**Alberta Energy Regulator – Coal Compliance and Monitoring**

Executive Summary

As a retired National Park Warden (1984-99) and Federal Fishery Officer (1999-15) I have considerable experience in resource protection. In particular, I am well versed in law enforcement as it pertains to fish habitat protection under the Federal Fisheries Act and other legislation in BC, ON, NS and NB. In 2015 I was awarded the Prix d’Excellence Award by Fisheries and Oceans Canada for my compliance work for fish habitat protection.

While Policy and Legislation provides the basis for effective resource protection, it is the implementation of these that truly accomplishes effective compliance by those whose activities affects ecosystems.

A review of Alberta Energy Regulator (AER) public information and discussions with various staff indicates that approvals for Coal Exploration Permits are granted with little or no field confirmation/study and can be based on thematic and outdated data without consideration for more comprehensive and current ecosystem wide consideration. Further, generic operating conditions are appended to Approvals which strongly rely upon self-reporting of non-compliance by industry. Compliance and enforcement is the responsibility of AER, Compliance and Liability Management. Actual compliance monitoring in the field is the responsibility of four Inspectors whose duties include inspection of all coal mining activity and all dam sites for the entire province. While AER employs a variety of enforcement approaches, there has only been two prosecutions in the past eight years. There is no indication if these were successful and if so, what penalties were levied. In effect there appears to be very little deterrence of companies to break environmental legislation.

Policy and Procedure

The AER provides a good summary of the process for Coal Mining authorization at <https://www.aer.ca/regulating-development/project-application/application-process/coal-mining-authorizations>.

Proponents submit plans for approval which in turn, cross the desk of reviewers from various disciplines for desk top assessments based on various data bases. The integrity of these data sources is of primary concern since it appears that no field surveys/inspections specific to plans are conducted. For example, Elan CEP #190001 received clearance under the Historic Resources Act based on a report from a 1974 data base. Without reading this Act I assume there is a requirement to stop work, protect and report if a potentially significant resource is discovered (if recognized). Self-reporting is often stipulated as a requirement in various legislation, including the AEP Code of Practice for Exploration Operations. In my experience, this is unlikely to be entirely complied with (particularly when the chance of getting caught is slim and especially if there are minimal inspections) but can act as another charging section for a discovered, prosecutable violation. However, in further reading, the 2020 Cabin Ridge CEP required a full independent historical resources assessment, as another example.

From my reading, comments from AER reviewers generally tweak company exploration applications (road placement, wildlife timing, reclamation vegetation methods, public land mgt conflict avoidance etc.). Sometimes they require further changes to plans for re-submission or give approval provided the proponent complies with the advice/direction. I have not found a planned or related activity by industry that is, in writing at least, out-right prohibited. The most specific operational conditions are listed in the company’s plans. For example, the Elan 2019 CEP Application in Table 10 regarding sensitivity and restriction zones, under Grizzly Bear Zone Requirements/Recommendations says “ Crossing of permanent watercourses avoided as much as possible”. I don’t see anything as prescriptive elsewhere. These types of statements are numerous in all the CEP Plans, and while they may appear to general readers as stringent, they are far too ambiguous to be enforceable. I assume that somewhere in legislation there is a section that requires proponents to follow the Conditions cited in an approved plan. Importantly there is absolutely no consideration in any plans or plan review criteria concerning cumulative affects. This is a serious fault in the AER approval process particularly given the potential intensity of coal activity in Alberta.

There are several Acts, Regulations, Protocols, Best Practices that affect mining operations such as:

Weed Control Act, Forest Act, Historical Resource Act, Water Act, Environmental Protection and Enhancement Act, Drilling Waste Management Act, Coal Conservation Act, Environmental Protection and Enhancement Act (EPE Act), Species at Risk Act (fed), Federal Fisheries Act, Environmental Protection Act (fed). The main guidance document for coal exploration is the Code of Practice for Exploration Operations under the EPE Act. This document is very general in terms of dictating operational requirements. For example, regarding erosion control, which of course affects fish habitat, the only measures provided (“but not limited to”) include slope stabilization, cross ditching, soil replacement and reseeding. There is no direction regarding stream crossings for example.  There is more legislation but I believe these are the main ones. The point is, there is considerable legislation to enforce and given this array of legislation and the actual and potential for environmental impacts of surface mining/exploration, compliance monitoring is an important and daunting task.

