



Petro-Canada Oil Sands Inc.

Prehearing Meeting
Application to Construct and Operate the
Sturgeon Upgrader
Sturgeon County

March 27, 2008

ENERGY RESOURCES CONSERVATION BOARD

Decision 2008-024: Petro-Canada Oil Sands Inc., Application to Construct and Operate the Sturgeon Upgrader, Sturgeon County

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CONTENTS

1	Introduction.....	1
2	Prehearing Meeting.....	1
3	Issues.....	2
4	Standing	3
5	Local Intervener Costs	5
6	Location and Timing of Hearing.....	6
	Appendix 1 Prehearing Participants	8

ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

PETRO-CANADA OIL SANDS INC.
STURGEON UPGRADER

Decision 2008-024
Application No. 1490956

1 INTRODUCTION

Petro-Canada Oil Sands Inc. (PCOSI) applied, on behalf of the Fort Hills Energy Corporation and Fort Hills Energy L.P. (Fort Hills), to the Energy Resources Conservation Board¹ (ERCB/Board) and Alberta Environment (AENV) for approval to construct and operate the Fort Hills Sturgeon upgrader and associated infrastructure with a capacity to process 54 000 cubic metres per day (m³/d) of bitumen. The proposed upgrader would be located in Sturgeon County, approximately 15 kilometres (km) north of the city of Fort Saskatchewan, on all or part of Section 19, Township 56, Range 21, West of the 4th Meridian, and Sections 2, 3, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 27, Township 56, Range 21, West of the 4th Meridian. Initial production is scheduled for 2011.

PCOSI submitted the following applications:

- Application No. 1490956 to the ERCB, pursuant to Section 11 of the *Oil Sands Conservation Act*. In support of its proposal and as part of its application to the ERCB, PCOSI also submitted an environmental impact assessment (EIA) report to AENV. The EIA report forms part of the application to the ERCB.
- Application No. 001-231303 to AENV, pursuant to the *Environmental Protection and Enhancement Act (EPEA)*, to construct and operate a 54 000 m³/d upgrader and associated infrastructure.
- An application (File No. 00236443) to AENV, pursuant to Sections 36, 37, 49, and 50 of the *Water Act*, to authorize site water management plans for the construction, maintenance, and operation of the upgrader, including the diversion of up to 14 454 000 m³ per year from the North Saskatchewan River, surface runoff, and groundwater dewatering for industrial purposes.

2 PREHEARING MEETING

In a letter to the Board dated December 28, 2007, the Northeast Sturgeon County Industrial Landowners (NESCIL) and the Citizens for Responsible Development (CFRD) requested a ruling from the Board that the members of NESCIL/CFRD were directly affected by Application No. 1490956. Furthermore, NESCIL/CFRD requested that the Board follow a process similar to that used in the BA Energy Heartland Upgrader application, (which resulted in *Decision 2004-110* and *Decision 2005-079*) and that prior to proceeding to a hearing, Application No. 1490956 be set down for a prehearing meeting at which the Board could receive input from NESCIL/CFRD and other participants on the scope of the hearing, timing, procedures, participant roles, costs, and funding.

¹ Then the Alberta Energy and Utilities Board.

A prehearing meeting was held in Fort Saskatchewan, Alberta, on March 14, 2008, before Board Members J. D. Dilay, P.Eng., G. J. Miller, and B. T. McManus, Q.C.

At the prehearing meeting, the Board received input from the applicant and interested parties on a number of issues, including

- the scope and purpose of the hearing,
- relevant issues to be examined,
- timing and location of the public hearing,
- procedures, and
- participant roles.

The Board did not hear evidence, submissions, or arguments pertaining to the merits of the applications or objections; these will be heard at the public hearing.

Those who spoke at the prehearing meeting on behalf of a group of interested parties or on their own behalf are listed in [Appendix 1](#).

