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July 9, 2014

Authorizations Review & Coordination Team  
Alberta Energy Regulator  
Suite 1000, 250 – 5 Street SW  
Calgary, Alberta T2P 0R4

**E-mail: ARCTeam@aer.ca**

**Re: Coal Valley Resources Inc. ("Coal Valley") – Robb Trend Project  
AER Application No. 1725257**  
**Our File: 043998-0007, 041205-0048**

We write on behalf of Ermineskin Cree Nation ("ECN") and Whitefish (Goodfish) Lake First Nation ("WLFN") in response to the Notice of Application issued by the AER on June 4, 2014.

Our clients previously filed Statements of Concern on AER Application No. 1725257 and *Environmental Protection and Enhancement Act* ("EPEA") Application No. 028-11066. ECN's Statement of Concern was submitted on September 28, 2012, and WLFN's Statement of Concern was submitted on July 10, 2013. We request that you consider these Statements of Concern and their attachments, as well as this letter, as our clients' Statements of Concern in response to the Notice of Application issued June 4, 2014.

*Supplementary Statement of Concern*

Since the original Statements of Concern were filed, ESRD has issued Enforcement Order No. EO-2014/02/UAR ("EO") against Coal Valley in relation to several of Coal Valley's existing facilities in the eastern slopes (see attached, the EO and its amendments).

The EO issued March 14, 2014, shows that several of Coal Valley's tailings ponds have been leaking since 2012 and that the Director is of the opinion that Coal Valley contravened EPEA and its existing approvals. Toxic substances in the watershed, among other impacts to be determined by Alberta Environment, and the resulting effects on fish, wildlife and vegetation could render the affected areas unsuitable for the exercise of our clients' Treaty rights.



At no time did Coal Valley disclose this information to ECN or WLFN despite having knowledge that community members likely fish for food on waters impacted by these unauthorized releases.

The information revealed by the Order reinforces the concerns expressed in the previously filed Statements of Concern. As well, ECN and WLFN have new concerns regarding Coal Valley's failure to inform the community, and the company's disregard for our clients' health and the environment in general.

ECN and WLFN have a reasonable expectation that Coal Valley will disclose matters that are likely to affect our clients and the exercise of their Treaty rights, such as that tailings ponds are leaking, on an ongoing and continuous basis. Further, our clients request that the AER require Coal Valley to make such ongoing and continuous disclosure as a condition of any approval issued regarding AER Application No. 1725257.

Should the Regulator have any questions or require clarification, please feel free to contact me.

Sincerely,

**MacPherson Leslie & Tyerman LLP**

Per: <original signed by>

Meaghan M. Conroy 

MMC:AKP

cc: Les Lafleur, Coal Valley Resources Inc.

Lori Crozier, CEAA, [lori.crozier@ceaa-acee.gc.ca](mailto:lori.crozier@ceaa-acee.gc.ca)

Clients

**ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT**

**BEING CHAPTER E-12 R.S.A. 2000 (the "Act")**

**ENFORCEMENT ORDER NO. EO-2014/02-UAR**

Coal Valley Resources Inc.  
2900, 10180 - 101 Street  
Edmonton Alberta T5J 3V5

(the "Company")

WHEREAS the Company operates a coal mine (the "Mine") on the lands legally described as Township 49, Range 23, 22, 21; Township 48, Range 22, 21, 20; Township 47, Range 21, 20, 19; and Township 46, Range 19, all West of the 5<sup>th</sup> Meridian, in Yellowhead County, in the Province of Alberta;

WHEREAS the Company owns and operates a coal processing plant (the "Plant") on the lands legally described as the Section 24, Township 47, Range 20, West of the 5<sup>th</sup> Meridian, in Yellowhead County, in the Province of Alberta;

WHEREAS the Company constructed and operates the Mine and the Plant pursuant to Approval No. 11066-02-00, as amended (the "Approval");

WHEREAS pursuant to the Approval, the Company operates "mine wastewater handling facilities" or "settling ponds" which are parts of the Mine that collect, transport, store and treat mine wastewater. Ponds are classified in the Approval as either "major ponds" or "minor ponds" (collectively the "Ponds");

