

# **AER Multistakeholder Tailings Regulatory Management Technical Advisory Committee (TAC)**

## **Draft Terms of Reference**

September 1, 2015

### **1 Background**

The Government of Alberta (GoA) released the *Lower Athabasca Region: Tailings Management Framework for the Mineable Athabasca Oil Sands (TMF)* on March 13, 2015. The *TMF* provides policy direction for the management and reduction of fluid tailings on Alberta's landscape. The Alberta Energy Regulator (AER) is responsible for developing and implementing requirements to achieve the *TMF*'s objectives and outcomes.

The AER responded to the release of the *TMF* by suspending *Directive 074: Tailings Performance Criteria and Requirements for Oil Sands Mining Schemes* while it conducted a thorough analysis of the new provincial framework to determine how best to implement it. On April 9, 2015, the AER announced that a new directive would be developed to manage the accumulation of fluid tailings and that *Directive 074* would remain suspended until it is replaced by the new directive. The AER expects oil sands mine operators to continue to proactively manage fluid tailings volumes while the new directive is finalized.

The AER engaged with different stakeholders in developing an initial draft of the new tailings directive. Stakeholders informed us that they believe that a more collaborative, technical approach is needed to increase the credibility tailings management. The AER is establishing a multistakeholder technical advisory committee on regulatory tailings management (TAC) to conduct a thorough review of the draft directive in conjunction with a 60-day public feedback period.

### **2 Mandate**

The TAC is established under the direction and authority of the AER president and CEO, Jim Ellis. The TAC's mandate is to conduct a thorough technical review of the draft directive and, using a consensus-based approach, provide recommendations to the AER on improving the regulatory management of tailings in the province.

As part of this mandate, the TAC is to identify any gaps or deficiencies in the directive, including those provided through the public comment period.

The TAC is to provide its recommendations throughout the process and within the given timeframe provided below to address gaps or deficiencies.

The following items are out of scope for the directive and outside of the TAC's mandate:<sup>1</sup>

- dam safety requirements
- regional monitoring (under the jurisdiction of the Alberta Environmental Monitoring, Evaluation and Reporting Agency)
- new measurement standards for reporting
- tailings policy development and *TMF* implementation work streams led by the GoA; ready-to-reclaim, Integrated water management, and Mine Financial Security Program.

### **3 Decision-Making Process**

The TAC will reach agreement on its recommendations through consensus. Consensus is achieved when each stakeholder agrees that they can support the outcome of a particular recommendation or action. Stakeholders may not achieve all their goals, but the optimal solution is in everyone's best interests and the solution does not damage or harm any stakeholder's interests. The resulting recommendations are likely to be more innovative and longer-lasting than those reached through traditional negotiation processes.

While the goal of the TAC committee is to reach consensus on its recommendations, items on which consensus is not reached will nevertheless be forwarded to the AER. Where consensus is not reached, the views of the various parties, including the pros and cons of their respective solutions, will be provided to the AER without attribution. The AER is the final decision-maker on regulatory requirements.

The TAC is not a substitute for public engagement on the draft directive. In addition to the TAC recommendations, the AER will consider comments provided by the public during the 60-day feedback period.

### **4 Committee Composition**

The TAC will consist of representatives from industry, environmental nongovernment organizations (ENGOs), First Nations, Métis, municipalities, community-based groups with direct interest in tailings management, and the AER. The group size and balance of stakeholders will be determined by stakeholder response, but to ensure that the process is manageable and productive, the AER is recommending the TAC should not exceed 16 members.

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<sup>1</sup> Addressing out-of-scope matters will be discussed by the TAC at the first meeting, and a committee recommendation will be incorporated into the meeting ground rules or the TAC terms of reference.

Subject matter experts may be invited to provide input where their specific expertise would enhance the committee's understanding of a matter related to fluid tailings management.

The GoA will be invited to participate as an observer to the TAC and will be included in distribution of meeting documentation.

