

## KEY SHORTCOMINGS IN ALBERTA'S REGULATORY FRAMEWORK FOR OIL SANDS DEVELOPMENT

Article by Nickie Vlavianos ♦

### Introduction

Alberta's oil sands are sand deposits containing vast quantities of crude bitumen. They are located under the boreal forest in the northern part of the province. Crude bitumen is produced by mining and extracting deposits located at or near the surface, and by *in situ* thermal and non-thermal recovery of deposits located deep below the surface. The bitumen contained in Alberta's oil sands is one of the largest known hydrocarbon deposits in the world.

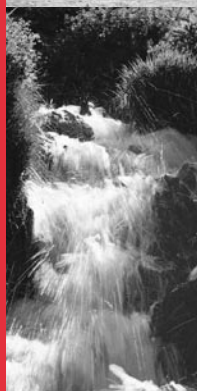
Between 1995 and 2004, oil sands production more than doubled to approximately 1.1 million barrels per day. Production is expected to increase by 2015 to between 3 and 5 million barrels a day. Over the next ten years it is expected that over \$60 billion could be invested in Alberta's oil sands.<sup>1</sup>

Although oil sands development undoubtedly brings considerable economic benefits to local communities, to Alberta and to Canada as a whole, the intense pace of development is raising questions about the ability of the current regulatory framework to cope with the increasing socioeconomic and environmental challenges of large-scale development. Commentators query whether "maintaining the current structure is workable under a scenario where oil sands production more than doubles in the next 10 years."<sup>2</sup>

In May 2006, the Government of Alberta impliedly acknowledged that change is needed when it instituted a public consultation process on oil sands development. This process was a response to criticism the government had received when it developed a strategy for the Athabasca mineable

oil sands area without province-wide consultation. A multistakeholder committee was charged with carrying out public consultations and reporting back on a vision for oil sands development, and strategies to implement that vision. The Committee finalized its report in June 2007. It made a number of recommendations, including some in regard to improving the transparency of the existing regulatory framework. The Committee recommended that government undertake "a thorough, transparent review of legislation, policies and institutional structures" in order to "identify gaps, strengths and weaknesses as they relate to oil sands development". It recommended that government use the results of this review to "move decisively to fill the gaps and ensure accountability for outcomes".<sup>3</sup>

The current legislative and regulatory framework for oil sands development is characterized by three distinct decision-making stages — the disposition of mineral rights to develop oil sands;<sup>4</sup> the disposition of rights to access the surface of public land (both for exploration and production activities);<sup>5</sup> and the project review and approval stage. Different legislation, regulations and decision-making processes apply at each stage, and different decision makers are involved. The first stage involves primarily Alberta Energy and the *Mines and Minerals Act* and regulations. The second stage involves Alberta Sustainable Resource Development (SRD) and Alberta's *Public Lands Act (PLA)* and regulations. Also involved is Alberta Environment (AENV), as mandated under the *Environmental Protection and Enhancement Act (EPEA)* and its regulations. The last stage, that of project review and approval, involves primarily





## RÉSUMÉ

Alors que le développement des sables bitumineux se poursuit en Alberta, la question se pose de savoir si le cadre législatif et réglementaire afférent à ce développement est adéquat. Cet article identifie trois défauts du cadre actuel, à savoir: l'absence de plans intégrés pour le développement des sables bitumineux et l'utilisation des terres dans la province; la complexité et le manque de transparence qui résultent du chevauchement des mandats législatifs; et les problèmes relatifs à l'absence ou à l'insuffisance de participation du public aux moments critiques des prises de décisions.

Alberta's Energy and Utilities Board (EUB) and the *Oil Sands Conservation Act (OSCA)* and regulations, as well as AENV pursuant to the *EPEA* and Alberta's *Water Act (WA)* and regulations.

