

Spotlight on the Oilsands:

A Summary of the Kearl Spill Hearings



By Aliénor Rougeot

The oil sands tailings ponds, once the subject of international scrutiny, were recently thrust back into the spotlight, after enjoying a few years of relative quiet. A toxic leak at Imperial Oil's Kearl mine, which the company covered up for nine months, prompted media headlines and a series of hearings in Ottawa. The hearings highlighted the systemic issues that exist in the entire oil sands industry, from government negligence to companies more concerned about their reputation than the well-being of Indigenous communities and the environment in the regions where they operate.

A leak, a cover-up, and a spill

Since at least May 2022, one of Imperial's tailings ponds at its Kearl mine has been leaking toxic sludge into the ground at significant volumes — enough for the waste to accumulate in the muskeg outside the boundaries of Imperial's lease and seep into the surrounding environment. Imperial noticed the accumulation of tainted fluids in May, and by June 3, the company confirmed to the Alberta Energy Regulator (AER) that it was contaminated with industrial wastewater known as tailings. The AER and Imperial did not notify the Indigenous nations within whose territories Kearl is situated, nor any other Indigenous nation living downstream, despite regularly discussing the disaster behind closed doors.

A subsequent incident in February 2023, resulted in the spill of an additional 5.3 million litres. The impacted area was an estimated five hectares — “enough tailings fluid to cover two city blocks up to a depth of 10 centimetres,” according to CPAWS

Northern Alberta. This large spill was too significant to ignore, leading the AER to issue a public notice on its website that also mentioned the previous leak. It was only then that the Indigenous nations, the federal government, the government of the Northwest Territories, and the public were informed about either of these incidents.

Déjà vu for Indigenous communities

Indigenous nations within the contaminated region were kept in the dark about the leak for nine months. These communities rely on food and water that pass through the affected territory. This means that community members were harvesting meat, berries, and other medicines from the territory while completely unaware of the risk of contamination. This lack of respect from Imperial and the regulator is outrageous, and when the news broke, fear took over the communities.

Jean L'Hommecourt, a member of Fort McKay First Nation whose family cabin is only 13 kilometres away from the Kearl site, told CBC, “I'm concerned about the moose I harvested, which is in my freezer right now, which I've shared with many people ... Now I have this fear of the long-term health effects that we are going to face.”

Chief Billy-Joe Tuccaro, from the Mikisew Cree First Nation, spoke to this fear during the parliamentary hearings: “My members are scared, we have people who are scared to drink the water.”

To truly grasp the level of fear this disaster evoked requires an understanding of context. These communities already experience higher-than-expected rates of various cancers, which the community

and local physicians associate with contamination stemming from oil sands operations. The communities and environment are exposed to chemicals from the tailings through multiple pathways, including the air, the wildlife they consume, and the ongoing seepage of millions of litres of tailings fluids, which are reaching groundwater and are suspected to also impact surface water.

Chief Allan Adam from Athabasca Chipewyan First Nation reminded Members of Parliament that the Imperial Oil disaster is far from an isolated incident: “It has been leaking tailings into our traditional territories for the last 11 months, let alone for the last 30 years. This is just what we know of.”

The toxic tailings in the oil sands cover 300 square kilometres of what used to be pristine boreal forest, now used as a dumping ground for more than 1.4 trillion litres of toxic sludge. Recent evidence shows that these tailings “ponds” (now larger than many lakes) were in fact designed with the understanding they would leak. While the industry claims to have an interception system for the expected seepage, industry data confirms they are not intercepting all of it.

Imperial is sorry they got caught

Imperial's CEO, Brad Corson, appeared in front of the parliamentary committee on April 20.

Corson came to the hearings prepared to apologize profusely for what he calls a “communication breakdown,” which was more appropriately called a “cover-up” by Indigenous community representatives and Members of Parliament. He was careful,

however, to avoid explicitly apologizing for his company's precariously disposing of billions of litres of toxic waste in pits that are designed to leak.

He and his team repeated the company's commitment to "operate in an environmentally responsible manner," a statement that contrasts not only with Imperial's performance in the oil sands but also with the pollution caused by their downstream operations in Ontario. Speaking to Imperial's presence on the St. Clair River near Sarnia, ON, Vanessa Gray, the Divestment Campaign Coordinator with Indigenous Climate Action, said: "In communities like mine, the Aamjiwnaang First Nation, Imperial is the oldest and highest emitting company ... This is a far-reaching issue where companies like Imperial Oil do not disclose the life-threatening impacts of the exposure of the chemicals they are responsible for."

