

December 29, 2020

By Email Only

**Tarlan Razzaghi**  
**Boughton Law Corporation**

**Statement of Concern No. 31843**  
**WA Application 010-00311969**  
**Coalspur Mines (Operations) Ltd.**  
**Vista Mine**

Dear Tarlan Razzaghi:

You are receiving this letter because you filed a statement of concern (SOC) on behalf of Gunn Métis Local #55 (Lac St. Anne Métis) (GML/LSAM), about WA Application 010-00311969. The Alberta Energy Regulator (AER) has reviewed your SOC, along with the application, and all applicable requirements and other submissions or information about the application. The AER has decided that a hearing is not required to consider the concerns outlined in your SOC.

The application is to amend condition 4.14 such that it allows the AER to authorize appropriate changes to the approved maximum operating level of the McPherson Pit Settling Cell 1 tailings pond, either increasing and/or decreasing the level. The amendment under consideration is as follows (amendment in red):

4.14 The Approval Holder shall maintain the McPherson Pit Settling Cell 1 tailings pond at a maximum operating level of the lower of either 1187 metres elevation, or a minimum 2 metres of freeboard below the bedrock-overburden interface around the perimeter of the pond, **unless otherwise directed by the AER.**

The applicant sent a companion request to temporarily vary the maximum operating level of McPherson Pit Settling Cell 1 to 1188 meters elevation, maintaining a minimum 1 metre below the bedrock-overburden interface, which would be considered by the AER if the amendment application was approved. The requested relaxation is temporary in nature, and would only be permitted until March 31, 2021. For full transparency, the details of this second request were included in the public notice of application, and you were notified directly as the AER is aware that you have expressed concerns in SOCs

filed against applications for additional settling cells for the Vista Mine. While the second request to vary the maximum operating level is not subject to a formal application process, and therefore not subject to the SOC process, the AER has considered your concerns in making that second decision, and will address those concerns in the second part of this letter after addressing the decision regarding the condition 4.14 amendment application.

### **WA Application 010-00311969**

In our review of your concerns, we considered the following:

- The amendment to condition 4.14 aligns it with the same conditions in the related licence under the *Coal Conservation Act* (CCA) and the approval under the *Environmental Protection and Enhancement Act* (EPEA).
- Condition 14 of Coal Mine Licence No. C 2014-5C states:

The maximum operating elevation of the McPherson Pit Settling Cell 1 shall not exceed 1187 meters above sea level and shall remain below the till/bedrock geological contact excluding the freeboard requirement, unless otherwise directed by the AER.
- Condition 3.1.6 of EPEA Approval No. 00301345-00-00, as amended, states:

The approval holder shall construct the McPherson Pit Settling Cell 1, fine tailings treatment system, and tailings transport infrastructure:

  - (a) as described in applications 007-00301345; or
  - (b) as otherwise specified in this approval;

Unless otherwise authorized in writing by the Director.
- When the project is viewed as a whole, the AER agrees with Coalspur that it was not intended that a formal application process would be necessary to authorize a temporary variation of the operating level freeboard. The AER concludes that not including the phrase “unless otherwise directed by the AER”, or similar wording, within condition 4.14 was an inadvertent error, and the proposed amendment corrects this error.
- Amending the *Water Act* approval would bring all three approvals into alignment, and allow for the AER to address the operating level of the freeboard in accordance with the results of monitoring or operating conditions to ensure that protection of the environment and public safety is maintained to the satisfaction of the AER.
- Much of your expressed concerns are in relation to Coalspur’s applications submitted for approval of McPherson Tailings Cells 2-9 which is part of a separate review and is not within the scope of AER’s current review of the subject amendment application.
- Regarding your concerns about a lack of stakeholder engagement, the AER is satisfied that Coalspur has committed to, and has made attempts to discuss the Vista Project-related impacts with Indigenous groups and stakeholders as part of the development and implementation of its ongoing engagement plan.
- Pursuant to the *Responsible Energy Development Act* (REDA), The AER has no jurisdiction to assess the adequacy of Crown consultation associated with the rights of aboriginal peoples; the Aboriginal Consultation Office (ACO) determines if consultation is required and adequate.

- You expressed concerns regarding the SOC process being unfair because it was not extended to address the current pandemic; however, Public Notice of Application for Cell 1 was posted on November 21, 2019 with a deadline of December 23, 2019. The application for cell 1 was approved on February 6, 2020. These dates are all well before the health measures due to the pandemic came into effect. Additionally, for this application, the AER took special measures to ensure that you were aware of the amendment application and had an opportunity to file a SOC. These measures included notifying you directly rather than using the AER's standard process of posting the Notice of Application on the AER's website, and including details regarding Coalspur's related request for a temporary freeboard relaxation, which is not subject to the SOC process.
- With respect to your request respecting confidentiality, the AER reviewed the request with the decision maker that made the decision on SOC 31795, and it was concluded that the materials remain confidential pursuant to the original decision.

Based on the above, the AER has concluded that it is not necessary to hold a hearing before making a decision on the application. The AER has issued the applied-for approval and this is your notice of that decision.

You may file a regulatory appeal on the AER's decision to issue the approval if you meet the criteria within section 36 of the *Responsible Energy Development Act*. Filing instructions and forms are located here: <https://www.aer.ca/regulating-development/project-application/regulatory-appeal-process>.

