A COMPARISON OF DIFFERENT REGULATORY APPROACHES, ANALYSIS OF THE RELATIVE BENEFITS OF COMMAND AND CONTROL, REFLEXIVE LAW AND SOCIAL LICENCING IN ENSURING OIL INDUSTRY COMPLIANCE WITH ENVIRONMENTALLY SUSTAINABLE PRACTICES AND OBLIGATIONS

BY

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A thesis submitted in conformity with the requirements for the Master degree (LLM)
Faculty of Law
University of Toronto
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Abstract

This paper explores the relative benefits of command and control, reflexive law and social licensing in ensuring oil industry compliance with environmentally sustainable practices and obligations. Recognizing why oil sands and their development are significant, the background and development are reviewed first, and then the focus is shifted to look at its economics including the benefits, uncertainties and environmental costs of development.

This paper examines how lawmakers in Canada have failed to meet their respective obligation. Drawing on environmental provisions, case law and legal scholars’ articles, books and reports, this paper examines the very problematic issue of oil sands regulation. It proposes to provide an in depth analysis of each regulatory forms and their application to the oil sands. It concludes that in order to solve the oil sands regulation challenges, a collaborative stringent enforcement of regulation from both federal and provincial governments, oil industry and public Pressure is required.
Acknowledgments

I would like to express my very great appreciation to my supervisor professor Andrew Green for his valuable and constructive suggestions during the planning and development of this research work. His willingness to give his time so generously has been very much appreciated.

I want to thank the University of Toronto, Faculty of Law for the opportunity to study at an outstanding university and for providing the financial means and facilities.

I would like to acknowledge and extend my heartfelt gratitude to the following persons, Ms. Julia Hall, Professor Jutta Brunnée and the staff at the graduate writing centre for their advice on my writing throughout the past year.

I also want to thank my family for their kindness & endless love, through the duration of my studies.

This paper is dedicated to the Canadian children who I hope will have more respect for the environment and will have the intellectual growth to protect and serve it as it has always served us.
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INTRODUCTION

0.A. WHY ARE THE OIL SANDS SIGNIFICANT? IS THERE A PROBLEM WITH THE REGULATION OF THE OIL SANDS?

In the past Canada has been considered as an admirable country and has enjoyed a great international reputation and influence, undeniably at present the situation is widely divergent. Canada is no longer considered as an environmentally progressive nation. Canada’s position has changed from a key player in international environmental protection to being recognized as a supporter of multinational oil companies. Canada was a responsible affiliate of the Intergovernmental Panel on Climate Change (IPCC) and one of the countries that initiated the Climate Change Convention at the Rio Earth Summit twenty years ago. Unfortunately, Canada became known for an unwise decision, ranked as the first country in the developed world to formally abandon the Kyoto Protocol in 2012.1 Many Canadians are embarrassed about the direction that their country is taking. There are many critics at the national and international levels criticizing Canadian policies on many issues including the global climate change. In Canada the main industry contributing to the Greenhouse gas emissions (GHG) and consequently to global warming is the oil sands industry.

This paper explores the relative benefits of three forms of regulation for oil sands -- command and control, reflexive law and social licensing -- in ensuring oil industry compliance with environmentally sustainable practices and obligations. This paper considers that the collaborative stringent enforcement of regulation forms such as government control, industry self-regulation, and public pressure could respond to the environmental challenges facing oil sands regulation.

An overview of the three forms of regulation is given before an in depth discussion of each type in the following sections.

First, Command and control approach is known as the direct regulation, through which environmental standards are imposed and sanctions are given. The federal and Alberta’s provincial governments are in charge of enforcing command and control regulation on the oil sands industry. This regulation’s objective is to reduce the impact of harm done to the environment. Command and control regulation is the laws established by the government. This regulatory technique has been extensively criticized.

In terms of the command and control regulation of the oil sands, many have called into question the actions of the government. The Canadian government has been lobbied consistently by the oil sands industry.\(^2\) The federal and Alberta governments have not restricted their role to imposing rules; they have in addition partaken in and advocated for the development of oil sands, subsequently this has caused many to question the reliability of their regulatory functions. Given the criticisms of government regulation of oil sands, a new regulatory method became necessary: the reflexive law approach.

The second regulatory approach discussed in the paper is Reflexive law, which is an alternative approach that grants access to more useful and more efficient environmental regulation. Reflexive law is essentially convincing corporations to adopt a process of self-reflection, to consequently, encourage corporations to self-regulate.\(^3\) Reflexive law supports businesses’ ethical environmental actions by providing useful motivation for responsible behaviour.\(^4\) Reflexive law’s self regulation encourages the oil industry to take voluntary measures. Thus far industry’s self regulation has been very limited and more focused on technology based innovations.

Oil corporations are not only ruled by government and self-regulation. The third form of regulation has been branded as Civil regulation, which is societal pressure applied to oil corporations to behave in an environmentally acceptable way. Social pressure and expressed public opinion produced by civil society can positively impact the oil sands industry’s environmental behaviour, particularly greenhouse (GHG) emissions, and government policies surrounding the industry in the form of social licence regulation. Murphy and Bendell argue that civil regulation is where organisations of civil society set the standards for business behaviour. It is left to the discretion of the oil corporations whether they choose to accept those standards or not. Peter Newell maintains that the wide series of protests and society-based efforts to apply social control over capital are expressed as civil regulation. Many groups are working hard to protect the environment affected by the oil sands development.

Recognizing why oil sands and their development are significant, this paper first reviews in (Section 1) the importance of the oil sands, the background and development. (Section 2) will then attempt to look at the economics of oil sands including the benefits, uncertainties and environmental costs of development. (Section 3) will subsequently discuss command and control as a regulatory approach and its application, history, practices and policies. Next (Section 4) will consider the reflexive law approach and its application to the oil sands. (Section 4) will explore social licence regulation and its effects and applicability to oil sands. (Section 5) ultimately, discuss the three forms of regulation and their relevance to oil sands across the sections.

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SECTION 1 - BACKGROUND ON OIL SANDS

1.A. BACKGROUND ON OIL SANDS

The Aboriginal People discovered the oil sands, applying the tar to waterproof their clothing and canoes many years go. Oil sands (or tar sands) are deposits of bitumen containing thick black oil that can be transformed into crude oil. Crude bitumen is the technical term for the fossil fuel extracted from the oil sands. The world’s two largest sources of bitumen are Venezuela and, second in size, Alberta, Canada.\(^9\) Alberta’s oil sands cover an area of approximately 140,200 kilometres in the Athabasca, Peace River and Cold Lake regions, representing nearly 23 percent of the province and an area larger that the entire state of Florida.\(^10\)

It is estimated that these Alberta reserves contain between 1.75 and 2.5 trillion barrels of oil.\(^11\) With current technology, about 200 billion of those barrels are recoverable at a rate of approximately 20 million barrels per day.\(^12\) These reserves would satisfy Canada's own petroleum needs for the next 475 years\(^13\) and increase Canadian exports to the United States by 90 percent.\(^14\) Since 2010, 200 billion dollars has been invested in the oil sands, which has caused it to become the biggest energy project on the planet.\(^15\)

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9 Alberta Department of Energy. *What is Oil Sands* online: <http://www.energy.gov.ab.ca/OilSands/793.asp>
11 *Ibid.* While estimates vary, that by the Alberta Energy and Utilities Board (EUB) suggests that the oil sands contain approximately 1.7 trillion barrels of crude bitumen but predicts that only 19 percent of this total or 315 billion barrels will ultimately be recovered. See Alberta Energy and Utilities Board, *Ibid.*
Section 2 - ECONOMIC BENEFITS OF OIL SANDS

2.A. ECONOMIC BENEFITS OF OIL SANDS

From an economic and international trade perspective, oil sands would seem to be beneficial for Alberta and Canada and of significance to the world. The United States Energy Policy Development Group has referred to Alberta’s oil sands as “a pillar of sustained North American energy and economic security.”16 Currently, 46 percent of Canada’s oil production is from the oil sands,17 with a 2007 baseline output estimated at approximately 1.2 million barrels of oil per day (bpd)18 and production increasing steadily. The Canadian Energy Research Institute has roughly calculated that from 2000 to 2020 oil sand production would increase the gross domestic product (GDP) to $885 billion divided among Canada and other countries, with $634 billion accruing to Alberta.19

Looking ahead to 2020, production forecasts vary.20 Estimating conservatively, the Canadian Association of Petroleum Producers (CAPP) predicts that production will increase to 180,000 barrels per day yearly to achieve a total of 3.2 million bpd. More ambitiously, oil companies anticipate an increase to 380,000 bpd yearly reaching 5 million bpd by 2020. According to Andrew Potter, managing director, institutional equity research at CIBC World Markets, “Oil sands companies that are

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making big capital allocation decisions have to be that much more confident in the macro
environment to hit the [start] button;" CIBC suggests that 270,000 bpd yearly is a realistic expectation.
Their cautiously optimistic estimate suggests that by the year 2020 production will rise to 4 million
barrels per day, when oil sands corporations intend to produce one-sixth of the amount of oil the
OPEC produces on a daily basis. At the same time, there are many barriers that could reduce
production by millions of barrels per day. One such obstacle is transportation.

The transportation of synthetic crude oil and bitumen from oil sands producers to refineries is
achieved via a group of pipelines that begins in Fort McMurray and travels to Edmonton and
Hardisty, Alberta. Although some processing takes place in Alberta, the majority of the oil sands
product is transferred to Ontario, the Midwest and Rocky Mountain regions of the United States,
British Columbia and Washington State.

Several new proposed pipelines would maximize the export potential of the oil sands. One, put
forward by Enbridge, would travel from Fort McMurray to Edmonton and then to a deep water
marine terminal in Kitimat, British Columbia. This "Gateway Pipeline" would allow the exporting of
synthetic crude oil for sale to foreign markets in California and the Asia-Pacific region, mainly China.
FortisBC Energy is contemplating its own pipeline to Kitimat in direct competition with Enbridge as
well as developing plans to maximize the potential of the Trans Mountain pipeline. CIBC’s Potter
comments, "Even if Keystone XL, Trans Mountain, Northern Gateway and the tentative TransCanada

21 Reguly, supra note 18.
22 Hussain, supra note 20.
23 National Energy Board, supra note 13 at 32.
24 A small industrial and forestry town in the Coastal Mountains at the mouth of the Kitimat River.
25 For more information on the proposed Gateway Pipeline, see <http://www.enbridge.com/gateway/>.
Online: <http://www.cosi.ualberta.ca/en/~media/cosi/News/Documents/pdfs/OilsandsTechnologyRoadMap.ashx>
27 J. Mawdsley, J. Mikhareva, & J. Tennison, The Oil Sands of Canada - The World Wakes Up: First to Peak
Oil, Second to Canada’s Oil Sands (research report) (Raymond James Equity Research, 2005), online:
We Coast Line were all built, there would still not be enough pipeline capacity to handle planned growth through 2020.\textsuperscript{28} Importantly, there is noteworthy environmental opposition to the above mentioned propositions -- as there is to oil sands' development in general. The building of the pipelines and the employment of oil tankers necessitate lifting the moratorium on oil tanker traffic along the Pacific Coast. (More broadly, the oil sands' development has caused controversy for its high use of fossil energy and associated greenhouse gas emissions, further discussed below.)