WHEREAS the Approval requires the Company to operate and manage its Ponds for the control of Total Suspended Solids ("TSS") in accordance with strict limits and parameters, as some of these Ponds discharge into the surrounding watershed;

WHEREAS the Approval permits the Company to use flocculants to enhance the settlement of TSS in the Ponds, but flocculants must be used at a controlled rate and in identifiable dosages and quantities as they can have adverse effects on the aquatic environment;

WHEREAS Alberta Environment and Sustainable Resource Development (the "Department") inspected the Mine's wastewater handling facilities on July 25, August 23 and September 17, 2012 after reported non-compliances and observations of turbid water in the Embarras River, which is a fish bearing watercourse that receives discharge from some Ponds;

WHEREAS on October 4, 2012, the Department requested the Company to stop using cationic flocculants in its Ponds because the Company had a series of contraventions in 2011 and 2012 where it released mine wastewater that exceeded the limits in its Approval. Also, the Company could not demonstrate that it could accurately determine flocculant dosage or that it was using

flocculant at a controlled rate as required by its Approval;

WHEREAS on March 14, 2013, the Company committed to installing automatic flocculant dispensing stations at three Ponds, and retrofitting its manual flocculant dispensing stations with metering pumps at other Ponds to control flocculant dosing;

WHEREAS on May 28 and June 27, 2013, the Department inspected the Mine and found that the Company had not followed through on its March 14, 2013 commitments;

WHEREAS clause 4.2.12 and Table 4.2-A of the Approval specify the following limits and parameters:

- the maximum daily concentration of TSS discharge from a major pond must not exceed 350mg/L (the "Daily Discharge Limit");
- the monthly average concentration of TSS discharge from a major pond must not exceed 50 mg/L (the "Monthly Discharge Limit"); and
- there must be 100% survival in 100% mine wastewater from a major pond using the Acute Lethality Test Using Rainbow Trout (the "Acute Lethality Test");

WHEREAS on April 4, 2013, the Company reported to the Department a daily TSS discharge concentration of 1,760mg/L for Yellowhead Tower Pond 3, being in excess of the Daily Discharge Limit;

WHEREAS on May 24, 2013, the Company reported to the Department monthly average TSS discharge concentrations of 141.4 mg/L for Yellowhead Tower Pond 3, 66 mg/L at Pit 29 East Pond, and 55 mg/L at Pit 29 West Pond each being in excess of the Monthly Discharge Limits;

WHEREAS on May 28, 2013, the Department sampled various Ponds and observed that drainage ditches near 28 Haul Road Pond, Erith Pond, and Yellowhead Pond 4 were poorly defined, not vegetated or armoured so they were not preventing channel erosion and adverse impacts on water quality as required by the Approval;

WHEREAS on May 29, 2013, the Company reported to the Department a daily TSS discharge concentration of 660 mg/L for Yellowhead Tower Pond 12, being in excess of the Daily Discharge Limit;

WHEREAS on June 3, 2013, an independent laboratory notified the Department that Yellowhead Tower Pond 12 and Yellowhead Tower Pond 4 each failed the Acute Lethality Test based on samples taken on May 28, 2013;

WHEREAS on June 3, 2013, the Department held a conference call with the Company to advise that a notice of investigation would be issued, and the Company verbally advised the Department that they were unable to stop the discharges from Yellowhead Tower Pond 12 due to concerns relating to that pond's structural integrity;

WHEREAS on June 4, 2013, the Department issued a notice of investigation to the Company regarding contraventions of its Approval, and requested further information regarding the Company's monitoring data and flocculant dosing;

WHEREAS on June 5, 2013, the Company reported to the Department that Yellowhead Tower Pond 12 failed the Acute Lethality Test based on a sample taken on June 1, 2013;

WHEREAS on June 6, 2013, the Company reported to the Department a daily concentration of TSS discharge of 465 mg/L for Yellowhead Tower Pond 12, being in excess of the Daily Discharge Limit;

WHEREAS on June 18, 2013, the Company responded to the Department's notice of investigation by providing further information on how it administers flocculant;

WHEREAS on June 27, 2013, the Department and the Alberta Energy Regulator inspected the Yellowhead Tower portion of the Mine and identified numerous non-compliances with the Approval including settling ponds that were not achieving adequate settling retention time or providing reliable flow measurement, and drainage ditches that were not preventing channel erosion and adverse impacts on water quality as required by the Approval;