This article outlines three key shortcomings in the current legislative and regulatory framework for oil sands development in Alberta. First, the lack of comprehensive plans both for oil sands development as well as for land use in the province means that decision making is proceeding without adequate guidance. It is occurring on a case-by-case basis with little formal coordination of decision making across the stages in the current process. Second, the current framework is at certain points characterized by significant complexity. This is most apparent in regard to the overlapping mandates of the relevant decision makers. This lack of jurisdictional clarity results in a lack of transparency at certain points in the development process. Third, contributing to the lack of transparency in the current framework are issues around public participation. At key decision-making points, public participation is entirely absent. At others, opportunities available may not suffice to ensure representation of a broad range of views from Albertans in oil sands decision making.

### Lack of Plans

Ideally, decisions made at each stage in the oil sands development process should fit within, and be driven by, an overall resource and environmental management policy and planning structure. Such a structure would assist with individual project decision making at each stage in the process. This is particularly significant given the minimal policy direction provided to decision makers by Alberta's current legislation and regulations.

To date, Alberta lacks such a policy and planning structure. What government policies do exist in regard to natural resource development have been criticized for

being inconsistent, lacking in specifics, and prioritizing development over environmental protection.<sup>6</sup>

Along with, or as part of, a comprehensive policy to guide oil sands development in the province, a comprehensive land-use planning framework for the oil sands areas is needed. In recent years, integrated landscape (or resource) management has garnered broad support as the best way to properly address the ecological, social and economic costs of multiple and incremental developments on land. The idea is that decision making must be integrated across the full range of sectors and activities (existing or proposed) on the landscape, and also among the various stages of decision making with respect to these sectors and activities.

A fundamental feature of integrated landscape management is comprehensive land-use planning. Without land-use plans that set thresholds and limits to cumulative environmental disturbances, the cumulative effects of development cannot be properly assessed and proactively managed.<sup>7</sup>

Although the Alberta government has in principle stated its commitment to integrated resource management, to date government initiatives have failed to yield satisfactory results. There are currently no comprehensive province-wide land-use plans; nor are there regional plans for all areas of the province. In the oil sands areas, existing plans are generally considered outdated, and provide broad management objectives only. They fail to provide useful guidance on, or to set, ecological limits or thresholds, as well as deal with other key issues related to managing cumulative effects in the oil sands regions.<sup>8</sup>

At the project approval stage, the EUB has repeatedly expressed concern over its inability to properly assess proposed oil sands projects without a regional development strategy that includes cumulative effects limits and thresholds.<sup>9</sup> While several commentators have assessed the current and projected cumulative environmental and





social effects of oil sands development, others have outlined the inadequacy of initiatives that were intended to manage cumulative effects from oil sands development.<sup>10</sup>

The current lack of a comprehensive oil sands policy and land-use planning framework for the oil sands areas in Alberta is a fundamental problem that affects all stages in the oil sands development process, from mineral rights disposition to project approval. The lack of adequate policies and plans impedes effective and meaningful decision making at each stage in the development process. For example, without comprehensive policies and land-use plans, decision making with respect to the disposition of rights to develop Alberta's oil sands are being made without any guidance on where, when and how quickly oil sands development will (or should) occur. The interdepartmental committee, the Crown Mineral Disposition Review Committee (CMDRC), which reviews requests before oil sands rights are offered for tender, does not have the benefit of comprehensive policies and land-use plans before it upon which to base its decisions. Rather, its mandate is limited to a general assessment of surface access restrictions currently required by law or policy. In the absence of comprehensive policies and land-use plans, decisions are being made on a case-by-case basis without consideration of the overall effect of these decisions.