2.B. ECONOMIC UNCERTAINTIES OF OIL SANDS DEVELOPMENT

Despite potential rewards, insecurity and ambiguity are also associated with expenditure on oil sands developments. A main reason is unrest in the Middle East. While oil prices are currently high as a result, \textit{if the Israel-Iran conflict is resolved, analysts anticipate that crude oil prices will fall, making Alberta-based investment less attractive. Enormous fuel stockpiling in Asian nations also contributes to the global uncertainty}.\textsuperscript{29}

\textit{The global economic downturn is another factor that is reducing demand for fuel. In mid-August 2012, the International Energy Agency reduced its estimates for global oil demand for several years, and for 2013 in particular trimmed 400,000 bpd from projected demand as a result of a “worrying slowdown.”}\textsuperscript{30}

Another problem for oil sands development is that prices for sales to the US tend to be variable as a result of instabilities in supply, resulting in occasional gluts and necessary discounting. In particular,

\textsuperscript{28} Hussain, supra note 20.
\textsuperscript{29} Alberta Energy and Utilities Board, supra note 13 at 2
CIBC points to the problem of Western Canada Select’s price discount to West Texas intermediate (WTI). Based on CIBC’s prediction, a decrease in oil prices to $70 per barrel would mean that return on development costs is not sufficient to warrant production of nearly a million barrels per day. Despite the fact that low-cost steam-assisted gravity drainage producers (SAG-DP) can function in a $43 per oil barrel situation, those engaged in upgraded mining will require $83.30 per barrel to manage, presuming a 15 percent discount to WTI.\(^\text{31}\)

Furthermore, labour problems can add to uncertainty and increase costs. As Mr. Gertz Carmen Valasquez, associate director of global oil at IHS CERA states: “One of the things we have learned from the last cycle in 2008, was we experienced labour shortages and had to bring in foreign workers\(^\text{32}\) and we saw cost escalation. But at that time, cost escalation was higher than this time around, and I feel we are [now] being proactive. When I talk to construction contractors, a lot of them are bringing in foreign workers.\(^\text{33}\)

These uncertainties are causing investors to re-consider oil sands investment. Despite some circumstances favourable to investment, such as all-time low cost of capital and low assessments, CIBC’s Andrew Potter questions the profitability of oil sands and reports “a cooling off period in [mergers and acquisitions or] M&As, no question about it, and it will continue to cool.”\(^\text{34}\) Some companies, taking note of the current situation, are making changes accordingly: Canadian Natural Resources cut its capital expenditure by 10 percent, or $700-million in 2012, while Suncor is reviewing

\(^\text{31}\) Hussain, supra note 20.
\(^\text{32}\) IHS estimates Canada will need at least 12,000 foreign workers to meet rising demand by 2014-2015, which could further add to producers’ costs.
\(^\text{33}\) Hussain, supra note 20.
\(^\text{34}\) Ibid.
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its $1.75-billion joint venture deal with France's Total E&P.\textsuperscript{35} In July 2012, Suncor chief Steve Williams commented, "In principle, there is the opportunity to not progress those projects. It is possible to withdraw."\textsuperscript{36} From an environmental perspective, this would be good news.

\textbf{2.C. ENVIRONMENTAL COSTS TO OIL SANDS DEVELOPMENT}

The global community and some corporations have identified climate change as one of the major problems of the twenty-first century.\textsuperscript{37} Scientists agree that by the year 2050, humans need to decrease carbon dioxide emissions in order to prevent chaos and save the planet and the life that exists here. Otherwise, a species-threatening disaster is probable.\textsuperscript{38}

Canada is implicated in global climate change through our overwhelming consumption of resources. Compared with other industrialized countries and OECD countries in particular,\textsuperscript{39} Canada is among the highest energy users, considered a high intensity user due to extensive industrial development, enhanced use of fossil fuel for electricity generation, growth in energy consumption in the transportation area and expansion in fossil fuel production for export.\textsuperscript{40} The ratio of Canada's

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\textsuperscript{37} Ian Bremmer, SHAPING THE POST-CRISIS AGENDA, online: <https://members.weforum.org/pdf/YGL/editorials/bremmer.pdf>.
\textsuperscript{38} JP. Bruce & I Burton & I Egner, DISASTER MITIGATION AND PREPAREDNESS IN A CHANGING CLIMATE, Environment Canada online: <http://www.iclr.org/images/Disaster_mitigation_and_preparedness_in_a_changing_climate.pdf>.
\textsuperscript{40} Idib
\end{flushright}
emission of greenhouse gases to gross domestic product is 25 percent higher than that of all other
industrialized countries.⁴¹

Environmentalists worldwide maintain that Canada has the responsibility to lessen our GHG emissions
in order to decrease the carbon intensity of our economy, an obligation that is in direct conflict with
oil sands development. The process of developing oil sands into crude oil is said to be more GHG-
intensive than producing conventional light or medium crude oil.⁴² Thus far the alternatives and
solutions considered by the global and Canadian public policy have not brought us even close to 80
percent reductions in greenhouse gas and have caused many to question whether we can manage to
decrease our carbon dioxide emissions as much as required. In order to successfully deal with this
issue, governments, the oil sand industry, environmentalists and public stakeholders must work
together, demonstrating responsible leadership and planning and cooperating within a multi-faceted
regulatory environment.

The three basic models of environmental regulation of business are command and control, reflexive
law, and social license, each discussed in turn below.

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⁴¹ Kevin A. Baumert. World Resources Institute, Climate Analysis Indicators Tool (CAIT) Version 2.0 (2005), online:
<http://www.ccap.org/docs/resources/234/Baumert_CAIT-Nov04.pdf>. Here the industrialized world is taken to comprise the member countries of the Organization for Economic Co-operation and Development (OECD).

⁴² K. Bim & P Khanna, A discussion paper on the oil sands: challenges and opportunities, Natural Resource Canada (2010),
SECTION 3 - COMMAND AND CONTROL REGULATION

3.A. COMMAND AND CONTROL REGULATION

In use since the 1970s, command and control has become the main form of regulation used by developed countries to battle environmental issues and has proven effective in so doing.43 "As its name suggests, [c]ommand and control achieves environmental protection by ordering regulated individuals and institutions to behave in a specific manner"44 with any violations triggering penalties. Via performance-based regulation, command and control regulations impose limits -- for instance, to emissions of pollutants -- in general by way of a system of government issued permits.45 Technology-based regulation is a second form of command and control. It advocates the use of pollution control mechanisms for example emission control technology.46

Endorsed by industry for reasons such as clarity, reliability, and predictability of consequences,47 command and control has proven effective in controlling pollution.48 Command and control regulations signal to businesses -- particularly to hard-to-regulate small and medium enterprises (SMEs), discussed below49 -- that certain practices are unacceptable.50 But, by also making clear what

45 Ibid at 8.
48 Ibid.
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is acceptable, command and control regulations identify criteria for and encourage a firm’s success and, more broadly, help establish a steady and predictable business environment. It is generally believed that when the business environment is stable, a firm’s information costs to the extent of breaches of regulations within a country will decrease, as will a regulator’s administration costs. The cost is the cost of compliance and expense of enforcement.

Command and control regulation can also be preferred by governments, since these latter can be seen by their electors to be shielding the environment and dealing with any bad behaviour committed by firms.

From an environmental perspective, a major criticism of command and control regulation is that it is not comprehensively effective: that is to say, that firms decrease their environmental emissions only if and when they are forced to do so by law or if they believe that their noncompliance will be noticed and penalized. Other criticisms include inefficiency, costliness of maintenance, ineffectiveness of communications at international level, and lack of flexibility with respect to the size of the firms involved. Since command and control applies a blanket guideline to all players, its stipulations may not be achievable by smaller, less affluent firms or by well-established firms whose older, non-

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compliant equipment can't be affordably replaced. But on the other hand command and control regulations can be adopted to size/type of corporations.

Over-complexity is also another accusation levied at command and control regulations, whose great number is confusing to both industry and regulators. Orts reported that in the 1990s, the United States had over one hundred separate environmental models and statutes that ran to thousands of pages, confounding law enforcers, promoting the application of heavy penalties as a sign of credibility, and backhandedly encouraging the growth of a criminal environmental industry. Orts summarizes: “When a body of law becomes so complex and arcane that it cannot even be known, let alone fully complied with or enforced, one cannot hope that its objectives will be realized.”

Significantly challenged to stay up-to-date with new scientific and social knowledge in the context of the present world environmental realities, command and control is considered too static and unable to adjust to new circumstances. Policy makers tend to reinforce what already exists via a kind of accumulative decision-making process.

Perhaps most crucially, a command and control regulatory system is criticized for limiting innovation and entrepreneurship: firms have no incentives to exceed compliance, develop new and potentially more effective technologies or in any way deviate from the set goal.

\[61\] Gunningham & Grabosky, supra note 13.
\[62\] Orts, supra note 10.
\[63\] D. Farber, “Environmental Protection as a Learning Experience” (1994) 27 LoyLALRev at 791.
\[64\] Orts, supra note 10.
\[67\] Tietenberg, supra note 23.
With so much criticism suggesting that the command and control approach is not adapted to the complexity and diversity of our constantly developing society, it was necessary to institute a new regulatory approach: the reflexive law approach, which is a self-regularity approach and would be explained in next chapter.

3.B. COMMAND AND CONTROL REGULATION OF ALBERTA'S OIL SANDS: HISTORY, PRACTICES AND POLITICS

This section of the paper, explores the history, practices and politics of command and control regulation in the development of Alberta’s oil sands (sometimes called tar sands). As will be seen, when it comes the oil sands, the Canadian and Alberta governments have not limited their role to regulating; they have also participated in and supported the development of oil sands projects, ultimately calling the integrity of their regulatory practices into question. They can be seen to be 'setting the fox to guard the henhouse' rather than safeguarding our shared environment for future generations.

Government rhetoric has been that on a global scale the greenhouse gas (GHG) emissions and the environmental damages of the Alberta oil sands are small and that the economic benefits of development are huge, despite scientific claims to the contrary. It can thus be asserted that the Alberta oil sands are preventing the enforcement of proper environmental policies and emissions reduction within Canada, which affects Canada’s role in reducing global climate change. Further,
Canadian and Albertan regulatory practices also prepare the ground for additional extraction and refinement of different fossil fuels on a global dimension and that would increase GHG emissions from consumption of fossil fuels rather than set the stage for conversion to renewable energy, clean "transportation and energy supplies". As Andrew Nikiforuk, author of *Tar Sands: Dirty Oil and the Future of a Continent* asserts: “The more a nation becomes dependent on a single resource such as oil, the less democratic it becomes over time. Oil begins to make the decisions. You introduce these incredible political imbalances to the system that slowly and incrementally change the very character of your democracy.”

This paper will show how tar sands oil in particular has affected and continues to impact policy at both the federal and provincial levels.

### 3.C. JURISDICTION OVER ENVIRONMENTAL ISSUES

When Canada was created in 1867, the environment represented neither a social nor an economic concern and so jurisdiction was allocated to neither the federal nor the provincial levels of...

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2100. “It doesn’t have to be this way. If politicians agree to cut emissions by 3 percent every year, the world can limit temperature rise to a ‘safe’ 2°C”, says the UK’s Met Office [CLIMATIC CHANGE Volume 35, Number 4 (2012), 397-414, DOI: 10.1007/BF03419381].


government. When the matter was raised in the Supreme Court of Canada decided that both levels of government are responsible for our environment and may adopt regulations.\textsuperscript{72}

More specifically, the Canadian federal government exercises authority over natural resources as both proprietor and legislator,\textsuperscript{73} and in so far as concerns related matters such as trade, commerce and taxation. Provincial powers over natural resources stem from Section 109 of the \textit{Constitution Act, 1867}, which grants the provinces ownership of lands within their borders and was intended at Confederation to provide a key source of revenue for the provinces.\textsuperscript{74} Thus, each province has authority over property and civil rights\textsuperscript{75} and over exploration for, and conservation and management of, natural resources within its provincial boundaries.\textsuperscript{76}

Today there exists considerable areas of overlap between provincial and federal jurisdiction. As Cairns explains: "...[the] practice has been for the provincial governments to have the major role in resource management, subject to federal control of interprovincial and international trade. A fundamental problem, however, is that it is not really possible to separate the two. Inescapably, resource management affects resource trade, and trade policy affects resource management."\textsuperscript{77}

\textsuperscript{72} G. Cornelis van Kooten, Anthony Scott, Constitutional Crisis, the Economics of Environment, and Resource Development in Western Canada, Canadian Public Policy / Analyse de Politiques, Vol. 21, No. 2 (Jun., 1995), pp. 233-249
\textsuperscript{75} Constitution Act, SC 1867, s 92(13).
\textsuperscript{76} Constitution Act, SC 1867, s. 92A(1).
\textsuperscript{77} Cairns, \textit{supra} note 74 at 56.
Thus, the very nature of federalism\textsuperscript{78} dictates that the management of natural resources has been and continues to be a point of overlapping concern for (and even potential conflict between) varying levels of government. Alberta’s oil sands have been no exception, with a myriad of regulators affecting business behaviour. At the federal level, these include Environment Canada, the Department of Oceans and Fisheries and Transport Canada, as well as the National Energy Board (NEB). At the provincial level, the regulators include Alberta Environment (AENV), the Energy Resources Conservation Board (ERCB) and Alberta Sustainable Resource Development (ASRD).

As will be seen below, with respect to oil sands’ development the relationship between the two levels of government regulators has fluctuated between cooperation and conflict. Of course, industry has wielded and continues to exert influence on governments and regulators; since the 1990s, other stakeholders such as NGOs, activists, environmentalists and scholars have attempted to do the same, so far with little influence.