### **Request to Authorize Temporary Freeboard Relaxation**

As stated above, the AER recognizes that you have expressed concerns about the request for a temporary freeboard relaxation. It is not the AER's usual process to provide reasons for requests that are outside of the formal application process; however, in this case the AER has decided to do so because the application and request are so closely related, and for complete transparency given that you have expressed concerns.

The AER considered your concerns, the materials submitted by Coalspur, and all regulatory requirements and has decided to authorize the temporary relaxation subject to conditions.

- Given the temporary nature of the relief Coalspur is seeking, the authorization would result in minimal effects on the environment. The purpose of the authorization is to allow for the deposit of tailings within McPherson Pit Settling Cell 1, an activity within an approved location that is already currently occurring. No additional activities are being undertaken. The application neither increases the project footprint nor will it result in increased environmental effects, and therefore does not appear to pose an increased risk to GML/LSAM.

With respect to your concerns respecting dam safety and risk to water and water quality, the AER considered the following:

- AER staff provided technical risk assessments associated with a change to the maximum operating level of McPherson Pit Settling Cell 1 against the risk for seepage from the tailings pond, the risk for increased air fugitive emissions, the risk to the geotechnical stability of the associated regulated containment dam, and the risk that a temporary freeboard relaxation might not be reversible. When applying conditioned operating, monitoring and mitigation requirements, it was assessed that there is no significant increase in risk or adverse effects anticipated with the amendment.
- As part of this application, a reputable consultant (BARR) has calculated an acceptable geotechnical safety factor that is achievable if the tailings pond level is temporarily increased to 1188 metres elevation, while maintaining the tailings pond level below the top of natural bedrock by one metre.
- The risk of seepage toward adjacent McPherson Creek was assessed; it was determined that the tailings pond level would remain below the level of McPherson Creek, thereby maintaining a gradient toward the pond, minimizing the risk of seepage to McPherson Creek.
- For geotechnical purposes, the tailings pond fluid levels are required to remain below the top of bedrock. The approved pond level of 2 metres below the top of bedrock incorporates a safety factor for wind wave setup and accommodating multiple 100-year/24-hour precipitation events while remaining below the top of bedrock.
- At this time of year, winter ice cover generally precludes wind wave setup, and seasonal high rainfall storm events generally do not start until after April 15. Hence, a return to 1187 metres elevation by March 31, 2021 is acceptable, and poses little to no risk.

In consideration of the above, the AER has required Coalspur to:

1. Measure and report the tailings pond level elevation to the AER twice daily,
2. Visually inspect and document the conditions of the crest and downstream slopes around the perimeter of the pond to identify areas of potential seepage or unusual dam structural conditions twice daily, and report daily to the AER,
3. Monitor the geotechnical instrumentation installed within the Native Plug 1 and report to the AER on a weekly basis, and
4. Develop and implement a Return Plan to ensure that the tailings pond maximum operating level returns to 1187 metres elevation by March 31, 2021.

The AER is satisfied that your concerns have been addressed both through the technical analysis performed and the conditions (above) applied to the authorization.

- With respect to your concern that this decision will negatively impact the decision and your participation in the decision regarding the applications for McPherson Tailings Cells 2-9, the AER is satisfied that this decision on the request for temporary authorization of a freeboard relaxation will not bias or prejudice the AER's consideration of any other related applications i.e. McPherson Tailings Cells 2-9, nor

will a decision on either the amendment application or temporary freeboard relaxation in any way fetter or predetermine the decision on the other related applications.

- To ensure that this separation between the matters is maintained, and there is no reliance on this temporary authorization in respect of other applications, as a condition to the temporary freeboard relaxation, the AER is requiring Coalspur to submit a Return Plan to the AER by January 30, 2021. The Return Plan is to detail how Coalspur will return the McPherson Pit Settling Cell 1 tailings pond maximum operating level to 1187 metres elevation by March 31, 2021, or another level as authorized in writing by the AER.

All AER-regulated parties must comply not only with the conditions of their approvals, but with all of the AER's regulatory requirements, including temporary authorizations such as the one granted to Coalspur with respect to the freeboard relaxation. To ensure industry compliance the AER has developed its *Integrated Compliance Assurance Framework*, which embodies the three main components of all effective compliance assurance programs, those being education, prevention, and enforcement. You can find out more about how the AER verifies industry compliance and responds to noncompliance here: <https://aer.ca/regulating-development/compliance/compliance-assurance-program>.

If you have any questions please contact [SOC@aer.ca](mailto:SOC@aer.ca).

Sincerely,

<Original signed by>

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Steven Van Lingen  
Director, Oil Sands Mining and Coal  
Regulatory Applications  
(Re: Water Act Amendment Application, SOC decision)

<Original signed by>

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Rushang Joshi  
Manager, Coal Mining  
Regulatory Applications  
(Re: Water Act Amendment Application, Request for Temporary Freeboard Relaxation)

Enclosures (1): Approval

cc: Murleen Crossen, Gunn Métis Local #55 / Lac Ste. Anne Métis  
Simon Stepp, Coalspur Mines Operations Ltd.  
Jonathan Toews, AER  
Irene Chia, AER  
SOC Assessor, AER  
Field Operations West, AER  
Environmental Protection & Enhancement and Water, AER  
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