

Honourable Naheed Nenshi
Leader of the Official Opposition

CC:
Sarah Elmeligi,
MLA Banff-Kananaskis
Shadow Minister for Environment and Protected Areas

Jodi Calahoo Stonehouse
MLA Edmonton-Rutherford
Shadow Minister for Forestry and Parks

Nagwan Al-Guneid
MLA Calgary-Glenmore
Shadow Minister for Energy and Minerals

Brooks Arcand-Paul
MLA For Edmonton-West Henday
Shadow Minister for Indigenous Relations

Feb 25, 2025

Re: We need a public inquiry into the Alberta Energy Regulator

Dear Naheed Nenshi,

New research from Dr. Kevin Timoney, published on January 3, 2025, demonstrates that the Alberta Energy Regulator (AER) is not fulfilling its mandate, and the public can no longer trust the regulator. The regulator has repeatedly failed to act in the public interest, ignoring tailings pond leaks, orphaned wells, and water security concerns. To add insult to injury, the AER's board recently appointed Rob Morgan, former CEO of an oil company which had 500 inactive oil and gas wells,¹ as the regulator's CEO. Appointing an oil executive to hold the industry accountable to Alberta's environmental standards shatters all hope of an effective and fair process. **We call on you, as the official opposition in the Legislature, the Alberta New Democratic Party (NDP) to hold the government of Alberta accountable and demand a public inquiry into the regulator's failures.**

Dr. Timoney's recent report analyzed data from 514 tailings spills reported in the AER's database that occurred over 10 years between 2014 and 2023 and compared the reported information against supplemental data on those spills obtained from the AER by a freedom of information request. It found that 97 percent of tailings spills were not inspected by the AER² – contradicting the AER's claim of routine spill inspections. The findings also show that for spill

¹ <https://thenarwhal.ca/roundup-alberta-energy-regulator/>

² Kevin P. Timoney, "Regulatory Failure to Monitor and Manage the Impacts of Tailings Spills, Alberta, Canada," *Environmental Monitoring and Assessment* 197, no. 2 (January 3, 2025): 125, <https://doi.org/10.1007/s10661-024-13416-1>.

sites where photo documentation is provided, approximately 41-54 percent of the sites show evidence of environmental harm – refuting claims from the AER that none of the 514 spills caused environmental damage.

This research demonstrates that the AER is failing at its mandate to “provide safe, orderly, and environmentally responsible energy development” – putting ecosystems, Indigenous Peoples, and Albertans in harm’s way by letting oil sands operators off the hook for numerous tailings spills.

Mounting evidence shows that the AER operates without sufficient public transparency, with minimal accountability, and that it has extraordinary discretionary powers which it uses to prioritize the interests of the industry it is responsible for regulating.

In February 2023, 5.3 million litres of tailings spilled from a storage pond at Imperial’s Kearl oil sands mine. Following this news, the AER issued a public notice stating that significant volumes of tailings had been leaking at the Kearl mine for nearly nine months, since at least May 2022. Neither the AER nor Imperial notified any of the Indigenous communities within whose territories the Kearl mine is situated, nor any downstream communities while this leak was happening.

On August 22, 2024, the AER announced that it had fined Imperial Oil \$50,000 for the Kearl incident, after concluding that Imperial had contravened two of its approval conditions. However, the AER had the authority to issue a much larger fine of at least \$1.3 million to Imperial Oil, but opted not to, giving the company a 95 percent discount on the fine³⁴.

Other recent examples of the AER prioritizing industry include:

- The AER’s decision to not reconsider its approval of Suncor’s flawed Operational Plan for the McClelland Lake Wetland Complex (MLWC), which poses a significant risk of irreversible damage to the unmined portion of the MLWC.
- The AER’s decision to review Northback Holdings Corporation’s applications for a coal exploration program on the Grassy Mountain coal deposit, despite the moratorium (now rescinded) on all new coal projects in the Eastern Slopes. The Alberta Court of Appeal is currently reviewing this decision, as there is evidence that the AER may have erred in its justifications for the review.
- The AER’s decision to not require an environmental impact assessment for the Pathways Alliance’s carbon capture and storage (CCUS) project. This decision was made by the AER despite the CCUS project including over 600 kilometres of pipeline, and an underground carbon storage area of approximately 18,000 square kilometres.

Taken together, these incidents represent a dereliction of duty by the AER to regulate Alberta’s energy industry in a safe and environmentally responsible manner. As other legal experts have previously concluded, the AER and its decision-making record bear the hallmarks of a captive

³ Alberta Wilderness Association et al, “Request for Reconsideration of Administrative Penalty Director’s Decision 202408-009” (November 27, 2024), <https://ecojustice.ca/wp-content/uploads/2024/11/2024-11-27-Request-for-Reconsideration.pdf>.

⁴ Drew Yewchuk, “Administrative Penalties at the Alberta Energy Regulator: Regulatory Penalties for the Kearl Oilsands Leak,” *ABlawg: The University of Calgary Faculty of Law Blog* (blog), September 4, 2024, https://ablawg.ca/wp-content/uploads/2024/09/Blog_DY_Kearl_Oilsands.pdf.

regulator, which “has prioritized its relationship with the oil and gas industry over accountability to the public.”⁵

Members of the Legislative Assembly must demand a public inquiry into the failures of the Alberta Energy Regulator. The inquiry must scrutinize the regulator's governance and operations to evaluate its effectiveness in fulfilling its mandate. Currently, 100 percent of the AER's Directors have ties to the energy industry. Industry cannot be trusted to regulate itself, and any entity responsible for making decisions related to Alberta's public resources should be independent and unbiased. The inquiry should make recommendations for reform to ensure the regulator is effective and fair and protects the health and safety of Indigenous Peoples, Albertans, and ecosystems.

We call on you, as leader of the Official Opposition, to ensure there is a thorough public inquiry into the Alberta Energy Regulator. The Government of Alberta is turning a blind eye to the failed regulator, leaving Albertans exposed to dangerous land, air and water contamination. The AER can no longer be permitted to operate with impunity for the benefit of corporate interests while polluting our rivers, destroying our landscape, and putting communities across Alberta in harm's way.

Sincerely,

Alberta Wilderness Association
Environmental Defence Canada
Keepers of the Water
Council of Canadians, Edmonton Chapter
Council of Canadians, Calgary Chapter
For Our Kids Alberta
Alberta Liabilities Disclosure Project
Canadian Association of Physicians for the Environment
Calgary Climate Hub
The Gravity Well

⁵ Drew Yewchuk, Shaun Fluker, and Martin Olszynski, “A Made-in-Alberta Failure: Unfunded Oil and Gas Closure Liability,” *The School of Public Policy Publications*, October 11, 2023, Vol. 16 No. 1 (2023), <https://doi.org/10.11575/SPPP.V16I1.77468>.