

BY E-MAIL ONLY

September 15, 2016

Yuk-Sing Cheng
Ackroyd LLP

**APPLICATIONS FROM TRANSALTA CORPORATION (TRANSALTA)
COAL CONSERVATION ACT (CCA) APPLICATION NO. 1848037
ENVIRONMENTAL PROTECTION & ENHANCEMENT ACT (EPEA)
APPLICATION NO. 013-11187, AND
WATER ACT (WA) APPLICATIONS NO. 007-240557 AND 008-79264
STATEMENT OF CONCERN NO. 30166, 30167, AND 30168**

Dear Yuk-Sing Cheng:

You are receiving this letter because you filed a statement of concern (SOC) on behalf of David Cymbaluk, Ferne Cymbaluk, and Philip Cymbaluk (the Cymbaluks) regarding the subject applications. The Alberta Energy Regulator (AER) has reviewed the SOC, along with the applications, the applicable requirements, and other submissions or information about the applications, and has decided that a hearing is not required under an enactment or otherwise necessary to consider the concerns outlined in the SOC.

In its review of the concerns, the AER considered the following:

- The Cymbaluks are owners of lands located within the boundary of Pit 07 and reside on owned lands located adjacent to the Highvale Mine boundary.
- Specific concerns were not raised in relation with the expansion of Pit 03.
- No change to the approved activity is being applied for by the renewal applications; however, the following are responses to the concerns outlined in their SOC:
 - Although the renewal does not contemplate a change to existing operations, for noise concerns surrounding Pit 07, the AER has included a condition within the CCA approvals for TransAlta to be compliant with *Directive 038*, which requires a noise impact assessment (NIA). The AER notes that TransAlta provided a noise assessment conducted for

activities related to Pit 07 to the Cymbaluks on July 14, 2016. The AER's review of the aforementioned assessment found it to be compliant.

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- Concerning groundwater protection, a commitment by TransAlta to install additional groundwater monitoring wells within the area of Pit 07 will be implemented through the groundwater monitoring program as part of the EPEA approval. If any impacts to groundwater are observed from the groundwater monitoring program, TransAlta is required to address those impacts.
- Regarding odour concerns, it appears the odour is likely related to spontaneous combustion of coal, which is an operational concern. As with other operational issues, the Cymbaluks are encouraged to contact TransAlta and the local AER field centre with any future odour complaints. Another potential source of odours within the vicinity are the power plants located SE of the Cymbaluks' location. The power plants are outside the authority of the AER and are managed by Alberta Environment and Parks.
- For concerns with feeding of ducks on the Cymbaluks' lands, this issue is outside the authority of the AER and is managed by Alberta Environment and Parks.
- For contractual concerns with TransAlta, enforcement of such private agreements is outside the authority of the AER and handled by the Alberta courts.
- Regarding reclamation concerns, the AER has included conditions within the EPEA approval for TransAlta to submit a Mine Reclamation Plan by December 31, 2017, to reclaim lands to equivalent land capability. This would include SE 34-51-4W5M. The Mine Reclamation Plan will provide a consistent source of reclamation information to the regulator and public stakeholders. The general public, including the Cymbaluks, will be provided an opportunity to file a SOC when TransAlta applies for a reclamation certificate of their lands.
- Concerns were raised about TransAlta's use of the emergency EPEA amendment approval to dispose of Keephills power plant ash into the Pit 05 ash disposal area and claims were made about no technical analysis being provided before the approval was issued. The amendment application was approved on an emergency basis in 2008. However, a request for authorization to permanently dispose of ash from the Keephills 1 and 2 power plants into the Pit 05 ash disposal area was granted on February 14, 2012. A letter issued on July 5, 2010, confirmed

that authorization to dispose of K3 power plant ash into the Pit 05 ash disposal area had already been given with the original K3 Project as per EPEA Approval No. 10324-02-00. These decisions were made by Alberta Environment & Sustainable Resource Development at the time, whose normal process would likely have included a technical assessment. There is no information to indicate that this technical assessment was not considered at the time of the authorizations.