3.D. GOVERNMENT REGULATION OF OIL SANDS

3.D.1. FEDERAL REGULATION

Historically, oil sand industry regulation by the federal government can been described as \textit{laissez-faire}, with two exceptions. The first exception occurred in 1943 when the federal government took

\textsuperscript{78} Federalism can be defined as a system which divides constitutional power between different levels of government in such a way that neither is subordinate and each may exercise within its sphere the full extent of its powers. See W. S. Livingston, "A Note on the Nature of Federalism" (1952) 67: 1 \textit{Political Science Quarterly} 81.
over the northern Alberta Abasand plant\textsuperscript{79} under a War Measures Act, but ultimately was unsuccessful in directly regulating oil sands development.\textsuperscript{80} The second exception was in 1980, that is, right after the energy crisis of the late 1970s. Then, Liberal Prime Minister Pierre Elliott Trudeau initiated and ratified the creation of the National Energy Program (NEP) whose official goals were "To establish the basis for Canadians to seize control of their own energy future through security of supply and ultimate independence from the world market; To offer to Canadians, all Canadians, the real opportunity to participate in the energy industry in general and the petroleum industry in particular, and To share in the benefits of industry expansion; to establish a petroleum pricing and revenue-sharing regime that recognizes the requirement of fairness to all Canadians no matter where they live."\textsuperscript{81} Some historians interpret the creation of the NEP as "first and foremost a political act intended simultaneously to change the structure of power between Ottawa and the provinces and between Ottawa and the oil industry."\textsuperscript{82} Certainly, the federal government's actions spurred tension with the Alberta provincial government and proved counterproductive to development.\textsuperscript{83}

In 1968 the federal government assessed the current oil sand region for prospective resources.\textsuperscript{84} Although there was a forceful demand from London for Ottawa to start the development of oil, the Canadian government at the time lacked the resources and funds. Hence, the federal government privatized the development of oil sands. Initially, Ottawa controlled the development of oil sands; however, as time went on its regulatory control lessened.\textsuperscript{85} The federal government originally had the

\begin{footnotesize}
\begin{enumerate}
\item Jenkins, supra note 81.
\item Chastko, supra note 80.
\item Cairns, supra note 74.
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intention of investing in oil sands and making them profitable, but instead turned to corporations to
develop this natural resource, using an incentive approach.

In the mid 1990s Ottawa established a 100 percent tax deduction on capital investment via an
accelerated capital cost stipend for oil sand corporations. This encouraged privatization and
development by corporations rather than promoting direct investment in environmental preservation
and care and signalled a further federal remove from participation in oil sands development.

The next major benchmark with respect to oil sands' federal regulation came in 2007, a critical year in
environmentalism: public opinion polls classified the environment as the number one concern for
Canadians. At that time, British Columbia began preparation for North America's first economy-wide carbon tax and Alberta started charging big polluters for their emissions.

The Federal Government led by Steven Harper released a plan to battle climate change, described by
Harper as "perhaps the biggest threat to confront the future of humanity today." The federal
government seemed interested in protecting the environment. "Canada may be a small contributor to
global warming," he added, "But we owe it to future generations to do whatever we can to address
this world problem." The federal government's initial climate change strategy was to reduce
Canada's carbon footprint to 282 megatons between 2008 and 2012. However, he later recanted: in

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86 A. Taylor, Thinking Like an Owner: Fact Sheet - Overhauling the Royalty and Tax Treatment of Alberta’s Oil Sands (Fact Sheet) (Drayton Valley, Alta: The Pembina Institute, 2006).
87 Chastko, supra note 80.
88 A. Taylor, M. Bramley & M. Winfield. Government Spending on Canada’s Oil and Gas Industry - Undermining Canada’s Kyoto Commitment. (Fact Sheet) (Drayton Valley, Alta: The Pembina Institute, 2005).
90 A report Vaughan released; G Dembicki, On Oil Sands, Ottawa’s Not Hearing What Alberta’s Saying (27 June 2012) online: <http://thetyee.ca/News/2012/06/27/Ottawa-Alberta-Oil-Sands-Policy/>.
2011 the amount of the planned reduction was lowered to less than 10 percent of the original goal, to 27 megatons to be achieved in the same time frame.\(^91\)

This earned the Canadian government the disdain of environmental groups including the Climate Action Network and the Tar Sands Group, which declared “Canada is the only country in the world to ratify a Kyoto Protocol target and than simply walk away from it ... while embarking on a massive increase in global warming pollution – up more than 26% since 1990 at a time [2007] when Canada was supposed to be reducing emissions by 6%.... The reason for the disconnect between Canada’s positive historical reputation and its current poor performance is the Tar Sands.”\(^92\)

In other words, the Canadian government was seen to be kowtowing to business interests that would develop the resources of the oil sands.

Retaliating to such criticisms, the Conservative Minister of Natural Resources Lisa Raitt commented, “…there have been a number of well-orchestrated media campaigns, restrictive legislative and regulatory proposals that associate oil sands with ‘dirty oil.’ There is a need to ensure the Government is more proactive in providing accurate and factual information to address those views.”


\(^92\) Climate Action Network Canada, the Tar Sands Group, Tarnishing the Maple Leaf: How the Tar Sands Drive Canada’s Climate Positions (December 2009) 2,4. Online: http://climateactionnetwork.ca/archive/e/publications/tarnishing-the-maple-leaf.pdf In 2008, Canada's GHG emissions were 24 percent higher than in 1990 and 30 percent higher than the country's KYOTO commitments. While many other industrialized countries have committed to emissions reductions of 20 to 40 percent below 1990 levels by 2020, the Canadian government's current target - 17 percent below 2005 levels by 2020 – translates to 2.5 percent above 1990 levels. Even achieving this low target is dubious as the government has predicted no net reduction in GHG emissions from federal action up to 2012 and Canadian governments haven’t yet agreed on an outline for a national approach to reducing greenhouse gases. No federal government measures for carbon pricing have yet been adopted and Canada does not have a low carbon growth plan. Out of 57 countries that together are responsible for over 90 percent of global energy-related carbon dioxide, Canada ranks second last in climate protection. [Environment Canada, national Inventory Report 1990-2010: Executive Summary online: <http://www.ec.gc.ca/ges-ghg/default.asp?lang=En&n=88AF9C6D-1>]
Although she refutes other jurisdictions in support of cleaner energy she admits that oil sands production is “energy and water intensive,” with “higher GHG emissions.”

Briefing documents arranged in 2009 by the Department of Foreign Affairs further reveal Canada’s stance as an international “carbon bully.” The manuscripts recommend that Canada seek to divide members of the EU on their attempts to reduce greenhouse gas (GHG) emissions, move away from reduction objectives and connect any support to developing nations to binding GHG objectives. The documents in addition draw attention to Canada’s terribly low-level goals, in contrast to European agreements to decrease emissions by 20 to 30 percent from 1990 levels by 2020.

In December 2010, a WikiLeaks report declared that the federal government had been prepared to impose strict new regulations on greenhouse gas emissions from Alberta oil sands: evidently the leaked US diplomatic cable suggested that Canada’s green reputation could otherwise be at stake. Perhaps connected to this, in May 2011, the federal government was visibly seeking to regulate the oil sands, with one option under discussion being a cap and trade system. Alberta’s Finance Minister Lloyd Snelgrove responded furiously, declaring that the only reason Ottawa decided to take a direct role was fear for the country’s reputation, “Now they see their little golden goose is under attack and they want to be the voice for Canada on the world [environmental] stage.”

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94 Mech, Supra note 70.
95 Andrew Nikiforuk, Dirty Oil – How the Tar Sands are Fueling the Global Climate Crisis, Greenpeace (September 2009) 33; USCAN Climate Action Network, Who’s On Board with the Copenhagen Accord (2010), online: <http://www.usclimatennetwork.org/policy/copenhagenaccord-commitments>.
Federal Environment Minister Peter Kent responded that the federal government respects Alberta’s input but has to follow its environmental obligation when it comes to loopholes surrounding bitumen development. Snelgrove asserted that "nobody wins" when both levels of government are trying to impose regulations.\(^98\)

Ultimately, however, the federal government announced later in May 2011 that any tightening of regulations, for instance via a cap and trade option, was "off the table." Since then, policymakers have struggled to find feasible alternative regulations.\(^99\) Although an August 2012 news report suggested that new federal regulations might be released in 2013,\(^100\) it appears that Ottawa has decided to keep to the more traditional *laissez faire*, business-as-usual approach to regulation. According to sources in the industry and Ottawa, the national regulations that are being drafted will be very similar to the most controversial parts of Alberta’s greenhouse-gas regulations, applying restrictions to the emissions discharged from one barrel of oil, but not on the sector – a procedure that would make it easier for the industry to double production. An additional important factor: the provinces would have the option of establishing their own laws as long as they aim to reach federal objectives, while Ottawa may possibly enforce more intense targets than are present in Alberta, the single province with greenhouse-gas laws for the oil sands sector.\(^101\)

Once again the government’s approach has been extensively criticized for being inadequate and too lenient to reduce the oil industry’s fast rising emissions. Based on the latest negotiations among Ottawa and the oil industry the federal government is in agreement to enforce new regulations on

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\(^98\) CBC News, *supra* note 96.


\(^100\) Ibid.

\(^101\) Ibid.
the facilities, to concentrate on building new plants and not to disrupt the competitive order of the oil industry.  

By the advocacy of the oil corporations, Ottawa has specified two policies, first that it would allow the industry to contribute to a technology fund so as to fulfill a part of their requirement, and second to employ low-cost offsets. According to oil corporation sources, this would permit the oil corporations to pay for emission cutbacks attained by a third party. Both policies are vital aspects of Alberta’s regulations. Under a principle known as ‘equivalency,’ the federal government will permit Alberta and other provinces to substitute Ottawa’s rules with their own regulations as long as they show that they would reach the equivalent amount of emissions reductions. Environment Minister Peter Kent and his officials have lately held gatherings with oil corporation executives and their industry associations to arrange draft laws that he expects to release next year. “We’ve already achieved a fairly significant meeting of the minds in terms of where we will go in drafting our regulations,” the Minister said.  

Kent stated that Ottawa has “no set target” for the oil industry to decrease emissions; this plan is to depend on performance standards and technology development by the industry itself so as to decrease the increasing emissions. He commented, “It’s a best efforts [approach] – ensuring that we actually reduce greenhouse gas emissions but without compromising jobs or economic growth”. P.J. Partington of the environmental watchdog Pembina Institute believes that the current method of regulation “would be far too weak,” as the oil corporations anticipate the federal government will only require upgrades for new construction and the old facilities will be immune to regulation.  

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102 Government of Canada, Budget 2012: Chapter 3.2 Improving Conditions for Business Investment.  
103 McCarthy & Vanderklippe, supra note 91.  
104 Ibid.  
105 Ibid.  
It is likely that the new regulations from Ottawa will not have any effect on the Alberta oil industry, which is already regulated by provincial measures (discussed in more detail below). As can be expected the oil industry is very happy with the fact that Ottawa has decided to focus on technology innovation instead of imposing tough regulations.

3.D.2. PROVINCIAL REGULATION

The government of Alberta started to play a major role in governing oil sands in the 1930s. Based on the constitutional amendment of the year 1930, a transfer of power from the federal to the provincial government reinforced provincial jurisdiction of natural resources and the Alberta oil sands in particular.

A number of reasons lead to this shift of power: first, the federal government was not able to successfully administer the Abasands facility, as noted earlier. As a result, the federal government lost interest in directly regulating and developing oil sands. Secondly, the province founded a series of major institutions, for instance, the Petroleum and Natural Gas Conservation Board. These institutions took up roles that had previously been unexercised or left to federal bodies. Thirdly, the provincial government began introducing legislation -- such as the Gas Resources Preservation Act, 1949\(^{107}\) -- that asserted its interest in controlling its own resources.\(^{108}\)

Compared with the federal government, the Government of Alberta played a major role in the development of the oil sands. For example, it made major public investment in research and development and partnered with the private sector to launch joint pilot plants. One of the latter was


\(^{108}\) Doern & Toner, supra note 82.
Alberta's 1945 partnership with Oil Sands Ltd., which controversially loaned the company $250,000 of public money for ten years, allowing the company to reap the profits. Such examples are numerous.

