

ALBERTA
ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Report and Recommendations – March 4, 2011

IN THE MATTER OF sections 91, 92, and 95 of the
Environmental Protection and Enhancement Act, R.S.A. 2000, c.
E-12;

-and-

IN THE MATTER OF an appeal filed by Coal Valley Resources
Inc. with respect to *Environmental Protection and Enhancement
Act* Approval No. 11066-02-00 issued to Coal Valley Resources
Inc. by the Director, Central Region, Environmental Management,
Alberta Environment.

Cite as: *Coal Valley Resources Inc. v. Director, Central Region, Environmental
Management, Alberta Environment* (04 March 2011), Appeal No. 10-035-R
(A.E.A.B.).

MEDIATION MEETING BEFORE:

Ms. Christine Macken, Board Member.

APPEARANCES:

Appellant:

Mr. Blaine Renkas, Coal Valley Resources Inc.; Mr. Les Lafleur, Coal Valley Resources Inc.; and Mr. Leonard Leskiw, Paragon Soil & Environmental Consulting. Represented by Mr. Ronald M. Kruhlak, McLennan Ross LLP.

Director:

Mr. David Helmer, Director, Central Region, Environmental Management, Alberta Environment; Mr. Ryan Puhlman, Reclamation Approvals Coordinator, Operations Division, Alberta Environment; and Mr. Isaac Amponsah, Research and Information Specialist, Petroleum Land Use and Reclamation Section, Sustainable Resource Development. Represented by Ms. Alison Altmiks, Alberta Justice.

Board Staff:

Mr. Gilbert Van Nes, General Counsel and Settlement Officer, and Ms. Marian Fluker, Associate Counsel.

EXECUTIVE SUMMARY

Alberta Environment issued Approval No. 11066-02-00 under the *Environmental Protection and Enhancement Act* to Coal Valley Resources Inc. authorizing the opening up, construction, operation, and reclamation of the Coal Valley Coal Mine and the Coal Processing Plant, in Yellowhead County, near Robb.

Coal Valley Resources Inc. filed an appeal in relation to the land conservation and land reclamation conditions contained in the Approval, advising the conditions could have an impact on Coal Valley Resources Inc.'s ability to reclaim the land.

The Board held a mediation meeting on March 1, 2011, following which an agreement was reached by the parties. The Board recommends that the Minister of Environment accept the agreement varying the conditions in the Approval.

TABLE OF CONTENTS

I. BACKGROUND 1

II. MEDIATION MEETING..... 1

III. RECOMMENDATIONS.....2

IV. RESOLUTION3

I. BACKGROUND

[1] On November 10, 2010 the Director, Central Region, Environmental Management, Alberta Environment (the “Director”), issued Approval No. 11066-02-00 (the “Approval”) under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”) to Coal Valley Resources Inc. authorizing the opening up, construction, operation, and reclamation of the Coal Valley Coal Mine and the Coal Processing Plant, in Yellowhead County, near Robb.

[2] On March 10, 2010, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Coal Valley Resources Inc. (the “Appellant” or “Coal Valley”), appealing the Director’s decision, specifically with respect to the land conservation and land reclamation conditions contained in the Approval, advising the conditions could have an impact on Coal Valley’s ability to reclaim the land.

[3] On December 17, 2010, the Board wrote to the Appellant and the Director (collectively the “Parties”) acknowledging receipt of the Notice of Appeal and notifying the Director of the appeal. The Board also requested the Director provide the Board with a copy of the records (the “Record”) relating to this appeal, and that the Parties provide available dates for a mediation meeting, preliminary motions hearing, or hearing.

[4] On January 12, 2011, in consultation with the Parties, the Board scheduled a mediation meeting for March 1, 2011, to be held in Edmonton, Alberta.

[5] On January 24, 2011 the Board received a copy of the Record from the Director, and on February 7, 2011, forwarded a copy to the Appellant.

II. MEDIATION MEETING

[6] Pursuant to section 11 of the Environmental Appeal Board Regulations, Alta. Reg. 114/93, the Board conducted a mediation meeting in Edmonton, on March 1, 2011, with Ms. Christine Macken, Board Member, as the presiding mediator (the “Mediator”).

[7] In conducting the mediation meeting, the Mediator reviewed the appeal and the mediation process and explained the purpose of the mediation meeting. She then circulated copies of the Participants' Agreement to Mediate. All in attendance signed the Agreement.

[8] Following productive and detailed discussions, a resolution evolved at the March 1, 2011 mediation meeting and is included as pages 3 and 4 of this Report and Recommendations.

III. RECOMMENDATIONS

[9] In accordance with section 99 of the *Environmental Protection and Enhancement Act* the Board recommends that the Minister of Environment vary Approval No. 11066-02-00 in accordance with the resolution reached by the Parties.

[10] Further, with respect to sections 100(2) and 103 of EPEA, the Board recommends that copies of this Report and Recommendations, and of any decision by the Minister, be sent to the following Parties:

- Mr. Ronald M. Kruhlak, McLennan Ross LLP, representing Coal Valley Resources Inc.
- Mr. Blaine Renkas, Coal Valley Resources Inc.
- Ms. Alison Altmiks, Alberta Justice, on behalf of Mr. David Helmer, Director, Central Region, Environmental Management, Alberta Environment.