WHEREAS on June 30, 2013, the Company reported to the Department monthly average TSS discharge concentrations of 81.0 mg/L for Yellowhead Tower Pond 5, and 236.6 mg/L for Yellowhead Tower Pond 12, each being in excess of the Monthly Discharge Limit;

WHEREAS on July 12, 2013, the Company reported to the Department that 28 Haul Road Pond and Mercoal West Pond 2 each failed the Acute Lethality test based on samples taken on July 8, 2013;

WHEREAS on July 16, 2013, the Company reported to the Department a daily TSS discharge concentration of 1,440 mg/L for Yellowhead Tower Pond 5, in excess of the Daily Discharge Limit;

WHEREAS a Department inspection report dated July 26, 2013 was sent to the Company outlining non-compliances with the Approval;

WHEREAS on August 6, 2013, the Department reviewed the Company's:

- inspection records and found that the Company failed to take a mine wastewater sample from seven major ponds throughout May and June 2013 where the outflow discharge likely appeared abnormally turbid (i.e. was greater than 50 NTU);
  - monitoring records and found that the Company failed to take mine wastewater samples 3 times/week during discharge in June 2013 for 17 major ponds;
  - monthly Mine Wastewater Report and found that the Company has failed to identify the dosage of flocculants used at its Ponds; and
  - Annual Wastewater Report and found that the Company has failed to evaluate sediment accumulation or dredging activities at its Ponds
- each of which was contrary to the terms of the Approval;

WHEREAS by letter dated August 30, 2013, the Company provided a response to the Department's July 26 inspection report;

WHEREAS by letter dated September 24, 2013, the Department indicated the Company's response was deficient and directed the Company to take specific actions to ensure its wastewater management would meet the outcomes required by the Approval;

WHEREAS by letter dated October 9, 2013, the Company committed to implementing some, not all, of the directions provided by the Department, or implementing directions on timelines that are not acceptable to the Department;

WHEREAS on January 28, 2014, the Department met with the Company to discuss their mine wastewater management;

WHEREAS to date, the Department has not been informed that the Company has discovered the root cause of the failed Acute Lethality Tests, or confirmed that this is not related to its flocculant use or dosing;

WHEREAS to date, the Department has not received sufficient information from the Company regarding how it administers flocculant at a controlled rate or how it determines flocculant dosage in accordance with its Approval;

WHEREAS to date, the Department does not believe that the Company can operate and manage its Ponds for the control of TSS as demonstrated by the Company's repeated failures to meet the Approval's limits and parameters;

WHEREAS Faye Hutchings, Acting Compliance Manager, Upper Athabasca Region, has been designated as a Director under the Act for the purposes of issuing an enforcement order under section 210 of the Act (the "Director");

WHEREAS the Director is of the opinion that the Company has contravened section 227(e) of the Act by:

- having Ponds that do not achieve adequate settling retention time or provide reliable flow measurement, contrary to clause 3.1.1(d) and (g) of the Approval;
- having drainage ditches that do not prevent channel erosion and adverse impacts on water quality, contrary to clause 3.1.3 of the Approval;
- failing to use flocculant at a controlled rate or being able to accurately determine flocculant dosage contrary to clauses 4.2.6 and 4.2.27(e) of the Approval;
- permitting the unauthorized discharge of TSS from major ponds at the Mine in excess of the Daily and Monthly Discharge Limits contrary to clause 4.2.12 and Table 4.2-A of the Approval;
- permitting the unauthorized discharge of mine wastewater from major ponds at the Mine that failed the Acute Lethality Test contrary to clause 4.2.12 and Table 4.2-A of the Approval;
- failing to take a mine wastewater sample for major ponds where the outflow discharge likely appeared abnormally turbid (i.e. was greater than 50 NTU) contrary to clause 4.2.15(c) of the Approval;
- failing to take a mine wastewater sample 3 times/week during discharge in May and June 2013 contrary to clause 4.2.14 and Table 4.2B of the Approval;
- failing to identify the dosage of flocculants used at its Ponds in its monthly Mine Wastewater Report contrary to clause 4.2.27(e) of the Approval; and
- failing to evaluate sediment accumulation or dredging activities at its Ponds in its Annual Wastewater Report contrary to clause 4.2.28(c) of the Approval.