Who actually has authority under these various pieces of legislation is a little difficult to tease out but technically it is a shared multi-department provincial and federal responsibility which can affect the complexity, efficiency and efficacy of compliance monitoring.  DFO looks after SARA and fish habitat issues though there is no capacity for regular field compliance monitoring.  Environment Canada enforces S. 36 of the Federal Fisheries Act (deleterious substances (chemical). Depending on the division of jurisdictional duties EC officers could be called upon to investigate violations by the coal industry but they don’t have an active compliance monitoring role either.Provincialfish habitat legislation primarily fall under the authority of  Alberta Environment and Parks, for the Environmental Protection and Enhancement Act and Water Act enforced by Environmental Protection Officers. Their scope of duties do not appear to include the energy resource industry. AB F&W Officers also have authority to protect watercourses but they don’t have an active role in compliance monitoring of the coal industry.

The main responsibility for compliance monitoring falls upon the AER, Compliance and Liability Management who enforce the Environmental Protection and Enhancement Act, Water Act, and Public Lands Act. This section is divided between Inspections and Enforcement.  While the AER websites states there are 70 AER field inspectors, only 4 are involved in coal extraction and these duties also include dam monitoring/operations. Their duties are further divided to include active mining and exploration. Their ability to perform effective monitoring of coal exploration is questionable. Actual law enforcement action is conducted by the enforcement branch of Compliance and Liability Management

The closest “Coal Team” inspector to the Crowsnest Area is located in Red Deer. An inspector is located in Medicine Hat though I don’t believe they work with coal issues. I spoke with the Red Deer Coal Team Inspector. I was impressed with his dedication and I learned a little that could indicate the degree of scrutiny coal exploration receives. First, they plan inspections depending on when operations are on-going and coordinate these with industry, otherwise they rely on responding to public complaint. From my resource enforcement experience, I can confidently state that any inspections conducted with the fore-knowledge of a proponent would be next to useless in terms of getting a true picture of compliance. Again, in my experience, and thankfully this is rare in this regard, when an employer creates this type of operational constraint on field staff it is ultimately because they want to control the outcome as much as possible**.** News of industrial sized non-compliance is generally not welcome by governments but that could be just me being cynical. Other possible constraints can be budget, equipment and training but I don’t know if these exist.

Second, considering that exploration areas are closed to the public I would imagine that public complaints in these areas are few to non-existent. A search of the Complaint Report (csv file) on this page did not have any coal related complaints listed. <https://www.aer.ca/providing-information/data-and-reports/activity-and-data/field-surveillance-incident-inspection-list>.

Third, the Inspector also mentioned there are other activities going on in Class 2 lands such as logging, quarrying and oil & gas that people sometimes confuse with coal operations. Given the “Coal Team” resource levels, naturally complaints are triaged by various factors including the type of activity involved. This could result, for example, in non-compliance by coal exploration road building going undetected since it could be attributed to forestry operations and not inspected.

Inspectors rely on internal experts to assist with directing specific mitigation measures such as stream crossing methods and use various resource materials to educate Proponents on best practices (i.e. AB Hwys Erosion & Sediment).

As with most regulatory bodies, AER compliance involves education (guidelines, best-management practices), prevention (monitoring, inspection, audit), enforcement (warnings, administrative sanctions, orders, directions, administrative penalties, prosecution). In general, the Inspector I spoke with stated there is a mix of compliance by the existing companies currently/recently involved in coal exploration; some good, some continuously not-so-good.