3 ISSUES

It is the Board's view that the following issues are relevant for consideration at the upcoming public hearing:

- technical process design
- consultation
- public interest
- environment
 - ground and surface water
 - air emissions
 - soil
 - vegetation
 - wildlife
 - noise and light
 - cumulative effects
 - mitigation and monitoring
- development and land use
 - traffic
 - community impact
- health and safety
 - human health
 - animal health/behaviour

- emergency planning and response
- socioeconomic impacts
 - impact on neighbouring farming operations

However, the Board does not consider the above list to be exhaustive and does not preclude the consideration of other issues at the hearing.

4 STANDING

When identifying who may participate at a public hearing, the Board is governed first by Section 26 of the *Energy Resources Conservation Act (ERCA)*, which provides that those persons whose rights may be directly and adversely affected by the approval of an energy facility are entitled to an opportunity to lead evidence, cross-examine, and give argument—in short, to full participation at a hearing, or “standing.”

Others who may not be able to meet the standing test (for example, those persons not situated in the designated proximity to a proposed facility) are not afforded these participation rights by the statute. However, it is the long-standing practice of the Board that should a hearing be held, it will allow those persons who would otherwise not have standing to participate to some extent at a public hearing, provided that they offer relevant information. Determination of the level of participation of such parties is made on a case-by-case basis. However, funding to cover costs, as described below, is not normally available to persons who may participate but who do not have standing.

The Board acknowledges the standing of Mr. Smulski (on behalf of S.V. Farms, S.V. Half Diamond Ranch, 267554 Alberta Ltd., and the J. Smulski Estate) and Stewart Shaw, Karen Shaw, and Kevin Shaw (the Shaws). With respect to NESICL/CFRD, the Board notes that some members have an interest in land that is adjacent to the proposed facility. Accordingly, the Board believes that NESICL/CFRD also has standing to participate in the hearing.

Prior to the prehearing meeting, the Alexander First Nation Industry Relations Corporation (AFN IRC) filed a submission asserting treaty and constitutional rights to use lands in the project area and contended that these rights would be adversely impacted by the proposed project. The AFN IRC provided no specific detail as to lands where such rights were being exercised or how the rights asserted would be directly and adversely affected by the project.

At the prehearing meeting, the AFN IRC again asserted its rights without specifying the lands associated with these rights. Further, the AFN IRC did not describe how these rights might be directly and adversely affected by the proposed project. The AFN IRC indicated that it would provide this detail in a subsequent letter to the Board.

The AFN IRC wrote to the Board on March 15, 2008, and asserted that there were private lands and lands zoned for industrial development within its traditional territory. The AFN IRC contended that it had treaty and aboriginal rights to use these lands for gathering, trapping, hunting, and practising its traditional way of life. The AFN IRC argued that the proposed upgrader had the potential for the following adverse impacts upon its people:

- fragmentation of wildlife habitat,

- disruption of wildlife feeding areas,
- disruption of wildlife migration routes,
- loss of wildlife habitat,
- creation of noise and odours repugnant to wildlife,
- loss of water from fish habitat,
- disruption of wildlife distribution patterns, including the loss of local wildlife population,
- loss of local flora, including traditional medicinal plants,
- introduction of toxic and hazardous waste materials into the local environment, and
- negative socioeconomic impacts.

The AFN IRC also asserted that appropriate and adequate consultation must occur and that all concerns must be addressed and mitigated before an approval for the project could be issued.

On March 25, 2008, the Board received a reply submission from PCOSI stating that the AFN IRC had not produced any evidence that it was “directly affected,” as contemplated by Section 26 of the *ERCA*, and that accordingly the AFN IRC should not be granted standing at this time. PCOSI stated that it had no objection to the AFN IRC participating to some extent at the hearing.

The Board has considered the AFN IRC’s position, as expressed in writing and at the meeting, and concludes that it has insufficient information to make a determination as to the AFN IRC’s status as a local intervener. The Board finds that there is a distinct absence of factual detail or precise information that would allow the Board to understand the degree of connection between the proposed upgrader and the rights asserted. The Board finds as a fact that the AFN IRC has failed to establish how the rights it is asserting will be directly and adversely affected by the project. The AFN IRC is not precluded from submitting additional information in support of its claim for local intervener status.

