

**IN THE PROVINCIAL COURT OF ALBERTA**  
**CRIMINAL DIVISION**

**BETWEEN:**

**HER MAJESTY THE QUEEN**

**-and-**

**SYNCRUDE CANADA LTD.**

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**AGREED STATEMENT OF FACTS**

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SYNCRUDE CANADA LTD., ("Syncrude") stands charged that:

*On or between the 1<sup>st</sup> day of April 2015 and the 5<sup>th</sup> day of August 2015, at or near Fort McMurray in the Province of Alberta did fail to keep or store a hazardous substance in a manner that ensures that the hazardous substance does not directly or indirectly come into contact with or contaminate any animals, contrary to section 155 of the Environmental Protection and Enhancement Act and did thereby commit an offence contrary to section 227(j) of the Environmental Protection and Enhancement Act.*

Syncrude further stands charged that:

*On or before the 5th day of August, 2015, at or near Fort McMurray, in the Province of Alberta, did deposit, a substance that is harmful to migratory birds, or did permit the deposit of such a substance, in waters or an area frequented by migratory birds or in a place from which the substance may enter such waters or such an area, contrary to section 5.1(1) of the Migratory Birds Convention Act, 1994, S.C. 1994, c.22 and did thereby commit an offence contrary to section 13(1)(a) of the said Act.*

## **Syncrude**

1. Syncrude Canada Ltd. ("Syncrude") is an Alberta corporation that operates two oil sands mining and processing facilities located north of Fort McMurray.
2. The Mildred Lake facility is located about 30 km north of Fort McMurray and has been operated by Syncrude since 1978. The facility consists of pits for active surface mining, an extraction plant to remove bitumen from the sand and an upgrader to convert bitumen into oil which is transported from the site by pipeline.
3. The facility also contains tailings ponds used as storage for "coarse tailings". The area known as the Southwest Sand Storage Site (SWSS) was constructed in 1991. These ponds are part of a decanting facility that was initially used to remove and recover solids, such as bitumen, mature fine tailings and sand, from process-affected water that would then be returned to the plant for re-use pursuant to Syncrude's operating approvals.

## **External Sump**

4. During the construction process of the SWSS, a structure known as the External Sump was constructed to collect liquids from the SWSS area. A pump located on a barge in the External Sump was used to pump these liquids back to the extraction plant.
5. The External Sump was a 2-compartment impoundment built into a hillside. The entire sump was about 1100 m long, 400 m wide and 8 m deep. A central berm separated a large and small compartment. The large (upstream) compartment was designed as a settling pond for coarser materials and the small compartment contained the pump barge. Process-affected water was collected in both compartments of the sump.
6. In 1993, the pump barge was removed and Syncrude ceased operational use of the External Sump. The Sump continued to contain liquids and solids including residual bitumen.

## Reclamation of External Sump

7. In 2005, Syncrude received regulatory approval to breach the large compartment of the external sump and drain about 25,000 cubic meters (25 million liters) of ponded water. Later in 2005, approximately 300 metres of the larger compartment was reclaimed by filling it with solid material, but the work was not completed because of "trafficability" concerns, i.e. the material in the Sump was too soft to support heavy equipment.
8. In November 2006, Syncrude's Closure and Reclamation Group started to place recovered sand in the small compartment in preparation for future reclamation, however this reclamation was not completed.
9. In 2009, Syncrude reported to Alberta Environment that the External Sump was not reclaimed due to "ground conditions and pre-planning issues". In 2010, Syncrude stated in its 2009 Annual Reclamation Progress Tracking Report that "the SWSS External Sump remains too soft to support placement of reclamation material. We had hoped that the dewatering process would act more rapidly than it has" and confirmed that there were "no firm plans to complete this area".
10. The sump was dry in some years, which may have contributed to it not being identified as an immediate risk, as well as the failure to remediate it. Further, the area's higher elevation meant that vegetation or periodic liquids in the facility could not be seen from ground level, and as the site was no longer in a functional part of the operations, workers did not attend or inspect it.
11. To deter landings by migratory birds, Syncrude had historically placed deterrent devices such as scare cannons and human effigies around the External Sump.
12. The cannons were removed by the end of the 2011 migratory bird season because the Syncrude department responsible for the deterrents understood that the area would be reclaimed. No deterrents other than the remaining effigies were placed after the end of 2011. The effigies were not maintained and deteriorated over time.
13. Although the External Sump was scheduled for further reclamation in 2011, no further reclamation activity was undertaken by Syncrude until after August 2015. This is because further reclamation attempts remained unviable due to trafficability concerns. Throughout this time, the External Sump continued to contain residual bitumen.