Dated on March 4, 2011, at Edmonton, Alberta.



Delmar W. Perras
Chair

IV. RESOLUTION



**RESOLUTION
ENVIRONMENTAL APPEALS BOARD
EAB File No. 10-035**

In the matter of the mediation of the appeal of the November 10, 2010 decision of the Director, Operations Division, Alberta Environment, to issue Approval No. 11066-02-00 (the "Approval") under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to Coal Valley Resources Inc., authorizing the opening up, construction, operation and reclamation of the Coal Valley Coal Mine and the Coal Processing Plant, in Yellowhead County.

All participants to the appeal have agreed to the following terms and conditions:

1. THAT a request be made to the Board to recommend the following variations to the Approval:
 1. That condition 6.4.4 of the Approval be deleted and replaced with the following:

"6.4.4 The approval holder shall replace all salvaged surface soil as follows:

 - (a) the approval holder shall replace surface soil over 1.0 metre of suitable overburden;
 - (b) the approval holder shall achieve suitable overburden on at least 85% of the area based on a one (1) hectare area, unless authorized in writing by the Director;
 - (c) at no time will unsuitable overburden be used;
 - (d) the approval holder shall ensure that a minimum average depth of 0.30 metres of surface soil is present in the reclaimed profile on at least 80% of the upland reclaimed area, based on a one (1) hectare area; and
 - (e) the approval holder shall ensure that a minimum average depth of 0.15 metres of surface soil is present in the Lowland/Wetland reclaimed areas on at least 80% of the reclaimed areas, based on a one (1) hectare area."
 2. THAT term 1(bbb) be deleted and replaced with the following:

"(bbb) "suitable overburden" means overburden, spoil or regolith that has an electrical conductivity less than 5 dS/m, sodium adsorption ratio less than 8, and pH less than or equal to 8.0."
 3. THAT the following be added after 3.2.3:

"3.2.3.1 Where there is insufficient suitable overburden the approval holder may salvage overburden that meets the criteria with electrical conductivity less than 8 dS/m, sodium adsorption ratio less than 12, and pH less than or equal to 9."

4. THAT the following be added after condition 3.2.9:
"3.2.9.1 That the approval holder shall continue to evaluate opportunities for the use of a field professional (i.e. field agrologist) in reclamation material planning, salvage and replacement."

2. THAT in consideration of the foregoing, the Appellant, Coal Valley Resources Inc., withdraws its Notice of Appeal.

RESOLUTION AGREED TO BY:



Blaine Renkas, Coal Valley Resources Inc.
Represented by Ronald M. Kruhlak, McLennan Ross LLP

Date: March 1, 2011



David Helmer, Director,
Operations Division, Alberta Environment
Represented by Alison Altmiks, Alberta Justice

Date: March 1, 2011



ALBERTA
ENVIRONMENT

*Office of the Minister
MLA, Medicine Hat*

Ministerial Order 09/2011

Environmental Protection and Enhancement Act
R.S.A. 2000, c. E-12

Order Respecting Environmental Appeals Board Appeal No. 10-035

I, Rob Renner, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal No. 10-035.

Dated at the City of Edmonton, in the Province of Alberta, this 7 day of March, 2011.

Rob Renner
Minister

Appendix

Order Respecting Environmental Appeals Board Appeal No.10-035

With respect to the decision of the Director, Central Region, Environmental Management, Alberta Environment (the "Director"), to issue Approval No. 11066-02-00 (the "Approval") under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, to Coal Valley Resources Inc. (the "approval holder"), I, Rob Renner, Minister of Environment, order that the Approval is varied as follows:

1. The Approval is amended by repealing condition 1.1.2(bbb) and replacing it with the following:

"1.1.2(bbb) "suitable overburden" means overburden, spoil, or regolith that has an electrical conductivity less than 5 dS/m, sodium adsorption ratio less than 8, and pH less than or equal to 8.0."
2. The Approval is amended by adding the following immediately after condition 3.2.3:

"3.2.3.1 Where there is insufficient suitable overburden the approval holder may salvage overburden that meets the criteria of electrical conductivity less than 8 dS/m, sodium adsorption ratio less than 12, and pH less than or equal to 9."
3. The Approval is amended by adding the following immediately after condition 3.2.9:

"3.2.9.1 That the approval holder shall continue to evaluate opportunities for the use of a field professional (i.e. field agrologist) in reclamation material planning, salvage, and replacement."
4. The Approval is amended by repealing condition 6.4.4 and replacing it with the following:

"6.4.4 The approval holder shall replace all salvaged surface soil as follows:

 - (a) the approval holder shall replace surface soil over 1.0 metre of suitable overburden;
 - (b) the approval holder shall achieve suitable overburden on at least 85% of the area, based on a one (1) hectare area, unless authorized in writing by the Director;

- (c) at no time will unsuitable overburden be used;
- (d) the approval holder shall ensure that a minimum average depth of 0.30 metres of surface soil is present in the reclaimed profile on at least 80% of the upland reclaimed area, based on a one (1) hectare area; and
- (e) the approval holder shall ensure that a minimum average depth of 0.15 metres of surface soil is present in the Lowland/Wetland reclaimed areas on at least 80% of the reclaimed areas, based on a one (1) hectare area.”