Alberta's regulations concerning environmental matters began in the early 1970's and reveal a consultative attitude. Previously, Alberta Environment's enforcement policy relied primarily on administrative directives embodying negotiated compliance requirements based on technical discussions. For example, emission limits in licenses were frequently set unrealistically low and to some degree regarded as performance objectives rather than as realistically attainable standards to be strictly enforced. Directives, originally intended within the statutory regime as a means of obtaining information, frequently embodied the terms of negotiated compliance standards. Indeed, administrative mechanisms were the main tools to achieve reduction and compliance. Control orders were not used on a regular and consistent basis -- and this is true even today. For example, there is minimal power under the existing statute to issue control orders against unregulated or unlicensed sources of emissions and there is no general offense provision under the *Clean Air Act* (2006) Stop orders were rarely used, partly because the authority to issue stop orders is reserved to the Minister of the Environment.

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109 Chastko, *supra* note 84.
110 Historically oil and gas industry associations and individual members participate in a number of oil industry-specific environmental groups including, for example, the Prairie Regional Oil Spill Containments and Recovery Advisory Committee, the Petroleum Industry Training Service (training for oil and salt spill reclamation), the Reclamation Research Technical Advisory Committee (sponsored by Alberta Environment to consider reclamation research), the Environmental Research Advisory Council, the Alberta Petroleum Industry Government Environmental Committee, the Alberta Hazardous Chemicals Advisory Committee and the Saskatchewan/Alberta Waste Disposal Co-op Steering Committee.
111 Minister of Environment Rona Ambrose unveiled a new, “made-in-Canada” proposal to be implemented in lieu of the Kyoto Protocol: the Clean Air Act. The Clean Air Act proposed to reduce greenhouse emissions by 45-65% of 2003 levels by 2050 [Environment Canada (October 19, 2006). The need for immediate action: Canada’s new clean air regulatory agenda. *Press Release*]. Under the Kyoto Protocol, a reduction of more than 33% (from 1990 levels) would be required by 2012, with further reduction targets put into place after 2012.
By the early 1990s, the provincial government played a very direct role in Alberta oil sands development, working closely with the oil industry and facilitating its collaboration with Ottawa. The focus was on three main areas: the regulatory environment, technological improvements, and exploration for markets. \(^{113}\)

In 1995 when Ottawa introduced the tax break described above (100 percent deduction of capital investment), Alberta established the standard oil sands royalty system, \(^{114}\) clearly created “to create fiscal certainty and stability in the encouragement of oil sand investment”. \(^{115}\) It was one of the lowest royalty rates in the world. \(^{116}\)

The provincial government has been greatly criticized by the royalty review panel and the council of Canadians for this royalty system's being so biased in favour of industry and paving the way for more development. \(^{117}\) \(^{118}\) At the same time, Alberta’s current regulations for environmental protection are some of the strictest in North America and the province’s licensing and permit structure is the most extensive in Canada. \(^{119}\)

Oil sands activities in Alberta are mainly governed by the Energy Resources Conservation Board (ERCB) and Alberta Environment (AENV). The ERCB is a self-governing, quasi-judicial organization of

\(^{113}\) Chastko, _supra_ note 80.

\(^{114}\) _As opposed to the former project-by-project system whereby each company paid what might be a different fee to the Alberta government._


\(^{116}\) _According to the Council of Canadians, under the generic royalty regime producers pay Alberta a meager 1% royalty until they recover all capital costs after which time they pay a 25 percent royalty on net project revenue; all costs (operating and capital) are 100 percent deductible in the year in which they are incurred._ [Phillips, Jeffrey P. T., Collecting Rent: A Comparative Analysis of Oil and Gas Fiscal Policy Regimes in Alberta, Canada and Norway. Available at SSRN: <http://ssrn.com/abstract=1140306> or http://dx.doi.org/10.2139/ssrn.1140306]


\(^{118}\) Taylor, _supra_ note 86.

\(^{119}\) _Canada Water Act. R.S., c. S(1st Supp.), s. 1._
the Government of Alberta. Its mandate is to regulate the safe, responsible, and efficient discovery, development and delivery of Alberta’s energy resources: oil, natural gas, oil sands, coal and pipelines.

In theory, environmental requirements for all oil and gas facilities that discharge effluents or otherwise pollute the air or surface or ground water are regulated under the Clean Air Act and Clean Water Act (1985). In practice, however, as noted in the ERCB Information Letter IL 86-2, facilities such as sweet gas plants and compressor stations are exempt from sections 3, 4 and 5 of the Clean Air Act and the Clean Water Act if some requirements are satisfied.

AENV manages the use of Alberta’s landscapes to sustain a healthy environment, a prosperous economy and strong communities. AENV’s central mandate is the protection of the environment and the protection and management of water resources. It also addresses climate change and waste management. AENV carries out its work under the authority of the Environmental Protection and Enhancement Act (EPEA), the Clean Water Act and other legislation. Through stringent monitoring and enforcement procedures, the department promotes and expects responsible stewardship of Alberta’s resources. AENV plays a key role in the regulatory approval process and the ongoing monitoring of existing oil and gas operations and works closely with project proponents and their consultants during the preparation of the Environmental Impact Assessment. Finally, in the event that oil sands operations include electrical energy generation or energy transmission, such operations may trigger additional regulatory requirements under the auspices of the Alberta Utilities Commission (AUC).

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120 Canada Water Act. R.S., c. 5(1st Supp.), s. 1.
121 Ministry of Environment - Environmental Protection Division, OIL AND GAS WASTE REGULATION – USERS GUIDE (2007).
122 Environmental Protection and Enhancement Act, RSA 2000 c12 (Supp) s2 amends s39, s3 amends s68, s4 amends s85.
The Alberta Government has developed its own greenhouse gas emissions reduction program as set out in *The Climate Change and Emissions Management Act* (2000)\(^\text{123}\), the *Specified Gas Reporting Regulation* (2004)\(^\text{124}\) and the *Specified Gas Emitters Regulation* (SGER) (2007)\(^\text{125}\). In force since July 2007, Alberta’s GHG emissions reduction regime applies to any facility that has emitted more than 100,000 tonnes of carbon dioxide in any year since 2003 and requires reductions in emissions intensity (i.e., in the quantity of GHG emissions per unit of production) from emissions intensity baselines. The SGER distinguishes between “established” facilities that completed their first year of operation prior to January 1, 2000 or have been in commercial operation for more than eight years and “new” facilities that completed their first year of commercial operation on or after December 31, 2000. Generally, the baseline for an established facility reflects the average emissions over the 2003-2005 timeframe. Conversely, the baseline for new facility emissions intensity is generally the third year of operation. For established facilities, the required reduction in GHG emissions is 12% from baseline which reduction is required to be maintained over time. New facilities require an annual reduction of 2% per year from their baseline up to the maximum of 12%. Pursuant to the SGER, there are three ways to meet reduction requirements as follows: (i) actual reduction in GHG emissions intensity; (ii) purchase of Alberta-based emissions offset credits; or (iii) purchase of Climate Change and Emissions Management Fund credits which are presently valued at C$15 per tonne.\(^\text{126}\)

This intensity-based approach has been widely criticized by environmentalists for not reducing emissions. According to an Environment Canada report, Canada will not be able to achieve the target level of GHG reduction by 2020 unless the GHG pollution of the oil sands is significantly reduced.\(^\text{127}\)

\(^{123}\) RSA 2000 c C-16.7.

\(^{124}\) AR 251/2004, passed under the Climate Change and Emissions Management Act.

\(^{125}\) Ibid

\(^{126}\) McCarthy & Vanderklippe, *supra* note 90.

But based on the current plan by the industry to double production they will be discharging 104.8 megatons of carbon dioxide or 17 percent of the 607 megatons target that Canada has set for the year 2020. This amount is greater than the emissions of Canada’s entire electricity sector.
SECTION 4 - REFLEXIVE LAW APPROACH AND OIL SANDS

4.A. THE REFLEXIVE LAW APPROACH

Developed in the 1980s by German sociologist Gunther Teubner, the reflexive law approach does not threaten or impose but rather aims to start a process of self-reflection that promotes corporations (small, medium or large) to develop decision-making processes based on careful evaluation and imaginative thinking. Related to Philip Selznick's idea of "responsive law," reflexive law has the benefit of deriving from a social theoretical point of view rather than a narrower, more strictly legal one such as is behind the command and control model.

Reflexive environmental law in particular aspires to promote corporations to develop internal evaluative procedures and decision-making guides that will reduce environmental harm and to improve environmental benefits. The state still lays down the goals but shares the accountability of achieving these with the firms. In addition, reflexive law tries to promote ethical environmental behaviour through providing positive incentives. These incentives may be directly or indirectly economic, the latter having to do with promoting the firm's good corporate citizenship among its customers or other stakeholders.

Theorists have identified many perceived benefits to reflexive law regulation. Gaines believes that reflexive environmental law has the ability to continuously develop and transform as the environment changes, meaning that it will not become outdated. Further, he sees the approach as applicable to

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131 Gaines, supra note 36.
132 Ibid. See also D. Fiorino, "Rethinking Environmental Regulation: Perspectives on Law and Governance" (1999) 23 HarvEnvtlRev 467.
firms of all sizes, structures, and purposes. Rolston similarly sees reflexive law regulation as being universally applicable, capable of creating positive change within individual firms and of inspiring other firms to take up its successful practices, encouraging social transformation based on the imaginative application of environmental law.

Since reflexive law regulation is predicated upon discussion, integration and compromise between competing social ideas, it has greater likelihood of being broadly recognized as politically and socially legitimate and ultimately of generating business activity that is win/win for both economic growth and environmental protection. Moreover, reflexive law is deeply implicated in a vast network of environmental activities -- "voluntarism, public disclosure, third-party certification, participation by public interest groups and non-governmental organisations" --, which helps ensure that it remains active.

Of course, reflexive law regulation also has its detractors, who construe it as unreliably based in a transferral of ideas; unpredictable, given that it appears to depend on unclear, undefined standards; and unable to guarantee outcomes, since it cannot anticipate the length of time a company will apply reflexive environmental law or whether the company will correctly identify ways of proceeding that will reduce environmental impacts. Consequently mistakes, setbacks and puzzlement are to be expected as part of the reflexive regulatory process.

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135 Ibid.
137 Ibid. at 48.
138 Ibid. at 46.
139 Ibid. at 46.
Heydebrand criticizes reflexive law for possessing the means to deconstruct substantive rights, avoiding normative legality implanted in formal justice and bending constitutional protections.¹⁴³ He implies that reflexive law is in opposition to the core of law and may possibly destroy it instead of developing it. Contradicting Heydebrand, Black claims that with reflexive law “substantive ends do not disappear, but the means for achieving them change.”¹⁴⁴

Blankenburg believes that any detected increase in the use of reflexive environmental law is a sign of increasing regulation of formerly unregulated social ground.¹⁴⁵ He suggests that the reflexive method stimulates new ways of avoiding laws rather than of improving on or falling in line with them.¹⁴⁶

Further criticism contends that since reflexive law developed as a voluntary system without clear sanctions, it may be unable to maintain effective regulation, even in the face of social and stakeholder pressure. While this social pressure can be effective in the case of large firms, it may have no impact on small firms with few resources,¹⁴⁷ as is further described below.

¹⁴⁵ Blankenburg, supra note 140 at 63.
¹⁴⁶ Ibid.
4.B. REFLEXIVE REGULATING AND OIL SANDS

Although oil corporations are responsible for an increase in GHG emissions and environmental damage, in the past they did not usually violate environmental regulations since both federal and Alberta provincial policies and regulations were essentially pro-development and not restrictive. The present regulatory structure remains, as expected, favorable to development. The main problem in regulation of oil sands corporations’ environmental behavior has been to persuade them to make environmentally friendly decisions that address their effects at local, regional, national and international levels. Looking forward to the future regulatory paradigm, both levels of government intend to use voluntary sectoral agreements to establish GHG emission targets that will serve as a basis for domestic emissions trade schemes. Although questions have been raised regarding the efficacy and reliability of purely voluntary, industry-driven approaches, there is positive energy-sector experience with voluntary measures.

This is for three reasons. First, the emission reduction required is relatively undemanding: the provincial GHG emission target is expressed in terms of emission intensity, that is GHG emission relative to gross domestic product (GDP), rather than in terms of absolute reduction. Second, voluntary compliance in the energy sector reflects long-standing government-industry collaboration in the regulation of emissions as well as more generally in the economic, social and environmental management of energy resource development in Alberta (as will be touched on later, in an overview of the industry’s extensive lobbying). Third, self-regulation (positively influenced by corporate social responsibility) can encourage big multifaceted oil corporations to keep implementing their own strategic plans regarding environmentally responsible business practices (in past years, the federal

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148 Doem, G., Canadian Energy Policy And The Struggle For Sustainable Development (2005), P. 293
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government has shown that it has not been able to keep its own regulation and statutory
requirements up-to-date with current realities).  