On review of the submission of Mr. Wright, the Board notes that at the closest Mr. Wright and his associates are located about 11 km from the southern boundary of PCOSI’s project lands. As a result, the Board does not find that Mr. Wright or his associates may be directly and adversely affected by Application No. 1490956 and finds that neither Mr. Wright nor his associates have standing.

In the matter of Mr. Hoehn, the Board notes that he did not make a request for standing or funding. The Board notes that Mr. Hoehn intends to make a presentation at the hearing.

The Board cautions that participation at the public hearing is also predicated on persons complying with the *Energy Resources Conservation Board Rules of Practice* regarding the presentation of evidence and procedural matters. For example, persons who do not file their own evidence and that of their experts by the prescribed deadlines may be denied the opportunity to provide that evidence at the hearing. It is important that parties respect the deadlines established by the Board in order to provide fairness to all parties that are participating in the proceeding and to maintain an orderly and efficient process leading to the oral hearing.

5 LOCAL INTERVENER COSTS

Prior to the prehearing meeting, hearing budgets were filed by NESCIL/CFRD in the amount of \$631 087; by the Shaws in the amount of \$100 000; and by Mr. Smulski in the amount of \$38 000 to \$42 000.

With respect to the NESCIL/CFRD's hearing budget, PCOSI argued that its costs were out of line with costs claimed by or awarded to other parties in other ERCB proceedings. PCOSI offered NESCIL/CFRD advance funding of \$175 000, arguing, in part, that the expertise provided by Ms. Goodwin, Dr. Blake, Dr. Du, and Dr. Holfelt overlapped; the costs and budgeted hours of Ms. Goodwin were excessive and of questionable value to the Board; and the scope of work suggested by Mr. Ennis was beyond what was required for the purpose of the hearing into the application.

NESCIL/CFRD argued that the costs claimed by or awarded to other parties in other ERCB proceedings were not relevant to the situation in the Alberta Industrial Heartland, where the pace of development and the number of recent approvals required a more diligent analysis of potential impacts.

NESCIL/CFRD noted that Ms. Goodwin's hourly rate was consistent with the Board's *Directive 031A: Guidelines for Energy Cost Claims*, given her years of experience as a practising industrial hygienist and in medical research. NESCIL/CFRD also noted that in addition to her technical assessment of the application, Ms. Goodwin would use her multidisciplinary knowledge and background to facilitate the scientifically informed interaction between the various experts and between legal counsel and the experts, thereby increasing the efficiency and effectiveness of the intervention.

NESCIL/CFRD stated that there was no overlap in the expertise provided by Dr. Blake, Dr. Du, and Dr. Holfelt. NESCIL/CFRD noted that Dr. Blake would assess the air quality in the region, Dr. Du would assess the dispersion of air emissions from the project, and Dr. Holfelt would assess the toxicological effects of the emissions.

NESCIL/CFRD argued that based on the Board's views in *Decision 99-8* (Shell Scotford), *Decision 2005-079* (BA Energy Heartland), *Decision 2006-085* (Shell Scotford Expansion), and *Decision 2007-058* (North West Upgrader), the Board clearly had an interest in technical matters and placed emphasis on the opinions of technical experts when discussing these matters. NESCIL/CFRD argued that its proposed consultant, Mr. Ennis, would be able to provide an expert opinion on technical issues consistent with the Board's expectations.

With respect to the Shaws, PCOSI stated that it had reached an agreement to provide them with \$65 000 in advance intervener funding.

With respect to Mr. Smulski, PCOSI stated that based on the information Mr. Smulski had filed with the Board, it could not support his claims for advance funding. However, PCOSI stated that it would give Mr. Smulski a letter outlining the information that it would require before it would consider providing any type of advance intervener funding.

The scope of work proposed by EGT Enterprises Inc. (EGT) and its associated cost was a topic of considerable discussion at the prehearing meeting. The Board notes that PCOSI does not object to an engineering assessment of its proposed upgrader; rather its objection lies with the level of detail proposed. PCOSI argued that some of the information sought by EGT related to matters that were confidential pursuant to licensing agreements or on the basis of competitive advantage.

