

October 11, 2024

By email only

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canada

www.aer.ca

Lawson Lundell
Suite 1100, 225 – 6th Avenue SW
Brookfield Place
Calgary, AB T2P 1N2

CVW CleanTech Inc.
305 - 505 8th Ave SW
Calgary, AB
T2P 1G2

Attention: Shailaz Dhalla

Attention: Kevin Moran

**Canadian Natural Resources Limited (Canadian Natural)
Oil Sands Conservation Act Application No. 1952256 and *Environmental Protection and
Enhancement Act* Application No. 022-00149986 (the Applications)
Canadian Natural Request for Confidentiality of CVW CleanTech Inc. (CleanTech) Statement of
Concern No. 32547**

Dear Sir and Madam,

The Alberta Energy Regulator (AER) has now considered the request of Canadian Natural submitted on July 25, 2024, under section 49(4) of the *Alberta Energy Regulator Rules of Practice* (Rules) for confidentiality (Confidentiality Request) over portions of CleanTech’s Statement of Concern No. 32547 (SOC), regarding “Health Impacts” (Concern no. 8) and “Safe Operations” (Concern no. 13). Canadian Natural requests confidentiality over portions of the SOC that reference technical components of the Naphtha Recovery Unit Tailings Treatment (NRUTT) project, located at Horizon Oil Sands Processing Plant and Mine (Horizon) in Northern Alberta, and its configuration (the Confidential Information).

Canadian Natural seeks to protect disclosure of the Confidential Information because the scientific and technical information related to the NRUTT Project, and the subject Applications is currently patent pending. Canadian Natural submits that this information is highly confidential and commercially sensitive and that if it were to form part of the public record, its publication could cause significant harm to Canadian Natural’s competitive position, the exclusive use of its novel technology, and the overall success of the NRUTT project.

To preserve the confidentiality of this information, Canadian Natural has requested that the AER:

- consider filing Canadian Natural’s redacted version of CleanTech’s SOC (the Redacted SOC), attached to its Confidentiality Request as “Attachment A”.
- extend confidentiality to all communications that may arise in the context of the proceeding that deal with the aforementioned confidential information, including its responses to the Supplemental Information Requests (SIRs) received from the AER on July 23, 2024; and
- grant it the ability to file redacted copies of all such documents in this proceeding, in accordance with the AER’s direction.

In response to the above requests, the AER has considered: (i) Canadian Natural’s Confidentiality Request; (ii) CleanTech’s response of August 12, 2024, discussed below; and (iii) Canadian Natural’s reply of August 13, 2024, which reiterated the economic implications that could occur if the AER put the confidential information on the public record.

In its Confidentiality Request, Canadian Natural describes CleanTech’s SOC as follows:

The SOC directly references the names of a certain solvent, additive and process conditions that are presumed by CVW to be used in the NRUTT Project, which leads to the identification of the nature of the NRUTT process. References to solvents and additives involved in the NRUTT Project have been consistently treated with the utmost confidence by Canadian Natural prior to, during and after the NRUTT Application was filed. The solvent and additive information (including any related conjecture on the part of CVW in the SOC), as components of the NRUTT Project, relate to a pending patent application that has been protected by Canadian Natural and not been shared in the public domain.

Canadian Natural submits that any publication of the Confidential Information, and these above-mentioned references in the SOC more specifically, could reasonably be expected to cause significant harm to its competitive position and cause it undue financial harm. It provides the following reasons for the Confidentiality Request:

1. The Confidential Information relate to solvent and additive information, as components of a novel technology to be used for the NRUTT process, which is patent pending.
2. Pending patent applications must remain confidential to prevent competitors from becoming aware of proposed innovations and technologies.
3. Competitors could, if given access to the Confidential Information, reverse engineered and exploit Canadian Natural’s new technology before Canadian Natural, through a patent approval, is provided protected exclusively over its intellectual property.

4. Public disclosure could jeopardize Canadian Natural's continued development and use of the technology, and could negatively affect the anticipated project, impacting operational timelines and economic benefits associated with the NRUTT project.
5. While Canadian Natural was ultimately able to file the NRUTT Application on a nonconfidential basis, Canadian Natural's earlier queries about filing the application confidentially demonstrate the legitimacy and significance of its confidentiality concerns.