THEREFORE, I, Faye Hutchings, Director, pursuant to sections 210 of the 7, DO HEREBY ORDER THAT:

1. The Company shall submit to the Director a written plan for mine wastewater management (the "Plan") by **April 30, 2014**.
2. The Plan shall include, at a minimum, the following:

- (a) The engineering drawings for all Ponds (major and minor ponds) in the Approval.
- (b) A list of all the Ponds that the Company's consultant, Matrix Solutions Inc., identified in its November 18, 2013 report as requiring modification or improvement along with a detailed work plan for how the Company will ensure these Ponds are designed to achieve adequate settling retention time and provide reliable flow measurements as required by the Approval. The Department is supportive of the recommendations made by Matrix Solutions Inc. to correct deficiencies at the Ponds and to improve the Company's overall mine wastewater management approach.
- (c) An assessment of all drainage ditches at the Mine to determine each ditch's compliance with the Approval's construction and maintenance requirements, along with a work plan for how the Company will ensure the drainage ditches are maintained to prevent channel erosion and adverse impacts on water quality as required by the Approval.
- (d) A system to inspect, sample and record **daily** the turbidity for all major ponds and those minor ponds using flocculants. In addition to clause 4.2.15 of the Approval, each daily inspection report shall include, but is not limited to:
  - i. the name of the person conducting the inspection;
  - ii. the name of the person taking the wastewater sample;
  - iii. a record that indicates the flocculant station is functioning properly and is releasing flocculant at a controlled, measurable rate, including the added dosage and quantity of flocculant used;
  - iv. a detailed description of the observed turbidity of the pond's outflow discharge (NTU); and
  - v. a record of daily freeboard.
- (e) The development of a site specific TSS/NTU correlation curve.
- (f) A system to conduct an Acute Lethality Test **monthly** at each major pond that has failed an Acute Lethality Test since January 1, 2012. The sampling regime shall start April 1, 2014 and a sample shall be collected from the pond discharge in the first week of the month during release. If there is no release during the first week of the month, the discharge shall be sampled during the first release that occurs in a subsequent week. Sampling frequency may return to intervals specified in the Approval after a Pond has passed three consecutive tests based on the parameters in Table 4.2-A.
- (g) A plan to retrofit all flocculant dispensing stations to ensure flocculant is administered at a controlled rate and that the Company can identify flocculant dosage and quantity. Retrofitting requires either installing either automated flocculant dosing stations or inflow measurement, turbidity/TSS measurement, and flocculant flow measurement devices used solely in conjunction with the appropriate flocculant dosing procedure developed by the manufacturer. All new flocculant stations shall be equipped with the

proper flocculant controls before a Pond is put into service.

- (h) A schedule to routinely dredge sediment accumulation in Ponds when pond water depth is less than 1 metre to ensure each Pond has sufficient capacity and retention to treat mine wastewater. The Company shall evaluate sediment accumulation in each pond on a **monthly** basis and after the Mine experiences a "storm event" as defined in the Approval.
  - (i) A storm event management plan that outlines how the Company will minimize unnecessary pumping of wastewater to Ponds and which outlines recirculation options. Each Pond affected by the storm event shall be evaluated for its ability to effectively treat wastewater within Approval discharge limits. This plan shall include how maintenance and dredging activities at each Pond will be prioritized and completed within one week of a storm event.
  - (j) A plan to actively pump down Pond levels when water quality meets the Approval's discharge limits in order to maintain a freeboard of 60 centimeters from the height of the water to the discharge outlet.
3. The Plan shall include a schedule of implementation for each requirement set out in paragraph 2 above.
4. The Company shall implement the work set out in the Plan in accordance with the schedule of implementation as approved by the Director.
5. The Company shall submit a written monthly status report (the "Status Report") starting 30 days after the schedule of implementation for the Plan has been approved by the Director, and every 30 days thereafter, until advised otherwise by the Director in writing. Each Status Report shall include at a minimum:
- (a) a detailed summary on the progress of the work undertaken in the previous 30 days including the monitoring data and inspection reports required under paragraph 2 of this Order; and
  - (b) a detailed work plan for the next 30 days.

