bitumen Upgrading Plant in the Fort McMurray Area, EUB Decision 2004-05, 27 January 2004, p. 77; EUB and Government of Canada, Shell Canada Limited Applications for an Oil Sands Mine, Bitumen Extraction Plant, Cogeneration Plant and Water Pipeline, Fort McMurray Area, EUB Decision 2004-009, 5 February 2004, p. 78. See also the three decisions from 2006 and 2007 that are discussed below.
20. EUB, *supra* note 7, p. 68.
21. *Ibid.*, p. 68.
22. *Ibid.*, p. 68.
23. *Ibid.*, p. 68.
24. EUB and Government of Canada, Albian Sands Energy Inc., Application to Expand the Oil Sands Mining and





Processing Plant Facilities at the Muskeg River Mine. Joint Panel Report and EUB Decision 2006-128, 17 December 2006.

25. *Ibid.*, p. 38.
26. *Ibid.*, p. 46.
27. *Ibid.*, p. 78.
28. *Ibid.*, p. 78.
29. EUB and Government of Canada, Imperial Oil Resources Ventures Limited, Application for an Oil Sands Mine and Bitumen Processing Facility (Kearl Oil Sands Project) in the Fort McMurray Area, Joint Panel Report and EUB Decision 2007-013, 27 February 2007.
30. *Ibid.*, p. 93.
31. *Ibid.*, p. 93.
32. *Ibid.*, p. 93.
33. *Ibid.*, p. 94.
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35. Woynilowicz, Severson-Baker & Reynolds, *supra* note 2, p. 54.
36. *Ibid.*, p. 55.
37. *Ibid.*, p. 55.
38. Kennett, *supra* note 9.
39. *Supra* note 8.
40. Geoffrey Scotton, "Oilsands need holistic approach: regulator" (15 March 2007) *Calgary Herald*, p. C1.

## NEW PUBLICATIONS

### ***Closing the Performance Gap: The Challenge for Cumulative Effects Management in Alberta's Athabasca Oil Sands Region***

by Steven A. Kennett. 2007. Occasional Paper #18. (softcover) [forthcoming in April]

This paper comments on the origins and record of the multi-stakeholder Cumulative Environmental Management Association (CEMA) and the Regional Sustainable Development Strategy for the Athabasca Oil Sands Area, initiatives launched in the late 1990s to address the cumulative environmental effects of oil sands development in Alberta. There is clear evidence of a growing gap between expectations regarding these initiatives and their performance. Opportunities for closing this gap include improvements in the efficiency and effectiveness of CEMA, a stronger role for the Government of Alberta in providing leadership and support, and attention to underlying obstacles to cumulative effects management.

### ***Legal and Economic Tools and Other Incentives to Achieve Wildlife Goals***

by Arlene J. Kwasniak. 2006. 25 pp. Wildlife Law Paper #5. \$10.00 (softcover)

This paper describes and where appropriate, evaluates legal and economic tools to achieve protection of wildlife and wildlife habitat. It looks at novel private conservancy legal tools such as conservation easements, and transfer of development rights, as well traditional tools that may be used to achieve conservancy goals such as contracts, leases, licences, *profits à prendre*, restrictive covenants and common law easements. It also considers economic based tools such as income and property tax incentives, certification programs, and payment for supplying ecological goods and services related to wildlife and habitat protection.

### ***Wildlife Stewardship***

by Arlene J. Kwasniak. 2006. 19 pp. Wildlife Law Paper #6. \$10.00 (softcover)

This paper explores a key approach to land management that maintains and enhances wildlife habitat values. This approach is wildlife stewardship. Through this approach the owner, occupier or other land manager takes on the role of steward of the landscape and exercises this stewardship to ensure that natural systems not only survive, but also thrive. It begins by introducing the concept of land stewardship. It then outlines the roles of the steward in relation to the land. Next it sets out how the stewardship concept is important to wildlife management. Finally it describes non-governmental organizations, and non-governmental/governmental partnerships that encourage, assist, or promote stewardship.

### ***Wildlife Management Beyond Wildlife Laws***

by Arlene J. Kwasniak. 2007. 27 pp. Wildlife Law Paper #7. \$10.00 (softcover)

This paper discusses a number of tools and approaches from a broad legal context that may relate to protection of wildlife and habitat. It first considers to what extent environmental assessment processes – both provincial and federal – has potential to address wildlife issues. Then the paper looks at how governmental decision making and how it impacts wildlife. The paper looks at alternative models, such as integrated laws, departments, and decision making processes and considers how they might better lead to wildlife sustainability. Then the paper focuses on land management approaches, in particular, ecosystem and multi-jurisdictional management and it points out how such approaches can maintain and enhance habitat.





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