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- In terms of air quality, the equipment being used by TransAlta meets all provincial and federal emission standards and the potential impacts to air quality was analyzed through the air modelling assessment. This assessment predicted emissions of fine particulate matter (e.g. dust), and the AER has included conditions within the EPEA approval, for TransAlta to submit a Dust Management Plan by January 1, 2017. The plan will provide measures to control and mitigate dust from certain locations (e.g. haul roads, active mining areas, disposal areas) and for certain mining activities (e.g. ash disposal, soil and overburden handling). If dust issues become more frequent and exceedances of any air quality requirements are detected by surrounding ambient air monitoring stations, the appropriate regulatory body will be notified to ensure compliance. Operational concerns, such as dust control, should be referred to TransAlta and to the local AER field centre.

Based on the above, you have not demonstrated that the Cymbaluks may be directly and adversely affected by the applications. The AER has issued the applied-for approvals and this is your notice of that decision. Copies of the approvals are attached. Under the *Responsible Energy Development Act*, an eligible person may file a request for a regulatory appeal on an appealable decision. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Energy Development Act General Regulation*. If you wish to file a request for regulatory appeal, you must submit your request in the form and manner and within the timeframe required by the AER. You can find filing requirements and forms on the AER website www.aer.ca under Applications & Notices: Appeals.

If you have any questions, contact _____ at _____ or by
e-mail at _____.

Sincerely,

<original signed by>

Erik Kuleba, P. Eng.
Director, Mining Authorizations

Enclosure (9): EPEA Approval No. 11187-03-00
WA Approval No. 240557-01-00
WA Approval No. 79264-01-00
CCA Approval No. C 2016-4
CCA Approval No. C 2016-5
CCA Approval No. C 2016-6
CCA Approval No. C 2016-7
CCA Approval No. C 2016-8
CCA Approval No. C 2016-9

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cc: Greg Milne, TransAlta Corporation
Suzanne Adrain, TransAlta Corporation
Authorizations Branch Support
AER Drayton Valley Field Centre

BY E-MAIL ONLY

September 15, 2016

Garry Lee MacDougall
Committee on Keephills Environment

**APPLICATIONS FROM TRANSALTA CORPORATION (TRANSALTA)
COAL CONSERVATION ACT (CCA) APPLICATION NO. 1848037
ENVIRONMENTAL PROTECTION & ENHANCEMENT ACT (EPEA)
APPLICATION NO. 013-11187, AND
WATER ACT (WA) APPLICATIONS NO. 007-240557 AND 008-79264
STATEMENT OF CONCERN NO. 30163, 30164, AND 30165**

Dear Garry Lee MacDougall:

You are receiving this letter because you filed a statement of concern (SOC) on behalf of the Committee on Keephills Environment (COKE) regarding the subject applications.

The Alberta Energy Regulator (AER) has reviewed your SOC, along with the applications, the applicable requirements, and other submissions or information about the applications, and has decided that a hearing is not required under an enactment or otherwise necessary to consider the concerns outlined in your SOC.

In its review of the concerns, the AER considered the following:

- COKE is an organization that represents residents living in the area proximate to the Highvale Mine.
- Specific information on the members of COKE was not provided.
- TransAlta applied to renew its approvals for its Highvale Mine and expand the boundaries of Pit 03, which remains within the previously approved project boundaries.
- In regards to the renewal applications, no change to the activity is being applied-for or permitted by the applications.
- COKE raised concerns with noise, although not specific to the expansion of Pit 03, and the AER has included a condition within the CCA approvals for TransAlta to be

compliant with *Directive 038*, which requires a noise impact assessment (NIA). The AER notes that TransAlta provided a noise assessment conducted for activities related to Pit 07 to a member representing COKE on July 14, 2016. The AER's review of the aforementioned assessment found it to be compliant.

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Based on the above, you have not demonstrated that the COKE may be directly and adversely affected by the applications. The AER has issued the applied-for approvals and this is your notice of that decision. Copies of the approvals are attached. Under the *Responsible Energy Development Act*, an eligible person may file a request for a regulatory appeal on an appealable decision. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Energy Development Act General Regulation*. If you wish to file a request for regulatory appeal, you must submit your request in the form and manner and within the timeframe required by the AER. You can find filing requirements and forms on the AER website www.aer.ca under Applications & Notices: Appeals.

If you have any questions, contact _____ at _____ or by e-mail at _____.