In CleanTech's response of August 12, 2024, CleanTech disputed the confidentiality of the information in its SOC. It reasoned that before any issuance decision is delivered, Canadian Natural will have to eventually publish the information as part of the patent application. As the information related to the patent will eventually become public, it is not necessary for the AER to treat the information as confidential. Along with its submissions, CleanTech submitted its own much more limited redacted version of the SOC as a proposed compromise.

For the reasons that follow, the AER has decided to grant the Confidentiality Request as submitted by Canadian Natural in its Confidentiality Request.

Reasons for decision

It is a fundamental premise of the AER's decision making process, and a requirement under section 49(1) of the *Rules*, that all documents filed in respect of a proceeding be placed on the public record. Public disclosure in the name of procedural fairness and transparency is the overriding general principle reinforced in subsection 49(1) of the Rules.

However, section 49 also recognizes the legitimate need, when established, of a party to protect confidential or sensitive information where disclosure of that information is likely to result in harm to such party's competitive, financial, or personal interest, and such harm outweighs the benefit to the public interest of disclosure. Exceptions to disclosure will only be granted in the clearest and most compelling cases and will be limited to those situations where the party requesting confidentiality has positively and demonstrably met the subsection 49(4) criteria. A confidentiality ruling is highly fact and situation specific.

Under section 49(3) of the Rules, a request for confidentiality must "(b) briefly describe (i) the nature of the information in the document that is the subject of the request, and (ii) the reasons for the request, including the specific harm that might result if the document were placed on the public record." The AER is satisfied the Confidentiality Request meets these requirements.

Canadian Natural submitted its request under section 49(4)(b) of the Rules. Accordingly, the AER has considered whether the information which Canadian Natural says should be redacted from CleanTech's

SOC falls under the category of information that, if disclosed, “could reasonably be expected (i) to cause significant harm to the competitive position of a party, or (ii) to result in undue financial loss or gain to any person or organization.”

The AER has determined that the redacted portions of CleanTech’s SOC, as described in the Confidentiality Request, contain information that meets the criteria in section 49(4)(b) of the *Rules* for confidentiality on the basis submitted by Canadian Natural.

Although Canadian Natural’s process may, the AER understands, eventually be made available to the public as part of Canadian Natural’s patent application, it is not yet publicly available. As such, CleanTech’s submission that the Confidential Information ought to be treated as public because it may become public, is preemptive. The fact remains that Canadian Natural has consistently treated this information as private and confidential.

The AER has also reviewed CleanTech’s redacted version of its SOC, which it submitted as a compromise. CleanTech’s redactions are significantly narrower than Canadian Natural’s proposed redactions. CleanTech’s version redacts the names of the chemicals from its SOC but makes no redactions to the discussion and commentary about Canadian Natural’s proposed process. Redacting the names of the chemicals does not, in the AER’s view, address Canadian Natural’s confidentiality concerns. Even with the names of the solvents and additives redacted, Canadian Natural’s competitors may still be able to gain valuable insight into the nature of the process conditions used in the NRUTT project.

The AER is therefore prepared to grant confidentiality over the redacted portions of CleanTech’s SOC, as submitted by Canadian Natural in its Confidentiality Request. The AER requires that the redacted version of the SOC be filed on the public record of the Applications, as only the requested portions of the SOC have been granted confidentiality, not the full document. The unredacted SOC will be treated as confidential by the AER and not form part of the public record.

The AER is also prepared to grant confidentiality more broadly for all communications that may arise in the context of this proceeding that deal with the Confidential Information, including Canadian Natural’s first-round supplemental information request (SIR) responses. However, the AER will not allow Canadian Natural to file redacted copies of all such documents in this proceeding.

For future communications and submissions in this application, Canadian Natural may file both a: (i) a confidential unredacted copy of all such documents for the AER’s review, which will not be placed on the public record; and (ii) a redacted copy of all such the documents with proposed limited redactions filing on the public record of the Applications.

Substantively, Canadian Natural's proposed redactions will be subject to the AERs review and approval. Canadian Natural should only redact what information is necessary to protect its patent pending NRUTT process. Some examples of limited redactions that the AER may consider approving include the specific additives, solvents and operating conditions involved in that process.

If you have any questions, contact SOC@aer.ca.

Sincerely,

<Original signed by>

Stephanie Latimer, KC
Vice President Law and Associate General Counsel

cc: SOC@aer.ca