



November 15, 2013

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Dear Minister Hughes, Minister McQueen, Minister Horne and Mr. Ellis,

Re: Obed Mountain Coal Mine Spill

We are writing to you on behalf of the Alberta Wilderness Association (AWA) and Keepers of the Athabasca.

The AWA is the oldest wilderness conservation group in Alberta dedicated to the completion of a protected areas network and the conservation of wilderness throughout the province. Keepers of the Athabasca are First Nations, Métis, Inuit, environmental groups, and Watershed citizens working together for the protection of water, land and air, and thus for all living things today and tomorrow in the Athabasca River Watershed. Both groups are concerned about the recent spill of contaminated waste water from the Obed Mountain Coal Mine near Hinton, Alberta (the “spill”).

On November 1, 2013, the Alberta Energy Regulator (AER) issued a news release stating that it had been informed by Obed Mountain Coal Ltd. (“Obed”) that “*a pit containing coal process and surface water*” at the Obed Mountain Coal Mine had “*failed at approximately 6:30 PM on October 31, releasing a large quantity of the process water into the Athabasca River via two tributaries.*” By November 7th, 2013, Alberta Environment acknowledged that the spill had impacted both fisheries and fish habitats.¹

This spill raises a number of serious questions regarding the potential consequences on the local and downstream natural environments, human health and Aboriginal and Treaty rights. We therefore request that the following information be provided forthwith to the public, the AWA and Keepers of the Athabasca, and the signatories of this letter.

Contents of the Spill

In its news release, the AER has described the contents of the spill as “*process water*” from a “*pit containing coal process and surface water.*”² On November 5, 2013, Alberta Environment described the spill as “*one billion litres of coal particles, clay, mud, shale and suspended solids.*”³ It is our understanding that containment of this type pits also contain toxic chemicals such as flocculants, selenium, arsenic, mercury, and polycyclic aromatic hydrocarbons.

¹ Marty Klinkenberg & Sheila Pratt, “Massive coal mine leak damaged fisheries, habitat”, *The Edmonton Journal* (12 November 2013) online: <<http://www.edmontonjournal.com/Massive+coal+mine+leak+damaged+fisheries+habitat/914568/0/story.html>>.

² Alberta Energy Regulator, News Release, AERNR2013-40, “Alberta Energy Regulator responding to Obed Mountain Coal Mine Process Water Containment Failure” (1 November 2013).

³ Marty Klinkenberg, “Federal officials look for Fisheries Act violations in wake of Athabasca spill”, *The Edmonton Journal* (5 November 2013) online: <<http://www.edmontonjournal.com/technology/Federal+officials+look+Fisheries+violations+wake+Athabasca+spill/9129613/story.html>>.

We have the following questions about the contents of the spill:

- Has there been any testing undertaken by any government bodies or by Sherritt International Corporation (“Sherritt”) or Obed to determine the chemical composition of the spill? If so, what are the results of that testing?
- What information does the AER or any other regulatory or government bodies have regarding the chemicals that may have been contained within the containment pit? When will the Material Safety Data Sheets for those chemicals be made available?
- Is any testing or monitoring data available from the containment pit that predates October 31, 2013 that could provide an indication of the contents of the pit?
- What was the total volume contained in the containment pit? What was the total volume spilled from the containment pit?
- How much sediment (i.e., clay, shale, mudstone, sandstone) was contained in the containment pit? How much of it was spilled?
- How much selenium was contained in the containment pit? How much of it was spilled?
- How much arsenic was contained in the containment pit? How much of it was spilled?
- How much mercury was contained in the containment pit? How much of it was spilled?
- What amount of hydrocarbons was contained in the containment pit? How much was spilled?
- What polymers were used at Obed Mountain Coal mine? Were they cationic polymers?

Spill Causation and Response

According to the AER, the spill began at approximately 6:30 p.m. on October 31, 2013.⁴

- What were the causes, or the likely causes, of the spill?
- How long were the contents of the containment pit spilling into the surrounding environment?
- How, when and by whom was the spill discovered?
- How much time elapsed between the first report of the spill and the deployment of emergency response to initiate containment and clean up?

⁴ *Supra* note 2.