The lack of a comprehensive policy and planning structure also precludes meaningful coordination and consistency of decision making amongst decision makers within each stage in the current process, and also across the different stages. Whatever integration occurs now does so informally for the most part, and without the benefit of a policy or planning framework applicable to all stages in the current process. The only formal arrangement which attempts to coordinate decision making in the oil sands context is a memorandum of understanding (MOU) between the EUB and AENV which applies at the project review and approval stage. At other stages in the development process there is a dearth of publicly-available information as to whether, if any, and what type of integration or coordination of decision making occurs. For example, although government information tells us that the CMDRC is comprised of representatives from various departments (including SRD, the EUB and AENV), there is no information available about the Committee's deliberations, its recommendations, the identity of its members, or its decision-making processes.<sup>11</sup>

The Government of Alberta has very recently committed to developing a "comprehensive energy strategy" for the province.<sup>12</sup> Presumably any such strategy will set the context for future oil sands policy. The government has also recently committed to developing a land-use framework

for the entire province which will provide "overall policy direction" on land use in Alberta and will define "processes, roles and responsibilities" to enable governments, stakeholders and the public to address land issues at provincial, regional and local levels.<sup>13</sup>

Both processes are ongoing. It is unclear whether either process will yield a policy and planning framework with sufficient detail to assist in cumulative effects management with respect to oil sands development. At present, it is also unclear whether, and how, the results from either process will relate to the vision and implementation recommendations delivered this past June from the oil sands public consultation process.<sup>14</sup>

### **Undue Complexity and Lack of Transparency**

Oil sands projects are huge industrial projects that involve considerable economic, social and environmental impacts. To suggest that a regulatory framework for oil sands development should be simple is likely naïve and imprudent. A fair amount of regulatory complexity is inherent given the nature and impacts of oil sands operations. Nonetheless, regulatory frameworks should not be unduly complex. The Alberta government has stated its goal of improving "the transparency and accountability of government agencies [and] boards".<sup>15</sup> Especially where the subject matter is inherently complex, legislatures and governments must work hard to identify and resolve ambiguities in decision-making mandates and regulatory jurisdiction. Decision-making processes should be as transparent as possible. Otherwise questions of accountability will undoubtedly arise.

Overlapping and ambiguous mandates of decision makers is a key problem in Alberta's current regulatory framework for oil sands development. At the surface rights disposition stage, for example, on what basis does SRD currently issue oil sands exploration approvals? SRD is authorized to approve of oil sands exploration activities on public lands in Alberta under the *PLA*. However, the Handbook SRD has developed to guide its decision-making process with respect to public land access says that oil sands exploration approvals are not issued under the *PLA*, but rather under a Code of Practice administered by AENV pursuant to the *EPEA*. AENV's jurisdiction is engaged because the conduct or reclamation of an exploration operation is an activity for which notice must be given to AENV under the *EPEA*.

A review of available documents reveals that the division of labour between SRD and AENV in the context of oil sands exploration approvals is not at all clear. Does SRD





conduct its own review of the proposed exploration project, or does it rely on the review conducted by AENV? If it does its own review, does it rely on its Handbook, AENV's Code of Practice, or both? If SRD and AENV conduct distinct review processes, how is decision making coordinated? What happens in the case of disagreement between SRD and AENV? Does one department's decision trump that of the other?

While in principle there is nothing wrong with one department relying on the guidance of another, such a process should be a clear and transparent one. The roles of each department and how their functions relate to each other in this process should be apparent. Where they are not, questions will inevitably arise about how the process is actually working in practice, its effectiveness, and the accountability of the departments involved.

Another example occurs at the project approval stage where the legislative mandates of the EUB and AENV also overlap in confusing ways in regard to the environmental impacts of oil sands development. For instance, although AENV is responsible for the environmental assessment process under the *EPEA*, the EUB must also consider environmental impacts in its review of a proposed project under the *OSCA*.

As noted, the EUB and AENV have signed an MOU to try to deal with overlapping mandates in the oil sands project review and approval context.<sup>16</sup> Oil sands projects that require approvals from the EUB under the *OSCA* and from AENV under the *EPEA* and the *WA* are subject to a coordinated approval process pursuant to the MOU. Since both agencies must consider environmental effects in issuing approvals and monitoring oil sands operations, the MOU was intended to harmonize approval and monitoring activities and to ensure consistent decision making. It outlines areas of primary EUB and AENV responsibility, as well as areas of shared or joint responsibility.

