

Via Email

March 4, 2016

O'Chiese First Nation

Calgary Head Office
Suite 1000, 250 – 5 Street SW
Calgary, Alberta T2P 0R4
Canadawww.aer.ca**Attention: Ms. Tuharsky**

Dear Madam:

**RE: Reconsideration Request by O'Chiese First Nation
Cardinal River Coals Ltd.
Mine Permit C2003-4A (Permit)
Location: Cheviot Coal Mine**

The Alberta Energy Regulator (AER) received a letter from O'Chiese First Nation (OCFN) on December 21, 2015 regarding Cardinal River Coals Ltd. (CRC) Application 1828666 (Upper Harris Expansion Amendment). In the letter, OCFN made requests of the AER to hold a hearing on Application 1828666 and to reconsider Mine Permit No. C2003-4A issued to CRC. The AER responded to your request in relation to Application 1828666 by letter dated January 26, 2016. This letter addresses your request for reconsideration.

The AER has considered OCFN's request and the response filed by Teck Coal Limited¹ on behalf of CRC. For the reasons that follow the AER has decided it will not reconsider the decision to issue Mine Permit No. C2003-4A, dated May 2, 2013.

Section 42 of the *Responsible Energy Development Act* (REDA) sets out the authority for the AER to reconsider its decisions:

42 The Regulator may, in its sole discretion, reconsider a decision made by it and may confirm, vary, suspend or revoke the decision. [underlining added]

Given the appeal processes available under *REDA*, and the need for finality and certainty in its decision, the AER will only exercise its discretion to reconsider a decision under the most extraordinary circumstances where it is satisfied that there are exceptional and compelling grounds to do so. The AER considers that the reconsideration power in section 42 of *REDA* should be used sparingly, and only in the most compelling cases where no other review power exists to address a situation that is in obvious need of remediation.

Mine Permit No. C2003-4A amended Mine Permit No. C2003-4 by removing several clauses and rewording one clause. The amendment was made following CRC's application to have certain clauses removed and reworded because of redundancy and overlap with similar conditions contained in CRC's EPEA approval and to reflect CRC's current operational practices. Between the time that CRC applied for the amendment and when Mine Permit No. C2003-4A was issued, CRC's EPEA approval was renewed. The AER notes that CRC's application for renewal of its EPEA approval included the requested changes to the mine permit.

Mine Permit No. C2003-4A approved the removal of additional clauses that were not identified in the application by CRC.

¹ Cardinal River Coals Ltd. is wholly owned by Teck Coal Limited

OCFN has not addressed what harm has or will occur if Mine Permit C 2003-4A stands. OCFN states that the conditions in the original mine permit were imposed to protect Aboriginal and Treaty rights, but it does not address how these rights were or are impacted by the removal and rewording of the conditions.

The AER also notes that OCFN did not identify why it waited until December 2015 to request a reconsideration of the decision to amend the mine permit which was made in May 2013.

The AER has concluded that this case does not warrant the AER exercising its reconsideration power. OCFN has not established exceptional and compelling grounds for the AER to reconsider its decision or that this case is in obvious need of remediation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Renée Marx", with a stylized flourish at the end.

Renée Marx
Counsel

cc: Richard LaBoucane, Teck Coal Limited
Nadia Haider, AER