In terms of ensuring environmental safeguards, it is important to note that Alberta’s proposed
sectoral agreements are not purely voluntary. They will include an explicit regulatory backstop that
ensures a firm legal basis for enforcement should voluntary arrangements fail in particular cases. As
has long been recognized, “The private techniques for avoiding regulation” -- such as the more easily
circumvented voluntary reflexive regulation -- "are more highly developed than the techniques for
enforcing it."  

Perhaps recognizing this reality, the International Law Association in its declaration of
principles emphasized that multilateral development other than the traditional form of regulation, is
the only technique to completely incorporate environmental policy.

The harsh realities of oil sands development point to the real need for regulatory control. Companies
say that they intend to dig up the oil and then return the region to its original state before leaving;
however anyone who has visited the region can see how implausible this public relations message
really is. From horizon to horizon, oil sands development has created a toxic moonscape of strip
mines and tailings ponds: a toxic legacy for Canadians.

We are already struggling to deal with the economic and environmental costs of versions of this
legacy in the relatively small Sydney Tar Ponds project in Cape Breton, Nova Scotia. There, 31
hectares were poisoned by 700,000 metric tonnes of contaminated sediments. Government recently

149  The federal government’s inability to remain current in its regulatory policies and practices may be due to
complicated administrative structures, lack of political or operational resources, or limited managerial capacity.
150  Cohen, supra note 139
SUSTAINABLE DEVELOPMENT online: <www.ila-hq.org>.
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committed $400 million in taxpayers’ dollars to a cleanup.\(^{152}\) Contrast these 31 hectares with the tailing ponds of Alberta’s Tar Sands, which already cover more than 5,000 hectares\(^{153}\) and are getting larger by the minute.

No environmentally viable plan exists for tar sands reclamation and industry is still studying clean up options while the problem grows. The leading proposal is to bury the worst of the toxic tailings under freshwater and to create an artificial series of creeks and ponds flowing to end-pit lakes which, it is hoped, will filter toxic chemicals and allow them to settle into sediments.\(^{154}\) The few scientific studies that are being done show serious toxic effects to such oil sand ‘reclamation.’ For example, scientists have already found that “wetlands formed from oil sands effluent will not support viable amphibian populations.”\(^{155}\) The same is true for birdlife\(^{156}\) with the effects on mammals (including humans) as yet unstudied.\(^{157}\)

Industry initiatives could make the difference between disaster and prevention of disaster, between irresponsibility and responsible business practice,\(^{158}\) yet voluntary industry action is minimal. The


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President of the Canadian Association of Petroleum Producers\(^{159}\), David Collyer, has declared that the oil corporations are trying to reduce oil sands' emissions, favourably contrasting their efforts with those of oil producers in the United States and internationally.\(^{160}\) Oil sands corporations declare that they are constantly trying to decrease emissions in numerous ways, for instance, by using low nitrogen oxide burners, sour water treaters and flue gas desulphurization and by investigating the use of other fuels in the production process.\(^{161}\)

Some oil companies have admitted that they are high GHG producers and will do their part in order to battle climate change, claiming a willingness to go beyond compliance set by Ottawa. For instance, Shell Canada made a commitment to reduce GHG emissions by 50 percent of its emission intensity of 55 kilograms of GHG per barrel of bitumen, subsequent to getting approval for Athabasca Oil Sands Project (AOSP). Shell Canada declares that it has committed to a reduction in energy use, advanced energy efficiency, acquiring national offsets and conducting feasibility studies on the topic of carbon dioxide capture.\(^{162}\) If Shell Canada follows up with its commitment, this example clearly shows that the oil industry can go well beyond compliance.

Asserting the importance of technology to improved performance, industry identifies several initiatory strategies that endeavour to reduce the affects of oil sands production. One of these initiatives is carbon capture and storage (CCS), which aims to accumulate carbon dioxide releases from oil sands

\(^{159}\) Canadian Association of Petroleum Producers (CAPP) online: <http://www.capp.ca/aboutUs/cappOrganization/Pages/executiveTeam.aspx>.


\(^{161}\) Note that the GHG intensity of synthetic crude oil production from the oil sands is significantly higher than the average intensity to produce conventional oil in Canada. Therefore, as increasing production of synthetic crude oil from the oil sands offsets the decline of conventional oil, the net GHG emissions from the oil industry are set to rise dramatically. While companies are evaluating a variety of end-of-pipe solutions, such as carbon capture and storage, and considering alternative energy sources such as deep geothermal, these are years if not decades away from full-scale implementation. [Richard K. Lattanzio, Canadian Oil Sands: Life-Cycle Assessments of Greenhouse Gas Emissions, Congressional Research Service (June 2012) online: <http://www.fas.org/sgp/crs/misc/R42537.pdf>].

\(^{162}\) Analysis and Modelling Group, The Magnitude of the Challenge: Revising the Gap (PowerPoint presentation to Joint Ministers Meeting, February, 2002).
development and transform them into a sustained form. The executive director of the Pembina Institute\textsuperscript{163} Ed Whittingham has declared: “Carbon capture and sequestration is part of a robust approach to tackling climate change and the fact that we’ve got a CCS project moving forward in Canada is important.”\textsuperscript{164} CCS technology is costly and it escalates electricity expenditures by approximately 30 to 80 percent even when it comes to coal power plants. Additionally, this technology is “energy and water intensive, requiring an extra 10 to 40 percent of energy, and 23 to almost 100 percent more water at a time when the world is facing water shortages.”\textsuperscript{165} There are further worries in relation to \textsuperscript{166} “the safety, capacity and liability of storing carbon dioxide underground, and the expediency and extent of contributions that CCS can actually make to cutting global carbon dioxide emissions.”\textsuperscript{167} The Royal Dutch Shell PLC has started the first CSS mission called “Quest” to put GHG into the ground. This project is one of the $950-million sponsored projects that were initiated by the government in response to vast criticisms in order to battle climate change. John Abbott the executive vice-president of Shell stated that: “this is one of the technologies that we believe can have the biggest impact in the shortest period of time, and that’s why we’re doing it.”\textsuperscript{168} The Alberta government donated $745-million to the project, and the federal government contributed an additional $120-million. The serious expenditure is an obvious sign of the huge gap

\textsuperscript{163} The Pembina Institute is an environmental organization that both lobbies for change and consults for government and industry.

\textsuperscript{164} VANDERKLIPPE, N. “Shell launches first Canadian oil sands carbon-capture project” (September 5\textsuperscript{th} 2012) The Globe and mail, Calgary.

\textsuperscript{165} Mech, Supra note 69

\textsuperscript{166} National Energy Board, \textit{Canada’s Oil Sands: Opportunities and Challenges to 2015: An Update - Questions and Answers} (July 2010), online: <http://www.neb-one.gc.ca/dfnr/nrgynfmtn/nrgyrprt/lspnd/sprtntsndchllngs20152006/qapprntsndchllngs20152006-eng.html>.

\textsuperscript{167} Ibid.

\textsuperscript{168} VANDERKLIPPE, \textit{Supra note 164}
that exists among carbon capture as an environmental and public relations benefit for the oil industry and employment the technology as a feasible approach.\textsuperscript{169} However, CCS technology is not the only locus of oil industry interest and investment: besides investing in carbon capture and storage technology, Total E & P Canada has proposed a project using dry tailings machinery that reduces the threat of pollutants leakage in water supply networks.\textsuperscript{170} Suncor joined together with Petro-Canada in March 2009, is budding equipment to pipe grey water from the City of Edmonton to up grader facilities.\textsuperscript{171}

With respect to water pollution, industry runs the Regional Aquatics Monitoring Program (RAMP). But as with air pollution and cumulative environmental impacts, the studies on aquatic pollution could not be better designed to ensure that no solid conclusions can be reached. The most important testing programs are erratic, that of sediment (where the toxic chemicals settle) in the Athabasca Delta being a case in point. In the most recent year of monitoring, the RAMP simply did not test in these areas at all. Independent scientist Dr. Kevin Timoney is scornful of the monitoring programs: “As typical of previous RAMP reports, changes in methods and means of reporting undermine the utility of the results... The result is the appearance of monitoring and management of environmental concerns in the public interest. The reality is a lack of timely publicly available information and the perpetuation of business as usual.”\textsuperscript{172} With its own information being dismissed, industry might secure additional public support for its oil sands operations by using information and scientific data

\textsuperscript{169} VANDERKLIPPE, Supra note164
\textsuperscript{171} George, R., Suncor-Creating New Values in the Oil Sands (2008) online: <http://www.edubourse.com/finance/actualites.php?actu=38096>. An earlier Suncor environmental initiative took place in 1996, when the company installed scrubbers to reduce sulphur dioxide (SO2) emissions, achieving a 75 percent reduction in emissions relative to 1990’s output. Regional SO2 emissions are expected to grow to 295 tonnes per day, which is higher than currently approved emission rates, but lower than the actual emission rates of the early 1990s.
\textsuperscript{172} Timoney, K., Behind the oil curtain – Athabasca river Monitoring and tar sands development (2007) online: <http://albertawilderness.ca/issues/wildwater/archive/200810_ar_wla_athabasca_timoney.pdf>. 
produced by the province's environmental non-governmental organizations (ENGOs), even though these latter challenge industry's current priorities and operations.

From the perspectives of communication, advocacy and education, three examples of voluntary industry initiatives are worth noting. First, in January 2008, the Canadian Association of Petroleum Producers completed a six-month initiative to provide an open public discussion meeting with industry representatives and Chief Executive Officers so that individuals, environmental groups and other stakeholders could express views and uncertainties and participate in discussion concerning the oil sands. The outcomes of these fora were resulted in three major points according to CAPP:

"Canadians believe that it is possible to develop the oil sands while protecting the environment. Canadians do not believe that oil sands companies are doing enough today to reduce environmental impacts. When considering oil sands environmental issues, Canadians are most concerned about the impact of the projects on fresh water, and about greenhouse gas emissions from the oil sands."173

Second, Nexen, an oil and gas corporation funded a report called ‘Catching Up: Conservation and Biodiversity Offsets in Alberta’s Boreal Forest’ prepared by the Pembina Institute and Alberta Research Council for the Canadian Boreal Initiative. This report explains the grounds for why it is in industry’s interest to buy biodiversity offsets, due to the fact that it would permit oil corporations to pay off for their development’s impact on nature through conserving lands of equal or larger biological significance, with the intention of having no net loss in biodiversity.174 The report is an indication of

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the ability of the oil industry to have positive benefits and engage directly in environmental and social investment.

Third, the Oil Sands Leadership Initiative (OSLI) is a collaborative network of corporations operating in the Canadian oil sands. In April 2010 ConocoPhillips Canada, Nexen Inc., Statoil Canada, Suncor Energy Inc. and Total E&P Canada Ltd. signed the OSLI Charter, with shell joining in 2011 agreed to work jointly on non-competitive issues, and share research and best practices. ¹⁷⁵

It would be worth indicating there have not been any useful outcomes of these sessions thus far or it seems that they were without direct impact on industry behavior.