While the MOU goes some way towards clarifying overlapping jurisdiction, confusion remains. The agreement is not an entirely clear and straightforward document. Especially in regard to matters of "shared responsibility", the MOU provides little detail and typically concludes with appeals for the two agencies to "work cooperatively" in recognition of overlapping and joint mandates. For example, the MOU states that aspects of land reclamation of oil sands development are regulated under the *EPEA* and are therefore subject to AENV jurisdiction. Specifically, AENV is responsible for site inspections prior to construction, reviewing lease construction practices, setting reclamation certification criteria and issuing reclamation certificates. On the other hand, the MOU notes that, at the same time, "reclamation planning and final landscape objectives

are important components of the EUB's obligation to consider whether an oil sands development is in the public interest."<sup>17</sup> The MOU calls upon both agencies to cooperate in seeking to "ensure that, without fettering the discretion of any statutory decision maker, the decisions rendered by the EUB and [AENV] regarding land reclamation matters, are consistent with each other."<sup>18</sup> In several oil sands decisions, the EUB has considered reclamation matters and has made recommendations to AENV with respect to reclamation.

Where cooperation is strong and there is little disagreement, the type of arrangement contemplated by the MOU may work well in practice. But the MOU provides no guidance on what happens when either cooperation is missing, or when opinions of the two agencies diverge. It is not at all clear what the result would be if AENV refused to issue an approval in the face of an EUB approval. The *EPEA* requires AENV to consider any written decision of the EUB on a project in deciding whether to issue its own approvals. Especially after a public hearing has been held, AENV may be hard-pressed to refuse to follow the decision and recommendations of the Board. But the legal effect of EUB recommendations to AENV is not clear. What happens if AENV disagrees with the EUB about whether a particular project is in the public interest given the environmental impacts? What if AENV believes the impacts cannot be mitigated and the EUB believes that they can be? Who has the final say on whether a project will proceed? Ultimately, despite the MOU, there are outstanding issues around the extent to which (or whether) one regulatory body must defer to the judgments of the other in matters of overlapping jurisdiction.

The MOU also does not address the possibility that one agency could sidestep dealing with a particular matter because it believes the matter to be within the primary jurisdiction of the other. For example, although the MOU states that acceptable air emission levels are within AENV's primary jurisdiction, the EUB's mandate to assist in controlling pollution and ensuring safe practices in the development of oil sands resources may grant it significant responsibilities over air emissions under the *OSCA*.

A statement in the MOU that the EUB has primary responsibility over whether or not an oil sands project is in the public interest is also troublesome. An approval decision by AENV under its legislation must also be an implicit public interest calculation. If AENV did not have to weigh the economic and other benefits of the proposed project against its environmental impacts, it would likely never have reason to grant an approval. In other words, if the project's benefits were not considered, no environmental impacts or risks would be worth accepting. Consequently, if AENV has an inexorable public interest



mandate, why does the MOU give the EUB primary responsibility over the “public interest” with respect to oil sands development?

Ultimately, the ambiguities inherent in overlapping mandates with respect to oil sands decision making add a critical element of complexity and lack of transparency in the current legislative and regulatory framework. One suggestion has been the adoption of a single regulator. A 2002 report recommended that a single regulator be responsible for all assessments, hearings, appeals, operations, and abandonment and reclamation activities of oil sands projects.<sup>19</sup> It has been said that such an approach would streamline and clarify a cumbersome and confusing process.<sup>20</sup> While such an approach may go some way towards achieving this objective, it may raise other challenges, particularly in regard to ensuring the accountability and transparency of a single all-powerful regulator. Moreover, as currently proposed, it is unclear whether such a regulator would have responsibilities in regard to mineral and surface rights disposition decision making. If not, a detailed plan or framework, preferably with legal effect, would be needed to ensure effective integration between decision making at these early stages in the development process and decision making at the later project approval stage.<sup>21</sup>