Alarming, Brad Corson also attempted to shift part of the blame onto the staff of the Indigenous nations. Throughout his appearance, he said Imperial had used "established processes" to communicate with the nations but "did not speak directly with the Leaders." This statement could mislead one into believing Imperial had communicated about the leak, and that it was the nation's staff that didn't act accordingly. The truth is that Imperial hid for nine months the fact that they knew that tailings water was spilling, only telling the staff once in May 2022 that they had spotted discoloured water.

A self-regulating industry

Senator Rosa Galvez and numerous others have warned that our governments place a disproportionate amount of power in the hands of industry under the assumption that polluters know best how to deal with their pollution. This system creates a conflict of interest: companies are oriented to return profits, which means that there is an incentive to cut costs wherever possible. This results in environmental management practices that are designed for cost minimization, rather than environmental outcomes such as preventing pollution.

The Kearl leak is a clear example of the blind trust placed in the industry by our governments and regulators. While the

company was regularly updating the AER about the leak, the law states it is Imperial's responsibility to inform the impacted communities. The hearings revealed that the company chose not to share updates about the leak with the nations because "[their internal] investigation determined there were no impacts to fish populations in nearby river systems or risks to drinking water for local communities" and they "didn't want to go back to communities until [they] fully understood the situation and had a finalized plan."

The fact that industry calls the shots on what meets the threshold to be shared with directly impacted communities is a major flaw in how pollution is managed and brings into question the purpose of the AER in the first place. It is especially problematic when private companies are given more authority than the Indigenous nations, whose health and livelihoods are impacted by industry activities.

"If a leak can go unreported for 10 months at Kearl, what is happening elsewhere?" asked Chief Allan Adam, highlighting the fact that the rules that allowed this cover-up to take place have not been changed since.

Rethinking the regulator

Laurie Pushor, the head of the AER, also used his time at the hearings to apologize for his organization's handling of the situation. He, however, refused to answer questions about when the Government of Alberta was first informed of the leak, promising that an independent investigation launched by the regulator would answer these questions.

This incident adds to the mountain of evidence that the AER is failing to fulfill its mandate of keeping the industry accountable for the safety and sustainability of its operations.

"The Alberta system, when it comes to the Alberta regulator, is completely broken and should be dismantled," said Chief Allan Adam during the hearings. Dan Stuckless, who was representing the Fort McKay Métis Nation, said the regulator has "zero credibility outside of Calgary's echo chamber."

The affected Nations' calls to replace the AER were soon joined by a group

of Indigenous and environmental organizations who wrote an open letter to Prime Minister Justin Trudeau and Alberta Premier Danielle Smith demanding they work together to "dismantle the Alberta Energy Regulator and develop an independent regulatory system in which the decision-making authority is shared with the impacted Indigenous nations."

The fight continues

For the Indigenous nations impacted by the spill, the struggle doesn't stop there. "Summer's coming, there's going to be kids swimming in the lakefront ... who can give me certainty that when they go in the water in the springtime ... that they are going to be safe?" said Chief Tuccaro to the parliamentarians in attendance.

At the time of writing, Imperial Oil hasn't stopped the leak, and the Alberta Energy Regulator has not yet issued a certification confirming that the spill has been fully cleaned up. Our governments should ensure that production at Imperial Oil's Kearl facility is suspended until the company provides proof to the affected Nations that their industrial wastewater is not reaching, or is not at risk of reaching the environment. More wastewaters should not be produced while potential harm is ongoing.

Beyond the immediate dangers, the Imperial Oil incidents must result in a comprehensive overhaul of the way that the federal and Alberta governments regulate industrial activities. Indigenous nations must have regulatory authority over the approval of new projects and the cleanup of existing ones. All parties must work together to come up with a scientifically rigorous plan and timeline for the cleanup of the oil sands tailings ponds. Companies should be compelled to put aside the billions of dollars needed for cleanup costs, so that the responsibility doesn't become the burden of taxpayers. In short, the five-decade-long practice of letting industry self-regulate must stop, and this incident must mark the beginning of a new era of transparency, responsibility, and accountability.

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