## 5 Expectation of Committee Members

- Members will respect confidentiality; it is expected that members will express a diversity of views as they collectively explore the nature and extent of risks associated with proposed regulatory changes. To ensure dialogue is open and meaningful and to develop trust, members must agree to respect the transitory and confidential nature of conversations. There will be expectations with regards to confidentiality and attributing specific conversations without prejudice to the parties.
- Members will represent their stakeholder group or organization and have authority to speak on behalf of the stakeholder sector.
- Members should have in-depth knowledge of fluid tailings management issues and strong familiarity with the *TMF*.
- Members should be committed to seeking mutual understanding of each other's interests and contributing to an environment where participants can work together in a meaningful and collaborative way to create mutually satisfactory solutions.
- Members will actively participate. If a member is unable to attend a meeting, they may send an alternate from their respective organization or group.

## 6 Meeting Organization and Support

The TAC will select co-chairs from among its members at its initial meeting. The co-chairs and the AER lead will form a committee leadership team (CLT). An independent meeting recorder will be present at all committee meetings to document the discussion.

### TAC Committee Member Responsibilities

#### Co-chairs

- Develop agendas for TAC meetings.
- Provide leadership and ensure the effective operation of the committee.
- Serve as committee spokespersons, if required.

### **AER Lead**

- Collaborate with other CLT members to develop meeting agendas.
- Provide leadership and ensure the effective operation of the committee.
- Serve as committee spokespersons, if required.
- Ensure there is appropriate AER subject matter expert participation.
- Participate in formulation or consensus decisions regarding recommendations

### **All TAC Members**

- Participate in formulation or consensus decisions regarding recommendations
- Ensure that action items are executed.
- Ensure key discussion points and areas of agreement/disagreement are accurately captured and executed.

### **TAC Committee Support or Non-members**

#### **AER Facilitator(s)**

- Provide guidance to help members have productive and meaningful conversations.
- Encourage listening and ensure that all members in the room have opportunities to participate.
- Help the group get beyond positions and instead understand interests.
- Help the group identify innovative solutions that address common interests.
- Focus on an effective meeting process, including collaborating with other CLT members to develop meeting agendas.
- Act as point person for logistics, with assistance from other AER staff as required.
- Ensure that the TAC members have meeting materials in advance of meetings.
- Be content neutral on substantive issues and impartial towards the parties.

#### **Meeting Recorder**

- Track meeting attendance.
- Document discussions.

- Capture action items and key discussion points, including meeting highlights, in meeting minutes.
- Assist with reporting, as required.

## Others

### Government of Alberta

- Be invited as an observer by the AER
- Help clarify the policy intent of the *TMF*.
- Follow expectations of confidentiality that apply to TAC
- Participate in a way that supports the mandate and timelines of the TAC.

### Additional subject matter experts

- Be invited by the AER.
- Follow expectations of confidentiality that apply to TAC
- Participate in a way that supports the mandate and timelines of the TAC.

## 7 Timelines

The AER anticipates that the committee will meet for five two-day workshops between September and November 2015. There may also be a one-day oil sands site tour, based on a needs assessment by the TAC. Timelines must align with the AER's commitment to release a fluid tailings management directive by the end of 2015. The TAC must conclude the directive review no later than November 13, 2015.

The following dates are **tentative** and will be adjusted based on feedback, release of the draft directive, and progress of the committee:

- September 23–24, 2015
- October 7–8, 2015
- October 21–22, 2015
- November 4–5, 2015
- November 12–13, 2015

Optional: One additional day for a facility tour.

The AER may request the TAC to meet in 2016 as the AER updates and issues a second version of the directive.

## **8 Member Compensation**

Members who are otherwise not compensated for their time on the TAC will be provided with an honorarium and are entitled to reimbursement by the AER of nominal expenses incurred as a result of their participation according to the following guidelines:

- Meeting attendance honorarium: \$125/half day, \$250/full day
- \$106 preparation time per meeting and \$106 follow up time per meeting (if required pending AER approval)
- Travel expenses; Mileage: \$0.505/km or flights;
- Meal allowance: \$41/day maximum (with receipt); lunch and refreshments will be provided during meetings
- Overnight accommodation: \$220/night maximum (with receipt); one night for each day of meetings
- Parking payable with a receipt