### Public Participation Issues

Increasingly, commentators agree that public participation in natural resource development leads to better decisions and provides legitimacy for those decisions.<sup>22</sup> At certain key stages in the current oil sands development process, there is a complete lack of public participation. The disposition of oil sands rights and the disposition of rights to access the surface of public lands (both for oil sands exploration and production activities) occur without public participation, and outside of public scrutiny.<sup>23</sup> Recent requests to Alberta Energy by conservation groups to allow for input into rights disposition decisions with respect to oil and gas development in a protected natural area of the province have been denied.<sup>24</sup> Critics argue that this approach is inconsistent with the public nature of Alberta’s oil sands resources and the lands, air, and water affected by oil sands development.<sup>25</sup>

With respect to the disposition of rights to access the surface of public lands for oil sands development, SRD has issued a statement about possible public involvement in the use of public lands.<sup>26</sup> This document grants land managers broad discretion to “assess the need for public involvement” based on a number of vague factors including the “amount of public interest that is likely to result” from the land-use decision. Thus, public consultation with

respect to the use of public lands may or may not occur. The level and type of consultation that may occur is entirely discretionary, however. Currently, there is no indication that public consultation of any kind is a regular feature of SRD’s decision-making with respect to granting surface access for oil sands development on public lands.

At the oil sands project approval stage, there is provision for public participation both in hearings before the EUB, and through the environmental impact assessment and environmental approval processes under the *EPEA*. These avenues are open, respectively, to persons that can establish that they are “directly and adversely affected” (to the EUB) or, in the case of the *EPEA* processes, to persons that are “directly affected” by the proposed project. Both requirements have the potential to exclude public interest groups and other stakeholders with legitimate interests and mandates related to the impacts of oil sands development. Recently, the EUB denied standing to trigger a public hearing to the Oil Sands Environmental Coalition, a group that has actively participated in several oil sands hearings.<sup>27</sup> The Board held that the Coalition was unable to demonstrate that one of its members had a legally-recognized interest in the lands in close proximity to the proposed oil sands operations that could be directly and adversely affected. Along with public interest groups, recreational users of public lands have also been denied standing by the Board if they do not live on the land, or have a licence to use the area for commercial purposes.<sup>28</sup> Even local governments (*i.e.*, municipalities) have been denied standing in relation to oil and gas development within their borders.<sup>29</sup>

Along with standing to be heard, the issue of costs is equally important. Although EUB practice may allow persons or groups without standing to participate (although not always fully) in hearings triggered by parties with standing, these persons or groups are not entitled to costs. Current statutory provisions that allow for the recovery of costs for participation in EUB hearings are restricted to persons, groups or associations who, in the Board’s opinion, have an interest in, or are legally-entitled to, occupy land that is or may be directly and adversely affected by a decision of the Board.

Although allowed to participate fully (and thus lead evidence, cross-examine witnesses, etc.) in three recent hearings on proposed oil sands projects, both the Regional Municipality of Wood Buffalo and the Northern Lights Regional Health Authority were denied intervenor costs by the EUB.<sup>30</sup> Although the Board found their participation valuable on the socioeconomic issues arising from the pace and scale of development in the area generally, the Board concluded that their interventions were not related to site specific issues arising directly from the applications.





The Board held that the relevant provisions were intended to benefit persons with legally-recognized interests in specific lands who participate in Board hearings “in order to safeguard the benefits they are entitled to enjoy by virtue of their ownership of those interests”. This did not, according to the Board, apply to the municipality and health authority in these circumstances.

Without the chance of at least some cost recovery, one wonders whether municipalities and health authorities will have the resources to participate as fully in future applications. The same is true for environmental, social or other organizations that have legitimate interests in a particular application, but cannot establish that one of its members has a legally-recognized property interest in the public lands affected by the proposed project. The end result may be a silencing of legitimate public concerns with respect to oil sands development.