Corporations’ voluntary actions signal their capacities and suggest that with stringent environmental policies, industry may greatly augment its attempts to lessen the effects of oil sands production. However, it must be underscored that all proposals that are taken by the industry willingly occur simultaneously as their wide-ranging lobbying of federal and provincial governments to guarantee the prolongation of the existing *laissez faire* method to regulation. In December 2009, an investigation by the International Consortium of Investigative Journalist (ICIJ)¹⁷⁶ found that the oil lobbyists are one of the “main special interest groups on Parliament Hill”¹⁷⁷ and lobby both “to shape legislation in industry’s favour and also to ensure that those industries benefit from the billions of dollars in government grants being issued for clean energy and emissions-reduction projects.”¹⁷⁸ As

¹⁷⁵ CAPP, Oil Sands Producers Hear Directly from Canadians, CEOs discuss the results to date of the different conversation (Jan 2009) (Press release), online: <http://www.capp.ca/aboutUs/mediaCentre/NewsReleases/Pages/OilSandsProducersHearDirectlyfromCanadians.aspx>.
¹⁷⁷ Chris Arsenault, Canada’s Tar Sands Lobbyists Focus on Democrats (September 2008) (press release), online: <http://ipsnews.net/news.asp?idnews=43765>; William Marsden, Canada’s About-Face on Climate: Tar Sands and a Tough Business Lobby Pull Ottawa Far from Copenhagen (December 2009), online: <http://www.publicintegrity.org/investigations/global_climate_change_lobby/articles/entry/1853/>.
¹⁷⁸ Ibid.
just one instance, Suncor (one of the corporations whose voluntary efforts were mentioned above) has since 1997 employed 56 registered lobbyists, 12 of who are active in-house lobbyists who invest over 20% of their time lobbying the federal government. Out of six consulting lobbyists employed by Suncor, four are former government senior policy advisors. These lobbyists act on behalf of Suncor in the capital, when it comes to the topic of Climate change. 179 Similarly, the Canadian Association of Petroleum Producers has registered 51 active lobbyists, 17 of whom previously worked in Ottawa; a noteworthy lobbyist is the former senior aide to Stephen Harper at the time that he was leader of the opposition.180 Perhaps it is no surprise, given the number of these oil industry lobbyists and their unequalled access to politicians and key civil servants,181 that in August 2012, federal Environment Minister Peter Kent asserted that the federal government has “no set target” for the oil corporations to reduce emissions and that the federal plan will rely on the oil corporations to develop their own performance standards and technology in order to reduce emissions.182

4.C. INFORMATION (AUDITING) AND TRANSPARENCY POLICIES

A panel is examining the governance of an environmental monitoring system in Alberta. This panel has presented a report with suggestions to Redford government in June 2012. The leader of this panel is Howard Tennant183, he has stated that, “The government of Alberta is in the position that it owns the oil, it sells the drilling rights or the mining rights to a company. It takes a share of the

180 Ibid.
181 Ibid.
182 McCarthy & Vanderklippe, supra note 49
183 CRYSERMANN, K “Head of oil sands review panel sees conflict of interest for Alberta government” (September 8, 2012) Calgary Herald
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profits of that. It makes all the regulations to do it, and it’s in charge of the environment.” Due to the increasing disapproval of the command and control of oil sands, both levels of government have pledged to impose fresh forms of regulation that are both transparent and independent regarding “data collection from the air, rivers, plants and animals in the Athabasca region”\textsuperscript{184} He believes that management of a fresh monitoring structure - one that will ultimately spread out from the oil sands to the other parts of Alberta - is vital to its credibility.\textsuperscript{185} Although the report has been submitted it has not been release yet. Simon Dyer\textsuperscript{186} has declared “current monitoring is inadequate and a new entity responsible for oversight should have true independence, akin to Canada’s environment commissioner or the federal auditor general.”\textsuperscript{187} Also Simon Dyer has affirmed that “There is a concern about lack of control. Typically the government of Alberta has done monitoring or delegated monitoring to industry”\textsuperscript{188}

In the winter of 2012 both levels of government started a new plan which has environmental monitoring stations in the oil sands. It has not been decided which body will collect the information. The report prepared by Tennant and his team discusses the information collection topic and how to the $150 million of industry fund should be allocated, spent and how to remain autonomous.\textsuperscript{189}

According to Travis Davies\textsuperscript{190} “the industry wants to see an independent agency created that administers the program and one the sector can “transparently” transfer the $50 million per year in

\textsuperscript{184} Ibid
\textsuperscript{185} Ibid
\textsuperscript{186} The Pembina Institute policy director
\textsuperscript{187} CRYDERMAN, supra note 183
\textsuperscript{188} CRYDERMAN, supra note 183
\textsuperscript{189} Ibid.
\textsuperscript{190} The Canadian Association of Petroleum Producers spokesman
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funding."\(^{191}\) Tennant said it's important that environmental information be released so "every credible scientist around the globe" can examine it. He hopes the Redford government will listen to what the panel has to say.\(^{192}\)

To conclude, the data suggest that for reflexive regulation to work as an alternative to transnational government regulation, strong accountability mechanisms and aggressive information (auditing) transparency policies need to be adopted by the participating oil corporations, who must be fiercely held in check by concerned citizens and other environmentally-minded stakeholders. While public statements of corporate social responsibility may please civil society, without stringent regulatory policy corporations feel no real and urgent demands to act on their own and comply. Ultimately, the concern for Alberta's ENGOs and individuals, communities and associations worldwide is that oil sand development is still rampant and drastically outpaces environmental efforts at remediation or containment.

\(^{191}\) CRYDERMAN, supra note 183
\(^{192}\) CRYDERMAN, supra note 183
SECTION 5 - SOCIAL LICENCE REGULATION AND OIL SANDS

5.A. SOCIAL LICENCE REGULATION

A type of civil regulation, social license regulation imposes societal pressure on firms to behave in an environmentally and socially acceptable way.\(^{193}\) Influence is exerted by stakeholders, that is, anyone who has a rightful interest in the firm.\(^{194}\) From an environmental social licence point of view, stakeholders include customers, suppliers, shareholders, communities and environmental and non-governmental organizations,\(^{195}\) which set the standards for business behaviour\(^{196}\) and hold firms accountable. Compliance is voluntary: it is left to the discretion of the firms whether they choose to accept those standards.\(^{197}\) However, non-compliance has social and market consequences such as damage to reputation\(^{198}\) and reduced brand loyalty.

By its advocates, social license regulation is seen as a system that can fill the void left by diminished regulatory practices that are overburdened and as a result slow to respond, obsolete, or without full jurisdictional reach in today's globalized world.\(^{199}\) Large firms and multinationals may be particularly susceptible to social license regulation since these latter are more prominently in the public domain and easily visible. This was proved out in the Brent Spar case\(^{200}\), discussed later in this section in more detail. Perhaps this is the first time which a large corporation became conscious of the potentially severe social and economic consequences for its actions. Neil Gunningham provides the

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\(^{195}\) Ibid. at 80.
\(^{197}\) Ibid. at 78.
\(^{198}\) Gunningham, Kagan & Thornton, supra note 21.
\(^{199}\) Bendell, supra note 182
\(^{200}\) Ibid. at 85.
example of the Brent Spar conflict between shell and green peace UK concerning disposal of disused oil rig at sea.\textsuperscript{201}

An example of civil regulation is the 'The Carbon Disclosure Project' (CDP), it presents assistance for the world's largest institutional investor cooperation on the business effects of climate change. Through the CDP numerous established investors\textsuperscript{202} jointly sign a worldwide application for disclosure of information on Greenhouse Gas Emissions.\textsuperscript{203}

One could infer that small and medium sized enterprises may be less effectively regulated by social license means, given their lesser visibility and more limited stakeholder scrutiny.\textsuperscript{204} Indeed, according to Lynch-Wood and Williamson the social licence five-factor model is not expected to control small and medium sized firms to comply.\textsuperscript{205} However, it is worth noting that SMEs are the largest employers, conduct the most business,\textsuperscript{206} and in fact produce 60 percent of environmental emissions\textsuperscript{207} -- suggesting that social pressures may in fact be not only effective but also necessary.

Relatedly, a perceived advantage of the social license approach is that it can encourage firms to exceed policy-based compliance, if such is the public will.\textsuperscript{208} As this kind of self-regulation becomes effective, government-imposed regulations can be reduced.\textsuperscript{209}

\textsuperscript{201} Gunningham N (2009) Regulation and Governance: Shifting Architectures, Journal of Environmental Law, 21 JEL (179)
\textsuperscript{202} More than 1,000 large corporations report on their emissions via the CDP site
\textsuperscript{203} CDP. 2008. http://www.cdproject.net/
\textsuperscript{205} Lynch-Wood & Williamson, supra note 54.
\textsuperscript{206} \textit{ibid}. at 91.
\textsuperscript{209} Bendell, \textit{supra} note 63 at 80.
Of course, social license regulation has problems and limitations. First, policy-makers do not recognize the application of the social licence as a policy mechanism and are puzzled as to how to make use of it.\textsuperscript{210} Social licence has also been criticised for blurring the boundaries among voluntary and mandatory regulation, public and private, and hard and soft law.\textsuperscript{211} Second, stakeholder pressure is not always consistent or reliable. Indeed, according to Vogel, consumers buy "on the basis of price, quality, and convenience" and "social, environmental, ethical issues fall way down by the wayside most of the time."\textsuperscript{212} Perhaps if stakeholders were convinced that their actions could make a difference in corporations' actions or policies, they would feel motivated to alter their environmental behaviour.\textsuperscript{213}

5. A. 1. SOCIAL LICENCE EFFECT INDUSTRY AND GOVERNMENT

Well-known commentators for instance scholars, scientists and experts of various political affiliations have the same opinion that conventional forms of environmental law have failed to meet their respective obligations when it comes to the regulation of the oil sands. Social pressure and expressed public opinion produced by civil society can positively impact the oil sands industry's environmental behaviour, specifically greenhouse (GHG) emissions, and government policies surrounding the industry in the form of social licence regulation. Social licence regulation is the chance for other stakeholders to have a say, participate in the regulation of the oil sands industry, or benefit from positive changes in the industry. The strength of the social license is revealed in the

\textsuperscript{210} Lynch-Wood & Williamson, supra note 54.
\textsuperscript{211} Vogel, supra note 71.
\textsuperscript{212} Ibid.
degree to which the public accepts oil corporations and their activities. The social license is a reflection of overall public approval.

5. A. 2. CIVIL SOCIETY AND PUBLIC INTEREST AS DISTINGUISHED FROM GOVERNMENT AND INDUSTRY

Civil society instigates and rates the social licence, as a separate entity from government and oil sands corporations. It is a collective group of volunteers and social institutions with common concerns, principles and goals, which form a working society. This group of people share an interest in making the production or non-production of the oil sands an environmental decision informed by public opinion. These “other” stakeholders consist of primary stakeholders such as local communities, impacted parties like Aboriginal peoples, customers, and employees; as well as secondary stakeholders such as academic scholars, scientists such as Shanta Barley, environmentalists like David Suzuki, ENGOs such as The Council of Canadians, activists, and broader publics like Canadian citizens or global citizens that care about this environmental concern. A. Fung, a Professor of Democracy and Citizenship states:

“each citizen should have equal opportunities to offer and accept the reasons that justify collective rules and actions.”

In this case, to impose and influence government and oil sands corporation policy and practices, such as to leave the oil in the soil, or to advance notions about using other forms of energy in order to

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turn Canada into a sustainable energy nation. A corporation with a bad reputation in the eyes of the stakeholders can face enormous consequences. The public or this type of public engagement creates the social licence regulation for the oil sands industry and can impact it with positively.

5.A.3. **GREENHOUSE GAS EMISSIONS**

Greenhouse Gas Emission (GHG) is one of the pressing issues that concern the civil society and stakeholders. Oil sands pollution is the single most important challenge to Canada mitigating global climate change effects. The public is concerned with the increase in GHG emissions causing global climate change and the role of fossil fuels in the future of energy structure. The development of the oil sands and the increase in GHG emissions will have catastrophic lasting impacts on the environment and many believe that the decisions being made are not considerate and representative of the Canadian public.

As mentioned in the previous section on page 23, the year 2007 was a critical year in Canadian history in terms of environmental goals. Public opinion polls classified the environment as a number one main concern for Canadians. Thus, British Columbia attested the preparation for North America's first economy-wide carbon tax. Alberta started charging big polluters for the emissions. The Harper federal government released a plan to battle climate change. Although the provinces followed through with their proposed plans, the federal government's initial climate change strategy was to reduce Canada's carbon footprint to 282 megatons between 2008 and 2012. In the same year, Harper referred to the carbon footprint as “perhaps the biggest threat to confront the future of humanity today. [ . . ] Canada may be a small contributor to global warming,” he added, “but we owe

216 Scott Vaughan, federal Commissioner of the Environment and Sustainable Development report 2011
it to future generations to do whatever we can to address this world problem.”

This shows that public opinion matters and can have an important role when it comes to regulation.

Attributable to shareholder awareness on global warming, many companies have been transformed by civil regulation. Shareholder activism has grown, “Shareholders documented 30 global warming resolutions demanding financial risk and disclosure plans to decrease GHG emissions. The examples of corporations from the oil sector are Chevron Texaco, Unocal and Exxon Mobil.”

5.A.4. THE ISSUE ABOUT THE OIL SANDS

Both government and industry are making major decisions, but all stakeholders will face the catastrophic effects of climate change of poor decision-making. The other stakeholders that are aware of the severe impact of oil sands extraction and usage raise awareness and inform others, and in this way social licence regulation works to decrease the rising GHG emissions, as well as positively impact other environmental issues pertaining to oil sands development. Global warming is happening and it is caused by human action and irresponsibility. Many Canadian political leaders have historically ignored this fact and have not put the environment first as possibly they believe that major changes will not take place during their term in office. In the past, the oil sands industry has been blinded by the high oil profits and has mitigated the effect of production on climate change.