## Authorizations

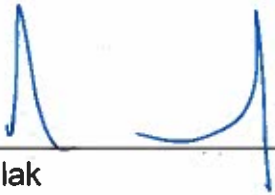
14. Syncrude operated pursuant to an Approval under the *Environmental Protection and Enhancement Act* that required the submission of a Waterfowl Protection Plan (“WPP”). The plan identified a variety of deterrent techniques to deter waterfowl from large tailings ponds affected by bitumen.
15. The plans, over time, continued to focus on managing large tailings ponds however, small, inactive areas, such as the External Sump, failed to be included in the plans.
16. The Oil Sands Bird Contact Monitoring Program (“OSBCMP”) was created because of regulatory requirements imposed on large industrial oil sand operators in the Fort McMurray region in 2011.
17. The 2015 OSBCMP Protocol included some changes from the previous protocols and in particular an “increased emphasis on identification of LIF habitats attractiveness to birds...” A LIF (liquid impoundment facility) was defined as a structure that holds process affected water. The bird mortality search component of the Protocol applied to the LIFs that were determined to have a “high bird mortality risk”.
18. Revisions were made to the 2015 Protocol to make improvements on the 2014 Protocol with respect to bird mortality search procedures. A specific risk model for evaluation of each LIF at a facility with respect to bird mortality risk is included in the 2015 Protocol. . Factors for assessment of bird mortality risk were derived from the integration of landing potential and bird mortality potential. LIFs rated as having a High bird mortality risk are included in the bird survey and mortality search procedures of the Protocol.
19. For a 3 month period, between May and August of 2015, the External Sump met the formal criteria for a LIF under the 2015 OSBCMP protocol and presented features making it attractive to birds and other animals (vegetation and habitat). However, the External Sump was not identified in the LIF list produced by Syncrude for the purpose of monitoring under the OSBCMP nor was it addressed pursuant to the WPP.

## **Waterfowl Incident**

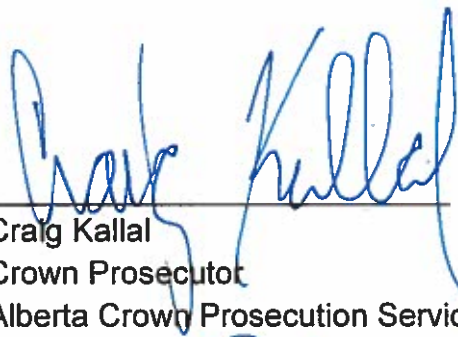
20. On August 5, 2015, an avian monitor working for a Syncrude contractor was looking for a shortcut from one monitoring location to another. His route took him past the External Sump where he noticed bird activity. The monitor saw a great blue heron in the sump lying down. The sump contained water, vegetation and bitumen. The monitor contacted his team leader and Syncrude's BET (Bird and Environment Team).
21. After this report, Syncrude staff responded. They recovered the live oiled heron and discovered 30 more heron carcasses in the small compartment of the sump. The carcasses were in various states of decomposition. There was water and bitumen in the sump as well as emergent vegetation in the water. The sump was surrounded by upland vegetation. Syncrude staff also noted evidence that other animals have been in the area.
22. Upon the discovery of the herons, Syncrude notified the Regulators and took immediate steps to deter additional birds from the Site by doing the following:
  - a. Installed wildlife fencing to prevent ground access.
  - b. Installed various deterrents including scare canons, human effigies, falcon effigies, ribbons and spinners around the perimeter.
  - c. As soon as the Site was released by the Regulators, Syncrude immediately started to operate the equipment it had mobilized to the Site to remove vegetation and water removal to mitigate the impacts.
  - d. Syncrude mobilized field and security personnel by deploying approximately 32 workers and staff members to reduce the risk of habitation and commenced a delineation reclamation plan.
  - e. That plan was eventually accepted by the Regulators and implemented, and the Site has been fully remediated.
23. Syncrude also deployed its personnel to conduct a comprehensive survey of the entire site (approximately 25,000 hectares) to identify other potentially affected water bodies that might be attractive to waterfowl which were not previously identified.
24. Syncrude further immediately took steps to remove vegetation and remediate several other LIFs which were identified.
25. Syncrude staff also discovered a Great Blue Heron rookery containing approximately 26 nests about 300 metres away from the External Sump in a densely wooded area.

26. Syncrude also completed a geospatial information management system to provide all Syncrude workers with access to a real-time site management process that identifies LIFs, other environmental features such as location of bear dens, and Occupational Health & Safety information such as material storage.
27. To date, Syncrude has expended approximately \$58 million on bird mitigation and deterrents from 2008 to 2017, and in particular spent approximately \$16 million on the remediation of the External Sump, which commenced in the spring of 2016 and was completed in late fall of 2016.
28. The Alberta Energy Regulator takes the position that the External Sump has been fully remediated as a result of Syncrude's efforts. The Alberta Energy Regulator has closed its remediation file and is not seeking for Syncrude to make any further remediation efforts with regards to the External Sump.

Agreed to this 31 day of December, 2018.



Ron Kruhlak  
McLennan Ross LLP  
Counsel for Syncrude Canada Ltd.



Craig Kallal  
Crown Prosecutor  
Alberta Crown Prosecution Service



Kent Brown  
Crown Prosecutor  
Public Prosecution Service of Canada

**DOCKET NO: 170887079P1, 171215312P1**

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