Public participation in natural resource decision making is also important at the level of policy. Currently, there are no legislative requirements for the government to consult with Albertans when setting government policies and guidelines with respect to oil sands development. While the government has chosen to do so in the recent oil sands and land-use framework consultation processes, these are *ad hoc* processes without legislative mandate and direction. Ultimately, there is no legal requirement that the government adopt and implement recommendations from either process; nor is there any guarantee that the government will always engage in broad public consultation in future policy-making exercises.<sup>31</sup>

## Conclusion

This article has outlined three key shortcomings in the current legislative and regulatory framework for oil sands development in Alberta. Implicit within these shortcomings are suggestions for reform. First, Alberta needs comprehensive and detailed plans for oil sands development, both with respect to oil sands (or energy) policy and land-use planning. The lack of specific guidelines and land-use plans for the oil sands areas (that set environmental limits and thresholds) means that decision making at each of the three stages in the current development process is occurring in a vacuum. Decisions are also being made without sufficient and formal integration of decision making across the disparate stages in the current process. In the result, effective cumulative effects management is not possible.

Second, Alberta’s current regulatory framework needs to be clarified in a number of areas to reduce complexity

and increase transparency. The overlapping and confusing mandates of key decision makers in the development process need to be carefully examined. The processes through which decisions, especially final ones, are made must be refined and made explicit.

Finally, Alberta needs to consider whether (and what type of) public participation should occur prior to the oil sands project review stage. Early public engagement could ensure that diverse concerns about the economic, social and environmental impacts of oil sands development are heard from the outset, before reliance occurs and legitimate expectations arise. With respect to public participation at the project review stage, Alberta needs to consider whether the current approach to standing accords with the modern realities of a public that increasingly wants to be heard in the context of natural resources and environmental decision making. Allowing persons or groups with legitimate interests to be heard is unlikely to overwhelm the current hearing process. Opening the doors to public interest standing litigants does not appear to have done so in the context of judicial proceedings. Specific guidelines could be developed to outline the type of participation that would occur, and to ensure that proceedings are not unreasonably delayed.

- ◆ Assistant Professor, Faculty of Law, University of Calgary and Research Associate, Canadian Institute of Resources Law. This article summarizes the main conclusions drawn in the following report: N. Vlavianos, *The Legislative and Regulatory Framework for Oil Sands Development in Alberta: A Detailed Review and Analysis*, Occasional Paper #21 (Calgary: Canadian Institute of Resources Law, 2007). Please refer to this report for more detailed analysis.

## NOTES

1. National Energy Board, *Canada’s Oil Sands: Opportunities and Challenges to 2015: An Update* (Calgary: National Energy Board, June 2006).
2. J. Lowe, “Towards a New Policy Framework for Oil Sands Development”, Paper presented to the Canadian Bar Association Alberta Law Conference, Energy Regulatory Panel, 10 March 2006, at 8.
3. *Oil Sands Consultations — Multistakeholder Committee Final Report* (30 June 2007) at 29, online: <<http://www.oilsandsconsultations.gov.ab.ca>>.
4. Approximately 97% of Alberta’s oil sands are owned by the province of Alberta.
5. Most of the lands under which the oil sands are located are owned by the province of Alberta.