DATED at the City of Spruce Grove in the Province of Alberta, this 14<sup>th</sup> day of March 2014.

<original signed by>

  
Faye Hutchings  
Acting Compliance Manager  
Upper Athabasca Region



**Section 91 of the *Environmental Protection and Enhancement Act* may provide a right of appeal against this decision to the Alberta Environmental Appeals Board. There may be a strict time limit for filing such an appeal. A copy of section 91 is enclosed. For further information, please contact the Board Secretary at #306 Peace Hills Trust Tower, 10011 - 109 Street, Edmonton, Alberta, T5J 3S8; telephone (780) 427-6207; fax (780) 427-4693.**

**Notwithstanding the above requirements, the Party shall obtain all necessary approvals.**



**ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT**

**BEING CHAPTER E-12 R.S.A. 2000 (the "Act")**

**ENFORCEMENT ORDER NO. EO-2014/02-UAR**

Coal Valley Resources Inc.  
2900, 10180 - 101 Street  
Edmonton Alberta T5J 3V5

(the "Company")

WHEREAS Enforcement Order No. EO-2014-02-UAR (the "Enforcement Order") was issued to the Company on March 14, 2014;

WHEREAS the Company requires further time to provide the written plan for mine wastewater management as required by the Enforcement Order;

WHEREAS section 212(1)(a) of the *Act* states that the Director may amend a term or condition of a enforcement order;

THEREFORE, I, Faye Hutchings, Director, pursuant to section 212(1)(a) of the *Act*, DO HEREBY ORDER:

1. Substitute June 30, 2014 for April 30, 2014 in clause 1.

DATED at the City of Edmonton in the Province of Alberta, this 21<sup>st</sup> day of March 2014.

<original signed by>

Faye Hutchings  
Acting Compliance Manager  
Upper Athabasca Region

Section 91 of the *Environmental Protection and Enhancement Act* may provide a right of appeal against this decision to the Alberta Environmental Appeals Board. There may be a strict time limit for filing such an appeal. A copy of section 91 is enclosed. For further information, please contact the Board Secretary at #306 Peace Hills Trust Tower, 10011 - 109 Street, Edmonton, Alberta, T5J 3S8; telephone (780) 427-6207; fax (780) 427-4693.

Notwithstanding the above requirements, the Party shall obtain all necessary approvals.



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**ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT**

**BEING CHAPTER E-12 R.S.A. 2000 (the "Act")**

**Amendment No. 2**

**ENFORCEMENT ORDER NO. EO-2014/02-UAR**

Coal Valley Resources Inc.  
2900, 10180 - 101 Street  
Edmonton Alberta T5J 3V5  
(the "Company")

WHEREAS the Company was issued Enforcement Order No. EO-2014-02-UAR (the "Enforcement Order") on March 14, 2014;

WHEREAS the Enforcement Order was amended on March 21, 2014 (Amendment No.1);

WHEREAS it was clarified that the date for providing the written plan for mine wastewater management as required by clause 1 of the Enforcement Order should be April 30, 2014;

WHEREAS the Company requires an extension of time relating to the submission of engineering drawings under clause 2(a) of the Enforcement Order;

WHEREAS section 212(1)(a) of the *Act* states that the Director may amend a term or condition of a enforcement order;

THEREFORE, I, Faye Hutchings, Director, pursuant to section 212(1)(a) of the *Act*, DO HEREBY ORDER:

1. Substitute **April 30, 2014** for **June 30, 2014** in clause 1.
2. Add the following after clause 2(a): **to be provided by June 30, 2014.**

DATED at the City of Spruce Grove in the Province of Alberta, this 26<sup>th</sup> day of March 2014.

<original signed by>

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Faye Hutchings  
Acting Compliance Manager  
Upper Athabasca Region

**Section 91 of the *Environmental Protection and Enhancement Act* may provide a right of appeal against this decision to the Alberta Environmental Appeals Board. There may be a strict time limit for filing such an appeal. A copy of section 91 is enclosed. For further information, please contact the Board Secretary at #306 Peace Hills Trust Tower, 10011 - 109 Street, Edmonton, Alberta, T5J 3S8; telephone (780) 427-6207; fax (780) 427-4693.**

**Notwithstanding the above requirements, the Party shall obtain all necessary approvals.**