Both federal and provincial governments have shown that they can deviate from their role as legislator and take a cooperative role with oil industry corporations when it comes to the oil sands.


Based on the first two chapters, one can see that both levels of the Canadian government have been very lenient when it comes to policy making for the oil sands and very merciful in enforcing these policies. Government has supported the development of oil sands. The collective body of stakeholders (civil society) can have a potent effect on the reputation of a company, as civil society has the ability to communicate quickly and efficiently against the oil sands' development and enforce social licence regulation. Social licence regulation empowers the civil society (in this case the Canadian citizen) to pressure the government and industry to consider or reconsider their decisions about the oil sands. The civil society is accountable to future generations for current decisions and actions concerning the oil sands and the environment. It is important to employ social licence regulation as it enables civil society to address major issues concerning the oil sands, and effect the decisions of this industry.
5.B. EXAMPLE OF CIVIL SOCIETY VOICES

5.B.1. ENGOs AND SCHOLARS

ENGOs have been trying to raise awareness and notify the public about the development of the oil sands for decades. For example, Greenpeace has a campaign called “stop the tar sands.” The route headed for increased public participation is steady and many ENGOs are strengthening civil processes in aid of the public. Thomas Webler professor of Environmental Studies and Seth P. Tuler Associate Professor, Interdisciplinary & Global Studies Division believe that educating the Canadian public on the subject of environmental policies, scientific reports, and publications will enable the Canadian public to become knowledgeable regarding the oil sands, help cease their development, and avoid the rise in the greenhouse gas (GHG) emissions and the effects on climate change. There are a number of campaigns and ENGOs concerning the oil sands, to name a few:

Indigenous Environmental Network, Parkland Institute, Dirty Oil Sands, Sierra Club of Canada and the Sierra Club Prairie Chapter, Rainforest Action Network, Greenpeace, Environmental Defence, Public Interest Alberta, Oil Sands Truth, and Forest Ethics. These ENGOs try to present information, share knowledge and inform Canadian citizens. They develop methods of consultation and support direct opportunities for citizen participation in settings where the government and the oil industry are represented in order to create change.

Gordon Laxer the director of Park Institute offered reasoning for his proposal at a conference. In order to produce three barrels of oil the corporations need to burn one litre of oil. This emits

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219 Greenpeace, Stop the Tar Sands online: <http://www.greenpeace.org/international/en/campaigns/climate-change/stop-the-tar-sands/>

pollution that is harmful to air, waters and fisheries. He suggested that GHG emissions must be reduced. He recommended a series of legal limitations that would limit oil production and would permit oil industry to extract oil and “would allow extraction in rare situations when extracting would enormously assist the socio-ecological and economic betterment of the vast society. His proposal also included no more subsidies for tar sand production, and reform in the law to include energy security for Canadians due to the fact that most of the tar sand will be exported. Furthermore he proposed greater economic rent as opposed to Alberta’s present well below normal royalty rate when it comes to dirty energy in order to finance a clean energy power.”

Social license regulation can also be described as the employment of national and international public regulation as a measure to enhance the accountability of the oil industry to the public. A case in point is when these corporations (AEP, Southern Company, Tennessee Valley Authority, Xcel Energy, and Cinergy) were sued for discharging over 10% of the America’s CO2 emissions. Considerably, the link among the state and corporations creates a bridge of accountability which targets both concurrently. For instance, CERES (Coalition for Environmentally Responsible Economies) and ICCR (Interfaith Centre for Corporate Responsibility), an alliance consisting of 275 faith based institutional investors, have been employing their monetary influence to hold corporations accountable for their part on climate change.\textsuperscript{222}

\textsuperscript{221} Patrick Bond “The state of the global carbon trade debate Presented to the Energy Caucus conference” (2008) Johannesburg

\textsuperscript{222} CERES, Supra note 218
5.B.2. ACTIVISTS

The oil sands industry has captured the attention of many activists and they try to pressure the industry and government through social licence regulation. Activists in Canada are working intently to stop the development of oil sands. The media especially the internet has the power to inform and empower people and their reaction and behaviour can affect the oil industry; an example of activism against the oil industry is when in 1995 shell corporation had to deal with massive protests initiated by Greenpeace as a consequence of their decision to destroy “an offshore platform”223 in United Kingdom waters. Many people boycotted shell gas-stations, some damaged some of those stations and one station was set on fire. Shell acknowledged to have ‘unintentionally’ fallen short of adequately informing the public regarding their project. Shell missed the fact that the environmental consciousness in Europe had transformed in those years.224 This forced the company to start a “dismantling operation”225 in 1998. The director of Public Affairs and Planning, Shell UK, John Wybrew has commented on this event as “Some commentators have suggested that the Brent Spar affair will come to be seen as a defining event in the relationships between business, the environment, those who campaign for its protection, and the attitudes of society at large.”226 This shows that public pressure can have a significant impact to help improve environmental regulation.

Another instance is the June 2012 Black Out Speak Out campaign when more than 500 websites decided to go dark, in order to demonstrate solidarity with institutions against the federal

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223 “Greenpeace claims victory over oil giant” (June 2007) Lincolnshire Echo.
225 Isirdi, Brune “How can oil sands companies keep a good reputation in the eyes of their stakeholders”(December 2007) University of Alberta school of business
226 Shell UK, “Brent Spar - How it happened, what it all means, why it matters, and what next?”, Barkers Trident Communication on behalf of Shell, p.6
government’s planned Bill C-38 and alterations to environmental protection regulations, “Bill C-38 would give the government greater control over the environmental assessment process. This includes setting time limits and ‘streamlining’ the dual review process at the provincial and federal levels into one. The main issue at stake for critics is the autonomy of the environmental review process from federal and commercial interests. Their goal is to separate the proposed changes from Bill C-38 to be reviewed separately by parliamentary committee.” Noteworthy Canadians behind the Black Out Speak Out campaign were environmental activist David Suzuki and award-winning author Margaret Atwood. Many Canadians connected through debates on the internet regarding the Black Out campaign and Bill C-38. Countless Canadians chose to change their profile pictures in order to advocate for the campaign that reflected “a Black Out Speak Out twibbon.” Activists, scholars or experts positively affect the government and industry’s environmental behaviour through the social licence by formally putting forward their peer-review and researched findings for industry, the public and governments to read, know of, and therefore be accountable to these findings.

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227 Hong, Beth “Black Out Speak Out campaign protests Harper government's assault on environment” (June 2012) Political Junkie, Vancouver observer
228 Ibid
229 Ibid
230 Ibid
5.B.3. SCHOLARS, SCIENTISTS, ENVIRONMENTALISTS, ENGOS AND ENGAGING THE PUBLIC

The social licence stakeholders like the environmentalists, scholars, and ENGOs, believe that influencing the policy-making process is a good idea. Changes in oil sands policy could lead to improved outcomes. The social licence stakeholders should aspire to increase alternatives and choices for public involvement. 231 There is disengagement between civil society and the policy-making process. Civilians of a democratic society are expected to exercise their rights and influence policy through social licence in order to prevent politicians from politicizing the oil sands decisions and to prevent the oil industry from erasing the distinction between public opinion and their development strategies. In this way, the public has a chance to check political power if they make decisions that are unpopular with the majority of the public. If the public loses authority to check political power and corporations that make unpopular decisions, the public cannot enforce the social licence with the same effectiveness.

Sherry R Arnstein, wrote on the subject of citizen involvement in planning processes in the United States in 1969 and explained a ladder of participation. She asserts that advising civilians about their rights, choices and obligations may be the first action headed for citizen involvement. 232

Social licence is a form of regulation that is independent from the political branches and insulated from industry influence. The goals of many civil society voices would be strengthened with increased civil engagement. Civil society voices can engage citizens to empower themselves to become politically active. Social licence regulation is the intermediary between the people and the legislature to make sure that the oil sands industry does not destroy the environment. Civil society voices should

facilitate and encourage social licence regulation by engaging with the public to advance positive changes.

5.B.4. WHY DO WE NEED SOCIAL LICENCE REGULATION? THE IMPORTANCE OF PUBLIC PARTICIPATION

Social licence exists in order to ensure that government and industry are kept in line; however, there are three challenges with respect to enforcing social licence regulation. The first challenge is that the oil sands industry has shown that they have not been able to police themselves, and so the Canadian public has lost faith in both the industry and government. Hudema argues, “People are consistently taught that their opinion doesn’t matter very much and that [people] feel fairly helpless in terms of engaging any type of change.” Consequently, the public does not examine these governmental processes. The second challenge is that the Canadian citizens are not very experienced when it comes to activism and accepted procedure of citizen participation. Sometimes citizens are aware that environmental regulations and enforcement are inadequate with respect to Alberta’s oil sands, but they fail to transfer awareness into political action. With respect to the first two challenges, the public concern for the environment is extensive, however considering the extent and growing environmental effects of oil sands current and future projects, the demands for regulation coming from the Canadian public is not sufficient. ENGOs, other environmental organizations, scholars, or other experts can help facilitate this type of political action. More active stakeholders such the ENGOs, scholars or other experts (with the knowledge about the issues surround the oil sands development) can inform the public so the enforcement of more severe environmental policies and regulations can be implemented by civil society participation. In fact, many environmentalists and ENGOs have been trying to raise awareness and pressure the government and oil industry to make

environmentally responsible decisions for decades. Informing the public such as holding meetings and workshops are practices, which “involve bringing people together so they can talk about a specific issue, become informed about it, and arrive at a strategy for what to do.” Active citizen participation does not have to replace the province’s current democratic structure. Instead of presuming that the politicians that are elected would do their job right, the public must demand to review government policy processes frequently. The scholars, scientists, environmentalists, and ENGOs have been aiming to target the public and communicate information regarding the oil sands; however, the third challenge is that it is sometimes difficult to transfer the information and raise awareness as many ENGOs do not accept funds from the government or corporations and thus have limited resources. Further, Mike Hudema of Greenpeace believes that public engagement is what seems to be the area, which ENGOs are not addressing to the degree that they should.

The three challenges stated above reiterate the need for greater public participation when it comes to the oil sands. Canadian and global citizens should increase their involvement as they have the ability to influence and insist on more effective regulation.

There can sanctions for the oil industry for not abiding with social licence provisions set by the public, such as financial loss as a result of damage to an oil corporations’ reputation. This is considered to be a strength of social licence regulation since the threat of sanctions may force an oil corporation to demonstrate environmentally responsible behaviour that goes further than simple compliance.

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Public pressure forces the government to consider its policy towards the oil sands. The power of social pressure is usually underestimated. The example given in section one illustrates how public opinion matters, but that members of the civil society are not aware of it. In May 2011, it was publicized that a federal cap-and-trade method was “off the table.” Policy makers have struggled to find a feasible alternative. There seemed to be a conflict between the two levels of government as Ottawa had declared that the federal government is planning to impose new strict regulations on GHG emission for Alberta oil sands. According to the Calgary Herald, Lloyd Snelgrove Alberta’s finance minister is furious with the federal government. He believes that the only reason Ottawa has decided to take a direct role is that a U.S. diplomatic cable (published by Wikileaks) has demonstrated that the federal government would enforce new regulations if Canada’s green reputation were at stake. Snelgrove stated: “Now they see their little golden goose is under attack and they want to be the voice for Canada on the world stage and we respect that.” This is an example of how the public voice in the form of the media creates public pressure has had the potential to influence the policy-making process.

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236 ibid
239 Andrew Nikiforuk, Dirty Oil – How the Tar Sands are Fueling the Global Climate Crisis, Greenpeace (September 2009) 33; USCAN Climate Action Network, Who’s On Board with the Copenhagen Accord (2010), online: <http://www.usclimatenetwork.org/policy/copenhagenaccord-commitments>.
The broader communities employ social licence regulation in order to urge the industry and government to think of better solutions. The increase in oil production has caused an increase in GHG emissions in Canada, the oil sands corporations have tried to appeal to the public by what many activists call "Greenwashing." This term is used when a corporation aims to manipulate public opinion and tries to make them believe that they care about the environment their policies are environment friendly. Some activists believe that the oil should be kept in the soil.

As also mentioned in section two, asserting the importance of technology to improved performance, industry identifies several plans that endeavour to lessen the effects of oil sands development. At the final declaration by People’s Summit “at Rio+20” for Social and Environmental Justice in defence of the common good against the commodification of life, a group representing Canadian citizens made the following declaration: “In order to overcome the climate change disaster governments and corporations try to impose the green economy in which they give free rein to the commodification of all common goods. We identify as false solutions mega mining, hydroelectric dams, the intensification of the aggressive and unconventional extraction of fossil fuels, gas shale “fracking,” tar sands, [...], and energy that appears to be green.” The answer cannot be found in technological changes, it entails a concept change. “The system has to change, not offers solutions for the crisis.”