6. See, for example: M. Wenig & W.A. Ross, "Making Progress Toward a Truly Integrated Energy Policy" (2007) 31:4 *LawNow*; A. Nikiforuk, "Plan? What Plan? Alberta's Energy Future" *Canadian Business Magazine* (5-18 June 2006); and E. Malterre & M. Lowey, "Alberta's New Energy Vision Faces Huge Challenges" (2006) 16:19-20 *EnviroLine Online*.
7. See, for example, S. Kennett *et al.*, *Managing Alberta's Energy Futures at the Landscape Scale*, Paper No. 18 of the Alberta Energy Future's Project (Calgary: Institute of Sustainable Energy, Environment and Economy, University of Calgary, 2006).
8. See, for example, *ibid.*, and M. Wenig & M. Quinn, "Integrating the Alberta Oil and Gas Tenure Regime with Landscape Objectives: One Step Toward Managing Cumulative Effects" in H. Epp, ed., *Access Management: Policy to Practice*, Proceedings of a conference presented by the Alberta Society of Professional Biologists, Calgary, AB, 18-19 March 2003 (Edmonton: ASPB, 2004).
9. For a summary of EUB comments in this regard, see S. Kennett, *Closing the Performance Gap: The Challenge for Cumulative Effects Management in Alberta's Athabasca Oil Sands Region*, Occasional Paper #18 (Calgary: Canadian Institute of Resources Law, 2007).
10. See, for example: R. Schneider & S. Dyer, *Death by a Thousand Cuts: Impacts of In Situ Oil Sands Development on Alberta's Boreal Forest* (Edmonton: The Pembina Institute and the Canadian Parks and Wilderness Society, 2006); D. Woynilowicz, C. Severson-Baker & M. Reynolds, *Oil Sands Fever: The Environmental Implications of Canada's Oil Sands Rush* (Drayton Valley: The Pembina Institute, 2005); and Kennett, *ibid.*
11. See, for example, Alberta SRD, "Crown Mineral Disposition Review Committee", online: <<https://www.srd.gov.ab.ca/lands/usingpublicland/oilgasmineralexploration/cmdrc.aspx>>, and Wenig & Quinn, *supra* note 8.
12. See M. Wenig & M. Moore, *Is "Conservation" Worth Conserving? The Implications of Alberta's "Energy Resource Conservation" Mandate for Renewable Energy*, Occasional Paper #20 (Calgary: Canadian Institute of Resources Law, 2007).
13. Government of Alberta, "Land-use Framework", online: <<http://www.landuse.gov.ab.ca/index.html>>.
14. It is also unclear how all of these processes will relate to the new cumulative effects management framework being developed by AENV.
15. Alberta Government, *Government Priorities* (13 December 2006), online: <<http://www.premier.alberta.ca/news/news-2006-dec-13-Priorities.cfm>>.
16. EUB Informational Letter 96-7: *EUB/AEP Memorandum of Understanding on the Regulation of Oil Sands Development* (18 April 1996).
17. *Ibid.* at 6.
18. *Ibid.*
19. Alberta Energy, *A Proposal For Regulating Resource Development* (December 2002).
20. See M. Lowey, "Alberta Moving to 'Single-Regulator' System for Natural Resources Development" (2004) 15:16-17 *EnviroLine Online*.
21. See, for example, D. Farr *et al.*, *Al-Pac Case Study Report Part 2: Regulatory Barriers and Options* (Ottawa: National Round Table on the Environment and the Economy, 2004).
22. See, for example, B. Barton, "Underlying Concepts and Theoretical Issues in Public Participation in Resources Development" in D. Zillman *et al.*, eds., *Human Rights in Natural Resource Development: Public Participation in the Sustainable Development of Mining and Energy Resources* (New York: Oxford University Press, 2002).
23. See, for example, N. Vlavianos, "Public Participation and the Disposition of Oil and Gas Rights in Alberta" (2007) 17 J.E.L.P. 205.
24. See "CBM Drilling in Natural Area Ignores Public Interest, Conservation Groups Say" (2007) 17:17-8 *EnviroLine Online* at 6.
25. See, for example, J.P. Holroyd, S. Dyer & D. Woynilowicz, *Haste makes Waste: The Need for a New Oil Sands Tenure Regime* (Drayton Valley: Pembina Institute, 2007), and Wenig & Quinn, *supra* note 8.
26. See SRD, *Public Involvement in Local Land Use Decision-Making* (July 1997).
27. EUB Decision 2006-069: *Suncor Energy Inc., Application for an Oil Sands Primary Extraction Facility, Fort McMurray Area* (30 June 2006).
28. See, for example, EUB Decision 2007-053: *Shell Canada Ltd., Prehearing Meeting Applications for A Well and Associated Pipeline Licences, Waterton Field* (29 June 2007), leave to appeal dismissed: *Sawyer v. Alberta (Energy and Utilities Board)*, [2007] A.B.C.A. 297.
29. See, for example, EUB Decision 2006-052: *Decision on Requests for Consideration of Standing Respecting a Well Licence, Application by Compton Petroleum Corporation, Eastern Slopes Area* (8 June 2006).
30. See EUB Energy Cost Order 2007-003: *Albian Sands Energy Inc., Application to Expand the Oil Sands Mining and Processing Plant Facilities at the Muskeg River Mine, Costs Award* (14 March 2007); and EUB Energy Cost Order 2007-001: *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, Costs Awards* (21 February 2007). Leave to appeal both of these decisions was denied in *Wood Buffalo (Regional Municipality) v. Alberta (Energy and Utilities Board)*, [2007] A.B.C.A. 192.
31. On the importance of legally-mandated public participation processes in policy making, see: A. Woolley, *Legitimizing Public Policy*, Paper No. 3 of the Alberta Energy Futures Project (Calgary: Institute of Sustainable Energy, Environment and Economy, 2007).