Impacts of the Spill

According to media reports, Alberta Environment and Alberta Health Services (AHS) have taken water samples to determine whether the spill “*could cause environmental or health problems.*”⁵ The media has also reported that Alberta’s Chief Medical Officer has found “*Mercury levels nine times higher than normal*” and “*levels of cancer-causing polycyclic aromatic hydrocarbons four times the allowed standard for Canadian drinking water*” while monitoring the spills impacts in the Athabasca River.⁶

We have the following questions about the impacts of the spill:

- How close is the containment pit to the Athabasca River and/or its tributaries?
- Was the containment pit close to any other water bodies? If so, are they fish-bearing water bodies?
- What was the basis for Alberta Environment finding that the spill had impacted fish and fish habitat?
- Have there been any documented impacts on local or downstream wildlife or ecosystems?
- In what ways does this spill impact the ability of Aboriginal people to exercise Aboriginal and Treaty rights? Specifically, what impact has this spill had on the right to fish in the Athabasca and related waterways?
- When will the results of the Alberta Environment and AHS testing be made public? Are any other regulatory bodies conducting monitoring on or near the Athabasca River? If those results or any other testing results are available when a reply is drafted to this letter please include those results in your response.
- When will the full results of the monitoring being conducted by Alberta’s Chief Medical Officer be released to the public?
- Will the AER, Alberta Environment and/or AHS be conducting any studies regarding the impacts of this spill on the environment or the health of humans and wildlife? If so, please provide information regarding the studies that are going to be conducted and when the public can expect the results of those studies.

⁵ Gordon Kent, “Billion litres of coal-mine muck leaks into Athabasca River”, *The Edmonton Journal* (4 November 2013) online <http://www.edmontonjournal.com/business/energy-resources/Billion+litres+coal+mine+muck+leaks+into/9118180/story.html?_lsa=1b7d-e43a>.

⁶ Paula Simons, “Simons: Time for Alberta to come clean about environmental accidents”, *The Edmonton Journal* (14 November 2013) online <<http://www.edmontonjournal.com/Simons+Time+Alberta+come+clean+about+environmental+accidents/9163015/story.html>>.

Responsibility for the Containment Pit

In its news release, the AER states that it was informed by Obed of the release. It has been reported in a number of news stories on this issue that the Obed Mountain Mine, now undergoing reclamation, is owned by Sherritt .

- Who does the AER consider responsible for the care and control of the containment pit from which the spill emerged? On what basis does it make this determination?
- If Sherritt is the responsible party, when and to what extent did they inform the AER of this incident?

Information Disseminated to the Public

Following the spill, a representative from Sherritt informed the press that the pit materials “*are inert and aren’t toxic to humans or fish*”.⁷

- Has Sherritt provided any information to the AER or other regulatory body to support their position that the contents of the spill are “*inert and aren’t toxic to humans or fish*”?
- Can the AER or any other regulatory body please confirm that Sherritt’s previous statement is not supported by the evidence?

Regulatory Action

The November 1, 2013 AER News Release states that “[t]he AER is investigating this incident to determine if the company was in compliance with AER requirements.”⁸ As previously stated, Alberta Environment and AHS have also been involved in the investigation. It has also been reported that Fisheries and Oceans Canada and Environment Canada are also investigating this incident.⁹

- Will provincial and federal regulatory and government bodies be sharing their findings with each other regarding the spill?
- When can the public expect the regulatory investigation(s) to be completed? How will the investigation results be conveyed to the public? What regulatory action is being contemplated by the AER or other regulatory bodies at this time?
- Are the AER or Alberta Environment considering laying any charges arising from this incident?

⁷ *Supra* note 5.

⁸ *Supra* note 2.

⁹ *Supra* note 3.

- How many other containment pits or ponds of this sort are there in Alberta? Does the AER or another regulatory body regularly inspect the integrity of these sites? When was the last inspection at the Obed Mountain site and what were its findings? What type of monitoring regime was in place at the time the spill occurred?
- What is the Regulator or other regulatory bodies doing to ensure that a similar spill does not occur?

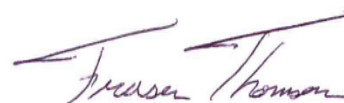
The sheer volume of the spill along with the potential impacts on the environment and the health of those that live downstream demonstrate the severity of this incident. In the coming months we, along with many other members of the public, will be closely watching the regulatory response to this spill and expect that the government will do all that is necessary to hold the responsible parties to account and ensure that an event such as this is not repeated.

We would appreciate a response to our questions by January 15, 2014.

Sincerely,



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cc:

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