Undeniably Social licence regulation is the chance for the broader communities to pressure the oil industry and government to choose more effective alternatives.

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*241* coined by New York environmentalist Jay Westervelt

SECTION 6 - THE THREE FORMS OF REGULATION AND THEIR RELEVANCE TO OIL SANDS

As described above, when it comes to the oil sands regulation the two forms of environmental regulation command and control and reflexive law have many shortcomings and some advantages. Social licence regulation, although effective in pressuring the government and oil industry is not widely used in Canada, making it difficult to predict with certainty which regulatory form will presumably ensure responsible environmental conduct by oil corporations in Canada. The oil sands regulation requires both a new stance on industry environmental behaviour and fresh forms of regulation, moving past but including the traditions of state based regulation.

Governments’ interests in developing the Alberta oil sands stand as a huge barrier to the establishment of effective regulations that would take an active action on climate change. So while command and control approach for lessening GHG emissions traditionally have a significant record, when it comes to climate emissions, a great deal of effective set of instrument are called for in order for public policy to advance in a just and successful manner.

Indeed, more rigorous regulation would seem to be necessary not just to control oil sands development but, ultimately, to shut it down entirely. Considering the anticipated ramifications of climate change derived from present emissions reduction obligations, temporary plans and merely short-term views and the construing of local pollution, climate change, and loss of habitation as of limited consequence will allow the ever-expanding oil sands projects to carry on.

Considering the entire foreign ownership and multinational interests that are connected to the oil sands -- including the big finances related to pipeline and tanker providers and the facilities in the
United States -- the complexities of dismantling the oil sands projects are enormous. These ramifications consist of responsibility for reclamation and liabilities connected to current development. However, for most of these companies, the oil sands investments embody only a small degree of their overall project. Additionally, if oil sands production and development does not come to an end and if additional development is not stopped, the losses of current and future generations encountering the devastating consequences of environmental devastation and global warming outweighs the economic disadvantages of companies that have committed capital to the oil sands.

Considering industry’s self regulation, compliance can only be achieved if the oil industry is sincere about reducing emissions and is interested in the regulatory approach used. In fact, Williamson and Lynch-Wood propose that conformity of a corporation with a regulatory system relies on a range of features such as “resource availability, visibility, and moral orientation.”\(^{243}\) In general, the higher the level of resources, visibility and moral orientation, the larger the firm, the greater is its receptivity to a reflexive regulatory approach.\(^{244}\) They comment that essentially more than compliant corporations will comply with reflexive law, where as non-compliant corporations will usually have a tendency to comply with command and control.\(^{245}\) In other words, while the command and control form of regulation may seem outdated, it may still be necessary to meet Canada’s oil sands’ environmental expectations among non-compliant oil corporations or those whose limited resources, low visibility, or poor moral orientation suggest they have little incentive to regulate themselves.

Based on the findings in this paper oil sands corporations have shown to be interested in reflexive regulation but many are not convinced that they will comply. Therefore it is necessary to implement stricter command and control regulation. Additionally, since even more-than-compliant oil

\(^{244}\) Ibid.
\(^{245}\) Ibid.
corporations may unintentionally orient their self-reflexive behaviour in insufficient ways, industry self-reflexive regulation may unintentionally threaten environmental progress.

With regards to social licence regulation the issue for Alberta’s ENGOs and individuals, communities and associations worldwide is that oil sands development is still rampant and drastically outpaces environmental efforts at remediation or containment. That is why social licence regulation will keep the oil industry and government held in check. Social licence regulation is the instrument for the public to take part in the regulation of the oil sands. Taken together as a whole, non-government and industry stakeholders have the ability to positively pressure the oil industry’s environmental behaviour, especially (GHG) emissions, and the government policies about the oil sands industry. The degree of power of the social license is shown through the extent to which the public approves of oil corporations and their activities, and is an indication of public acceptance taken as a whole.

Thus, for full environmental effectiveness of the above mentioned regulatory practice for the oil sands, it seems that industry self regulation needs to be correlated to the predictable conformity of command and control, and government regulation of oil sands balanced by the potential flexibility of oil industry reflexive law, with social licensing of oil sands enhancing and monitoring environmental effectiveness where possible. Social licence has revealed to be an effective form of regulation for large oil corporations as they are visible and have brand images to protect.

It is appealing to consider that a combination of stricter regulatory approaches such as government control, industry self-regulation, and social licensing by other stakeholders could eventually respond to the environmental challenges facing oil sands regulation.

SECTION 7 - CONCLUSION

In this paper three forms of regulation for oil sands are examined and compared. As oil sands contribute significantly to the greenhouse gas emission (GHG) and consequently to the climate change, the regulations of oil sands must prevent catastrophic harm to the Earth and the life forms it supports.

This paper examined the relative feasibility of the following three forms of regulation for oil sands -- command and control, reflexive law and social licensing -- in ensuring oil industry compliance with environmentally sustainable practices and obligations.

It was shown that if each regulatory approach is employed and enforced properly, the combination of government imposed command and control regulation, oil industry’s self-regulation and Social licence regulation can aid in reducing GHG emissions and will help tackle the problem of climate change.

Oil sands regulation is important and any shortcomings by the Canadian government, the oil industry and the public can have severe consequences on climate change.
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LEGISLATION

Constitution Act, SC 1867, s 92(13)
Constitution Act, SC 1867, s. 92A(1)
RSA 2000 c12 (Supp) s2 amends s39, s3 amends s68, s4 amends s85
RSA 2000 c C-16.7.

BOOKS

Chastko, P., "Developing Alberta’s Oil Sands: From Karl Clark to Kyoto" (Calgary: University of Calgary Press, 2004).
(Edmonton: Friesen Printers (1980).
Tuohy, C.J., “Policy and Politics in Canada: Institutionalized Ambivalence “(Philadelphia: Temple
Sahar Ghanaati

JOURNALS
Pembina Institute, Thinking Like an Owner.
AAAS Annual meeting symposium (American Association for the Advancement of Science),
Vancouver, Friday, February 17, 2012, online: < http://acs.qc.ca/documents/PresskitAAAS.pdf >.
Bernstien, B. & Hannah, E., “Non-state Global Standard Setting and the WTO: Legitimacy and the
Need for Regulatory Space” (2008) 11 J Intl Econ L 575
18 Law & Society 273
Cairns, R.D., ”Natural Resources and Canadian Federalism: Decentralization, Recurring Conflict, and
CLIMATIC CHANGE Volume 35, Number 4 (2012), 397-414, DOI: 10.1023/A:1005342632279
Cole, D. & Grossmann, P., ”When is Command and Control Efficient? Institutions, Technology and the
Comparative Inefficiency of Alternative Regulatory Regimes for Environmental Protection”
(1999) 5 WisLRev 887
from the Virtues in Environmental Narratives,” (2005) 58:1 Journal of Business Ethics
Dembicki, G, On Oil Sands, Ottawa’s Not Hearing What Alberta’s Saying (27 June 2012)
Doem, G,” Canadian Energy Policy And The Struggle For Sustainable Development” (2005),
ILA 2002, NEW DELHI DECLARATION OF PRINCIPLES OF INTERNATIONAL LAW RELATING TO
SUSTAINABLE DEVELOPMENT online: <www.ila-hq.org>.
Farber, D., ”Environmental Protection as a Learning Experience” (1994) 27 LoyLALRev
Faria, J., Few certainties and many doubts: law after the financial crisis (2009) online:
Fiorino, D., ”Rethinking Environmental Regulation: Perspectives on Law and Governance” (1999) 23
HarvEnvtlLRev 467
National Endowment for Democracy and the John Hopkins University Press Online


Gunningham, N., “Regulating Small and Medium Sized Enterprises” (2002) 14:1 JEL 4


Hanh, R., & Stavins, R., "Incentive-based Environmental Regulation: A New Era from an Old Idea?" (1991) 18 EcologyLQ


Kooten, G. Cornelis van & Scott, Anthony, “Constitutional Crisis, the Economics of Environment, and
Livingston, W. S., "A Note on the Nature of Federalism" (1952) 67: 1 Political Science Quarterly 81
Timoney, K., "Behind the oil curtain – Athabasca river Monitoring and tar sands development “(2007)
Sahar Ghanaati

online:


Tuler, S., and Webler T. "How preferences for public participation are linked to perceptions of the context, preferences for outcomes, and individual characteristics,” (2010) Environmental Management 46(2)

<http://www.greenleaf-publishing.com/content/pdfs/jcc01warh.pdf>.


REPORTS


Alberta Department of Energy. ‘What is Oil Sands’, online:
<http://www.energy.gov.ab.ca/OilSands/793.asp>.


April, B. , Climate Action Network Canada, “The Tar Sands’ Long Shadow: Canada’s Campaign to Kill Climate Policies Outside Our Borders” (November 2010) 5. Online:
<http://climateactionnetwork.ca/2010/11/30/the-tar-sands-long-shadow/?rel=691>.


Sahar Ghanaati

Bim, K. & Khanna, P., “A discussion paper on the oil sands: challenges and opportunities”, Natural Resource Canada (2010), online:

Bremmer, Ian, "SHAPING THE POST-CRISIS AGENDA", online:


Bruce, JP. & Burton, I & Egener, I, “DISASTER MITIGATION AND PREPAREDNESS IN A CHANGING CLIMATE”, Environment Canada online:


Canadian Association of Petroleum Producers (CAPP) online:

CAPP, “Oil Sands Producers Hear Directly from Canadians, CEOs discuss the results to date of the different conversation” (Jan 2009) (Press release), online:
<http://www.capp.ca/aboutUs/mediaCentre/NewsReleases/Pages/OilSandsProducersHearDirectlyfromCanadians.aspx>.

CBC News, "Alberta oilsands: Should Ottawa step in to regulate them?" (May 24, 2011), online:

CBC News, "Prentice was ready to curb oil sands: WikiLeaks" (December 22, 2010), online:


Climate Action Network Canada, the Tar Sands Group, “Tarnishing the Maple Leaf: How the Tar Sands Drive Canada’s Climate Positions” (December 2009 )2,4. Online:

CERES. 2005b. online: <http://www.ceres.org/investorprograms/shareholder_action>. accessed July

Dembicki, G, “On Oil Sands, Ottawa’s Not Hearing What Alberta’s Saying” (27 June 2012) online:
Sahar Ghanaati

Echo, Lincolnshire, “Greenpeace claims victory over oil giant” (June 2007)
Energy Resources Conservation Board, “Highlights in Alberta’s Energy Development”, online:
Environment Canada, 'national Inventory Report 1990-2010: Executive Summary 
, online:
Environmental Monitoring and Evaluation, Alberta Environment, “Technical Guidance Document for Baseline Emissions Intensity Applications” (July 18, 2007), online:
European Parliament, DIRECTORATE-GENERAL FOR EXTERNAL POLICIES OF THE UNION,
DIRECTORATE B- POLICY DEPARTMENT -Background on The Alberta Oil Sands (2008) online:
Greenpeace, “Stop the Tar Sands”, online:
Goverment of Canada, Budget 2012: Chapter 3.2, “Improving Conditions for Business Investment”
Hamilton, Tyler, ”Canada’s Oil Sands on the Verge of a Boom Again” (April 2011) MIT Technology Review, online: <https://www.technologyreview.com/energy/37319/page1/>.
Hong, Beth “Black Out Speak Out campaign protests Harper government’s assault on environment”(June 2012) Political Junkie , Vancouver observer

70
Sahar Ghanaati


Isirdi, Brune "How can oil sands companies keep a good reputation in the eyes of their stakeholders"(December 2007) University of Alberta school of business


Office of the Prime Minister of Canada, "Prime Minister Steven Harper Calls For International
Sahar Ghanaati


Taylor, A., “Thinking Like an Owner: Fact Sheet - Overhauling the Royalty and Tax Treatment of Alberta’s Oil Sands” (Fact Sheet) (Drayton Valley, Alta: The Pembina Institute, 2006).


Vanderklippe, N. “Shell launches first Canadian oil sands carbon-capture project” (September 5th 2012) The Globe and mail, Calgary.


William Marsden, “Canada’s about-face on climate” (International Consortium of Investigative
Sahar Ghanaati


SEMINAR HANDOUT