## NEW PUBLICATIONS

***The Legislative and Regulatory Framework for Oil Sands Development in Alberta: A Detailed Review and Analysis***  
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This paper provides a detailed review of the current provincial legislative and regulatory framework for oil sands development in Alberta. It does so by moving through the three key stages in the current process — the disposition of rights to develop oil sands; the disposition of rights to access the surface of public land; and the oil sands project review and approval stage. The paper identifies key issues and problem areas that arise at each stage. Many of these issues relate to the lack of clarity, certainty and transparency with respect to certain key decision-making points in the current development process.

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## CONTRACT LAW FOR PERSONNEL IN THE ENERGY INDUSTRY

On 13-14 February 2008, the Canadian Institute of Resources Law will present a two-day Contract Law course at the MacEwan Student Centre (Cassio A & B – east side of MacEwan Hall) at the University of Calgary. The course is aimed at non lawyers in the energy industry who deal with contracts.

The course examines a full range of contract law concepts and issues including formation and termination of a contract, the concepts of consideration and privity, judicial approaches to the interpretation of contracts, and damages. In addition, the course scrutinizes a number of clauses commonly found in energy industry contracts (for example, force majeure, independent contractor, choice of laws, liability and indemnity and confidential information clauses). The course does not focus upon specific types of contracts used in the industry. It is geared for industry personnel at all levels whose jobs require them to understand the basics of contract law. Materials prepared for the course draw primarily upon Canadian cases involving the energy industry.

Course instructors are Nicholas Rafferty, a contract law professor at the University of Calgary's Law Faculty, and Nickie Vlavianos, Assistant Professor and Research Associate at the Canadian Institute of Resources Law. The course involves lectures by the instructors, as well as individual and group problem solving sessions.

The registration fee is \$495 and includes all materials and coffee both days. Please note lunch is not included. To register, please contact Pat Albrecht: E-mail [palbrech@ucalgary.ca](mailto:palbrech@ucalgary.ca), Fax 282-6182, or Phone 220-3974. Downloadable registration form available online at <http://www.cirl.ca/html/whatsnew.html>.

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The Institute has moved into its new and much-improved suite of offices. As an additional enhancement, we are now pleased to display throughout our space the artwork of well-known Alberta artist, Barbara Ballachey.

### Canadian Institute of Resources Law Institut canadien du droit des ressources

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## RESOURCES

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### Canadian Institute of Resources Law Institut canadien du droit des ressources

#### THE INSTITUTE

The Canadian Institute of Resources Law was incorporated in September 1979 to undertake and promote research, education and publication on the law relating to Canada's renewable and non-renewable natural resources.

The Institute was incorporated on the basis of a proposal prepared by a study team convened by the Faculty of Law at the University of Calgary. The Institute continues to work in close association with the Faculty of Law. It is managed by its own national Board of Directors and has a separate affiliation agreement with the University of Calgary.

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