In DFO, fishery officers are required to enter their daily compliance checks in a data base that records what specific fisheries/activities were looked into (trout, salmon, lobster, clams, habitat etc), any violations and what response occurred. This data base can be used to report compliance check effort and violations by subject. A similar system does not appear to be in place with AER and when I asked the Inspector how it is best to see compliance inspection effort, I was directed to the AER web page, Compliance Dashboard http://www1.aer.ca/compliancedashboard/incidents.html. The following is data concerning Incidents, Investigations and responses to Non-compliance.

A review of the table searched by “coal” in the **Incidence Tab** had one citation:

Reference # Incident Date Company Location Operation Type Product Status

20152030 2015-07-17 Benga Mining Ltd Crownest Pass Mine Coal tailings No emergency/ Devon Canada Corporation (15 km NE) phase

Notification Date: 2015-07-20

Volume: 3 m3

Summary: A drilling pit on the mine site filled with water during an intense rain storm which resulted in the water breaching the side of the pit and release water into a nearby tributary and into Gold Creek.

Showing 1 to 1 of 1 entries (filtered from 1,966 total entries)

Under the **Investigation Tab**, bottom table there were 9 references:

| **Reference No.** | **Company** | **Date** | **Operation Type** | **Location** | **Status** |
| --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |  |
|  | 2020-040 | Elan Coal Ltd. | 2020-08-28 | Mine | Blairmore | Phase 1 - Evidence Collection |
| |  |  | | --- | --- | | Alleged Contravention: | Contravention of approval conditions | | | | | | | |
|  | 2019-031 | Cardinal River Coals Ltd. | 2019-05-07 | Mine | Cadomin | Closed |
|  | 2018-019 | Cardinal River Coals Ltd. | 2018-03-15 | Mine | Hinton | Closed |
|  | 2017-017 | Cardinal River Coals Ltd. | 2017-03-30 | Mine | Hinton | Closed |
|  | 2015-023 | Grande Cache Coal Corporation | 2015-09-04 | Mine | Grande Cache | Closed |
|  | 2014-099-EPEA | Prairie Mines & Royalty ULC (Formerly Coal Valley Resources Inc.) | 2014-10-16 | Mine | Edson | Closed |
|  | 2014-099-CCA | Prairie Mines & Royalty ULC (Formerly Coal Valley Resources Inc.) | 2015-03-23 | Mine | Edson | Closed |
|  | 2013-018 | Grande Cache Coal Corporation | 2013-11-12 | Mine | Grande Cache | Closed |
|  | 2013-006 | Prairie Mines & Royalty ULC (Formerly Coal Valley Resources Inc.) | 2013-10-31 | Mine | Hinton | Closed |

Showing 1 to 9 of 9 entries (filtered from 178 total entries)

In the **Non-Compliance & Enforcement Tab** the ST 108 Monthly Enforcement Action Summary stated the “page you requested does not exist”. However, located at the bottom of this page is a table that lists actions by:

- warning letters, administrative penalties, and prosecution;

- administrative sanctions (e.g., imposition of terms and conditions);

- directions of an inspector in relation to section 137(2)(c) of the Environmental Protection and Enhancement Act;

- orders issued to compel compliance or remediate;

- any notice of noncompliance that is related to a full or partial suspension of operations;

- suspension or cancellation of an approval; and

- cancellation of a reclamation certificate.

A search of this data base for “coal” revealed **10 enforcement actions** over the past 11 years (see below):