Sincerely,

<original signed by>

Erik Kuleba, P. Eng.

Director, Mining Authorizations

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CCA Approval No. C 2016-8
CCA Approval No. C 2016-9

cc: Greg Milne, TransAlta Corporation
Suzanne Adrain, TransAlta Corporation
Authorizations Branch Support
AER Drayton Valley Field Centre

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September 15, 2016

Tammi Cymbaluk Breymann

**APPLICATIONS FROM TRANSALTA CORPORATION (TRANSALTA)
COAL CONSERVATION ACT (CCA) APPLICATION NO. 1848037
ENVIRONMENTAL PROTECTION & ENHANCEMENT ACT (EPEA)
APPLICATION NO. 013-11187, AND
WATER ACT (WA) APPLICATIONS NO. 007-240557 AND 008-79264
STATEMENT OF CONCERN NO. 30160, 30161, AND 30162**

Dear Tammi Cymbaluk Breymann:

You are receiving this letter because you filed a statement of concern (SOC) regarding the subject applications. The Alberta Energy Regulator (AER) has reviewed your SOC, along with the applications, the applicable requirements, and other submissions or information about the applications, and has decided that a hearing is not required under an enactment or otherwise necessary to consider the concerns outlined in your SOC.

In its review of the concerns, the AER considered the following:

- You are the owner of lands located adjacent to the Highvale Pit 07 Mine boundary.
- TransAlta has applied to renew its approvals for its Highvale Mine and expand the boundaries of Pit 03, which remains within the previously approved project boundaries.
- In regards to the renewal applications, no change to the activity is being applied-for or permitted by the applications.
- Although the renewal does not contemplate a change to existing operations, for noise concerns surrounding Pit 07, the AER has included a condition within the CCA approvals for TransAlta to be compliant with *Directive 038*, which requires a noise impact assessment (NIA). The AER notes that TransAlta provided a noise assessment conducted for activities related to Pit 07 to you on July 14, 2016. The AER's review of the aforementioned assessment was found it to be compliant.

Based on the above, you have not demonstrated that you may be directly and adversely affected by the applications. The AER has issued the applied-for approvals and this is your notice of that decision. Copies of the approvals are attached. Under the *Responsible Energy Development Act* an eligible person may file a request for a regulatory appeal on an appealable decision. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Energy Development Act General Regulation*. If you wish to file a request for regulatory appeal, you must submit your request in the form and manner and within the timeframe required by the AER. You can find filing requirements and forms on the AER website www.aer.ca under Applications & Notices: Appeals.

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If you have any questions, contact _____ at _____ or by e-mail
at _____.

Sincerely,

<original signed by>

Erik Kuleba, P. Eng.

Director, Mining Authorizations

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cc: Greg Milne, TransAlta Corporation
Suzanne Adrain, TransAlta Corporation
Authorizations Branch Support
AER Drayton Valley Field Centre

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September 15, 2016

Tracy Friedel

Gunn Métis Local 55

**APPLICATIONS FROM TRANSALTA CORPORATION (TRANSALTA)
COAL CONSERVATION ACT (CCA) APPLICATION NO. 1848037
ENVIRONMENTAL PROTECTION & ENHANCEMENT ACT (EPEA)
APPLICATION NO. 013-11187, AND
WATER ACT (WA) APPLICATIONS NO. 007-240557 AND 008-79264
STATEMENT OF CONCERN NO. 30173, 30109, AND 30174**

Dear Tracy Friedel:

You are receiving this letter because you filed a statement of concern (SOC) on behalf of Gunn Métis Local 55 (GML) regarding the subject applications. The Alberta Energy Regulator (AER) has reviewed the SOC, along with the applications, the applicable requirements, and other submissions or information about the applications and has decided that a hearing is not required under an enactment or otherwise necessary to consider the concerns outlined in the SOC.

In its review of the concerns, the AER considered the following:

- GML asserted that the application “alone, and together with other industrial, commercial, agricultural and residential development, the Project will have a direct and adverse effect on Lac Ste. Anne Metis aboriginal rights and traditional uses, and the well-being of [its] community members.” The GML advised that its members are descended from the Métis of Lac Ste. Anne and its members are Aboriginal people within the meaning of section 35 of the *Constitution Act*, 1982, and therefore are holders of Aboriginal rights. GML advised that the Project Area is within the Traditional Hunting and Gathering Territory of several generations of Metis families with historic ties to Lac Ste. Anne.