The Board understands that the purpose of the work proposed by EGT is to find and characterize continuously discharging flows from the proposed upgrader. The Board considers that such information could be relevant if it is effectively compiled and could assist the Board in making its determination on this application. However, the Board is concerned that some of the details proposed for study by EGT are not practical or even possible at this stage of the project. Specifically, the Board questions whether specific analysis of valves, piping, and instrumentation diagrams is a necessary or practical exercise.

The Board also wishes to express its concern about the hourly rate estimated for Ms. Goodwin when she is acting as a group coordinator. While the Board sees value in such a role, it is of the view that coordination does not constitute expertise warranting an hourly rate of \$250.00.

Having regard to the foregoing, the Board is prepared to award NESICL/CRFD advance funding in the amount of \$260 000. This award was derived by awarding approximately 33 per cent of the estimated fees for EGT and Ms. Goodwin and approximately 50 per cent of the budgeted amount for NESICL/CFRD's remaining consultants.

In granting the advance funding request, the Board makes no determination respecting the value of any intervener's participation. Any intervener that accepts advance funding pursuant to this decision accepts the risk that if its final cost award related to the proceedings is less than the amount of the funding advanced pursuant to this decision, it will be required to repay the difference.

In making its final cost award, the Board expects to be satisfied that all fees and disbursements claimed relate to the proceedings and conform to the Scale of Costs adopted by the Board. The Board will also consider the effectiveness of the participation, its relevance to the issues, and whether the costs of the participation were necessary and reasonable. In making this determination, the Board will often decline cost awards to parties whose evidence was merely a duplication of evidence presented by other parties or if it finds unnecessary use of experts and/or counsel. With respect to the subject case, the Board sees significant potential for duplication; for example, more than one participant has indicated the intention to hire air and health expertise. The Board urges all interveners to consult with each other early on to share information and to avoid duplication of effort.

6 LOCATION AND TIMING OF HEARING

None of the parties objected to the hearing being held in Fort Saskatchewan.

With respect to the timing of the hearing, PCOSI expressed an interest in a hearing commencing May 7, 2008, as was suggested by the Board in its Notice of Prehearing Meeting. Interested

parties, however, noted in their prehearing meeting submissions and during the meeting that many of them had scheduling conflicts, which would limit their ability to participate if a hearing were to be held in May. Interested parties also indicated that as part of their review of the application, additional information from the applicant may be required and, as such, time should be allowed in the hearing schedule to solicit this information and for the applicant to reply.

Having regard for the opinions expressed by the parties, the Board directs that the following schedule will be followed:

Filing Schedule	
Item	Date
Intervenors file Information Requests (IRs)	April 16
PCOSI responds to IRs	April 28
Intervenors file hearing submissions	June 9
PCOSI files a response to intervenor submissions	June 16
Hearing commences	June 23

The Board will issue notice of hearing in due course.

Dated in Calgary, Alberta, on March 27, 2008.

ENERGY RESOURCES CONSERVATION BOARD

<Original signed by>

J. D. Dilay, P.Eng.
Board Member

<Original signed by>

G. J. Miller
Board Member

<Original signed by>

B. T. McManus, Q.C.
Board Member

APPENDIX 1 PREHEARING PARTICIPANTS

Principals (Abbreviations used in report)	Representatives
Petro-Canada Oil Sands Inc. (PCOSI)	M. Ignasiak S. J. Christensen
Alexander First Nations Industrial Relations Corporation (AFN IRC)	J. Arcand
Northeast Sturgeon County Industrial Landowners (NESCIL) and the Citizens for Responsible Development (CFRD)	R. Secord T. A. Nahirnik E. T. Chipiuk
Stewart Shaw, Karen Shaw, and Kevin Shaw (the Shaws)	V. Alexander
Statoil Hydro Canada (Statoil)	R. Christie
North West Upgrading (North West)	D. Bertsch
Suncor Energy Inc. (Suncor)	S. Lee
S.V. Farms, S.V. Half Diamond Ranch, 267554 Alberta Ltd., and the J. Smulski Estate	K. Smulski
R. Hoehn	R. Hoehn
Total E&P Canada Ltd. (Total)	L. Wall
A. Wright	A. Wright
Energy Resources Conservation Board staff J. P. Mousseau, Board Counsel R. Germain	