|  | **Reference No.** | **Company** | **AER Response** | **Description** | **Date** |
| --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |
|  | 202003-01 | Cardinal River Coals Ltd. | Order | Release of a substance into the environment as per sections 113 and 241 of the Environmental Protection and Enhancement Act. | 2020-03-02 |
|  | 202002-17 | Cardinal River Coals Ltd. | Administrative Penalty | Licensee released wastewater from an unauthorized mine wastewater handling facility in contravention of section 4.2.2 of approval 46972 and exceeded maximum daily limit for Total Suspended Solids prescribed in condition 4.2.15 of approval 46972; in contravention of section 227(e) of the Environmental Protection and Enhancement Act. | 2020-02-06 |
|  | 201905-02 | Cardinal River Coals Ltd | Order | Release of a substance into the environment as per sections 113 and 241 of the Environmental Protection and Enhancement Act. | 2019-05-10 |
|  | 201802-06 | Cardinal River Coals Ltd. | Administrative Penalty | Licensee buried approximately 2450 m3 of topsoil without AER authorization. | 2018-02-23 |
|  | 201711-05 | Keephills Aggregate Company Ltd. | Administrative Penalty | Contravention of Suspension Order SO2015-01A issued under sections 16 and 20 of the Coal Conservation Act. | 2017-11-07 |
|  | 201708-19 | Prairie Mines & Royalty ULC (formerly Coal Valley Resources Inc.) | Prosecution | Contravened or failed to comply with a term or condition of a licence and thereby committed an offence contrary to section 47 of the Coal Conservation Act. | 2017-08-31 |
|  | 201706-04 | Prairie Mines & Royalty ULC (formerly Coal Valley Resources Inc.) | Prosecution | Release or permit the release of a substance into the environment from the Obed Mountain Mine; in an amount, concentration or level or at a rate of release that causes or may cause a significant adverse effect contrary to section 109(2) of the Environmental Protection and Enhancement Act and did thereby commit an offence contrary to section 227(j) of the Environmental Protection and Enhancement Act. | 2017-06-09 |
|  | 201610-19 | Prairie Mines & Royalty ULC  (formerly Coal Valley Resources Inc.) | Administrative Penalty | Failure to provide written notification to the AER prior to discharge of any mine wastewater from Pit 142 to the surrounding watershed in contravention of section 227(e) of the Environmental Protection and Enhancement Act. | 2016-10-11 |
|  | 201609-06 | Benga Mining Limited | Administrative Penalty | Unauthorized use of public lands as per section 56(1) (d) of the Public Lands Act.  Failure to control the flow of water as per section 28(1) of the Coal Conservation Rules. | 2016-09-26 |
|  | 201511-26 | Grande Cache Coal Corporation | Administrative Penalty | Failure to comply with a condition of the licence or approval. | 2015-11-10 |

A lot can be inferred from looking at this information but, if the data is accurate, it appears that since 2013 there has been 1 Incident (defn?), 9 Investigations and 10 enforcement actions in the past 8 years. These numbers seem very low given the scope of the coal industry. Of the enforcement actions only 2 led to prosecution which could be interpreted as indicating a high level of compliance or perhaps systematic fault in holding violators accountable.

From my experience, a lot of minor non-compliance is dealt with by officers exercising discretion by giving informal directions. Since this effort is not captured in data collection, the above reporting does not necessarily indicate compliance inspection effort. I would hope this is what can be interpreted here. For an officer, non-compliance actions are influenced by complaints (veracity, number), company compliance history, potential for harm based on the nature of the work, the work site and environmental sensitivity, the actual harm and demonstration of due diligence of a company’s efforts to mitigate or not to create a violation. It is also affected by government policy, priorities and concern for public perception. The Inspector I spoke with was comfortable with the Team’s work load considering there are 11 operational coal mines and 4 companies in exploration at the time. This could indicate the degree of scrutiny exercised on an inspection is not particularly comprehensive and/or AER does not place comprehensive requirement for compliance and monitoring.

Conclusion

The Public generally relies on the effectiveness of public policy and legislation to protect their interests including the environment. It is often naively assumed that when these directives are in place then coal industry applications must undergo considerable scrutiny and that compliance is ensured. It is obvious from this analysis that this is not true of the coal industry in Alberta. The AER does not appear to place an emphasis on protecting public interests based on their plan approval methodology, resourcing and direction for compliance monitoring and enforcement. This is of particular concern as Alberta increases access to our coal resources for development in fragile areas with the potential to adversely affect thousands of residents and natural ecosystems.