- The applications that TransAlta has filed with the AER, and that GML has filed a SOC in relation to, are applications to renew approvals for its existing mining operations and to expand Pit 03. The AER notes that the renewal applications do not contemplate a change to the existing operations.
- The expansion application is for mining operations on two quarter sections adjacent to the existing Pit 03. The area is wholly within the existing Mine Permit area and had been included as part of the mine project since the permit area was approved on January 28, 1978.
- GML raised concerns with compliance with Ministerial Order 53/2014 and meaningful engagement in order to adequately raise GML's issues. Pursuant to section 21 of the *Responsible Energy Development Act*, the AER does not have authority to determine the adequacy of the Crown's consultation with Aboriginals. However, the AER is satisfied that its requirements relating to public notification and participation have been met. The AER notes that TransAlta appears to have complied with the directions of the Aboriginal Consultation Office in engaging with Aboriginal rights holders in the area and included that information in its Application in compliance with the Ministerial Order 53/2014. Further, TransAlta is aware of GML's concerns through the AER's SOC process and has filed a submission responding to each of the GML's issues. The AER also understands that TransAlta has met in person with GML members that have concerns with the project and conducted a tour of the project. The AER is satisfied that through the application process and prior to making its decision on the applications, it has the requisite information before it to consider the potential impacts of the applications on GML.
- GML raised concerns with landscape impacts, restrictions for industrial development, and lack of conformity with the Government of Alberta's climate change plans. The AER notes that regional and cumulative effects are addressed by policy and regulatory plans developed by the Government of Alberta. This area has been included in the Mine Permit boundary since January 28, 1978 and was designated as lands for industrial development by the decisions made at that time. Mining operations have been conducted for decades of time and portions of the project area have already been reclaimed, which is continuing. The AER is currently not aware of an AER requirement or authority provided to the AER to assess and enforce compliance with climate change policy statements by the Government of Alberta. Such concerns are best addressed to the Government of Alberta.
- GML raised concerns with potential contamination from mining activities of Wabamun Lake, including groundwater, and potential impacts to the environment outside the mine permit boundary. The AER notes that the expansion area is not located adjacent to Wabamun Lake and that existing approvals already require activities to address and protect Wabamun Lake from

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contamination from mining activities. There is no information to suggest that the existing measures for environmental protection have not been appropriate to date, given the lengthy mining operations that have already occurred, or that these requirements would not be sufficient to continue to protect the environment. As the expansion area is not adjacent to Wabamun Lake there does not appear to be impacts to existing activities on the shore or beaches. The AER will require further groundwater monitoring wells for the project area to increase the ability to early detect and address groundwater issues.

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- In terms of air quality, the equipment being used by TransAlta meets all provincial and federal emission standards and the potential impacts to air quality was analyzed through the air modelling assessment. This assessment predicted emissions of fine particulate matter (e.g. dust), and the AER has included conditions in the EPEA approval, for TransAlta to submit a Dust Management Plan by January 1, 2017. The plan will provide measures to control and mitigate dust from certain locations (e.g. haul roads, active mining areas, disposal areas) and for certain mining activities (e.g. ash disposal, soil and overburden handling). If dust issues become more frequent and exceedances of any air quality requirements are detected by surrounding ambient air monitoring stations, the appropriate regulatory body will be notified to ensure compliance. Operational concerns, such as dust control, should be referred to TransAlta and to the local AER field centre.
- GML raised concerns with the disposal of ash within the mine site and how it would impact groundwater. To minimize any impacts to groundwater, the AER will continue to require that ash be deposited at least 1.5 metres above the level of the re-established water table to decrease the potential for contamination.
- GML raised concerns with the proposed decrease in the reporting of groundwater conditions. TransAlta advised that annual testing was not required and that biennial reporting was sufficient. The AER has decided not to permit such a decrease in groundwater reporting at this time and will continue to require reporting on an annual basis, while monitoring the situation.
- GML raised concerns with impact to its members' use of areas south of Wabamun Lake, which includes the expansion area, Wabamun Lake, and the North Saskatchewan River valley for hunting and gathering plants and berries. GML attached an affidavit of Ms. Crossen in support of its position that its members use the area. A map that indicated the locations of Ms. Crossen's activities had been the subject of a confidentiality request, however, the AER found that the high threshold for confidentiality was not met and that Ms. Crossen could resubmit the map on the public record if she wanted the AER to consider it. The map was not resubmitted and the AER does not have the information setting out the particular locations of her activities.

- Ms. Crossen submitted that she has gathered plants and berries in the area of the Pit 03 expansion. Ms. Crossen advised that the area was not fenced off and that there were no signs indicating “No Trespassing”; although she does not indicate whether consent from the landowner was provided and she notes that many areas south of Wabamun Lake have now been fenced off. Ms. Crossen is also concerned that mining operations will adversely impact her ability to gather sweetgrass from areas around the mining operations, which she advises growing mainly on wet and undisturbed lands.
- TransAlta advised that the project area is on private land that has been already disturbed by decades of active mining and farming activities. Both quarter sections in the expansion area are adjacent to Pit 03 and within the mine permit boundary. Although the map of Ms. Crossen’s activities may have provided specific locations of harvesting activities, the map was not available for the AER to consider and therefore, there is only the general statement that sweetgrass has been harvested in the area of the project. It is not clear that this includes the Pit 03 area, especially given the existing level of disturbance to those lands. In regards to berry picking on the Pit 03 lands, it is not clear whether those lands are still accessible for gathering or if fences exist.
- The AER notes the small area of the expansion and that the privately held land for the project has historically been disturbed from agricultural activities. There is no information setting out the nature and scope of the berry picking to allow assessment of the impact to berry picking in the area. The site is within the Mine Permit boundary that had already been designated as part of the project plan and the mitigation measures that TransAlta is conducting through its reclamation plans includes the restoration of berry plants such as raspberry. The AER is of the view that the information in the SOC does not demonstrate that approval of mining activities to the expansion area that is within the mine permit will cause an adverse impact to Ms. Crossen’s ability to gather plants and berries in the area.
- Ms. Crossen also advised that she has used Wabamun Lake for fishing and gathered plants along the lake and is concerned with impacts to these activities. In regards to impacts to Wabamun Lake and the North Saskatchewan River, the AER is satisfied that the existing requirements, which would also apply to the expansion area, are sufficient to protect water quality in the area and the current and proposed water quality monitoring conditions within the EPEA approval adequately cover potential releases from the mine activities. There is no information to demonstrate that Ms. Crossen’s activities would be impacted, especially given the expansion area is not adjacent to Wabamun Lake.
- Ms. Crossen advises that she has hunted for Sharp-Tailed Grouse in the area. Although, the AER notes that the key habitat zone for Sharp Tailed Grouse does not overlap with the Pit 03 expansion area, as part of the EPEA approval, the

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AER will require TransAlta to submit a Wildlife Mitigation and Monitoring Plan by January 1, 2017. The plan will address the effects of the project on “species at risk”, which includes the Sharp Tailed Grouse. Further, without specific locations showing the proximity between the hunting and the expansion, there is no information to demonstrate that the expansion would impact Sharp-tailed Grouse.

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Based on the above, you have not demonstrated that the GML members may be directly and adversely affected by the applications. The AER has issued the applied-for approvals and this is your notice of that decision. Copies of the approvals are attached. Under the *Responsible Energy Development Act*, an eligible person may file a request for a regulatory appeal on an appealable decision. Eligible persons and appealable decisions are defined in section 36 of the *Responsible Energy Development Act* and section 3.1 of the *Responsible Energy Development Act General Regulation*. If you wish to file a request for regulatory appeal, you must submit your request in the form and manner and within the timeframe required by the AER. You can find filing requirements and forms on the AER website www.aer.ca under Applications & Notices: Appeals.

If you have any questions, contact _____ at _____ or by
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Sincerely,

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Erik Kuleba, P. Eng.

Director, Mining Authorizations

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cc: Greg Milne, TransAlta Corporation
Suzanne Adrain, TransAlta Corporation
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AER Drayton Valley Field Centre