

# Elk Valley Environmental Monitoring Committee 2015 Public Report

## Appendix B:

EMC Terms of Reference to April 2016

**Elk Valley**

Environmental Monitoring Committee

**TERMS OF REFERENCE**

**FOR THE**

**ENVIRONMENTAL MONITORING COMMITTEE**

**WITH RESPECT TO THE**

**ELK VALLEY PERMIT 107517**

**FINAL as of  
April 13, 2015**

1	KEY CONTACTS.....	2
2	BACKGROUND.....	2
3	SCOPE.....	2
4	EMC MEMBERSHIP .....	3
5	GOALS AND OBJECTIVES OF THE EMC.....	4
6	RELATIONSHIP TO OTHER COMMITTEES.....	5
7	MEETINGS.....	7
8	DELIVERABLES.....	7
9	ISSUE MANAGEMENT AND DISPUTE RESOLUTION .....	8
10	LIMITS OF THESE TERMS OF REFERENCE.....	8
11	AMENDMENT.....	8
12	SUPPORT .....	8

# TERMS OF REFERENCE FOR ELK VALLEY PERMIT ENVIRONMENTAL MONITORING COMMITTEE (EMC)

## 1 KEY CONTACTS

Teck Coal Limited:	Mark Digel: <a href="mailto:mark.digel@teck.com">mark.digel@teck.com</a>
	Christian Baxter: <a href="mailto:christian.baxter@teck.com">christian.baxter@teck.com</a>
Ministry of Environment:	Jeanien Carmody-Fallows: <a href="mailto:Jeanien.CarmodyFallows@gov.bc.ca">Jeanien.CarmodyFallows@gov.bc.ca</a>
	Lana Miller: <a href="mailto:lane.miller@gov.bc.ca">lane.miller@gov.bc.ca</a>
Ktunaxa Nation:	Bill Green: <a href="mailto:bgreen@ccrffc.org">bgreen@ccrffc.org</a>
	Kerri Garner: <a href="mailto:kgarner@ktunaxa.org">kgarner@ktunaxa.org</a>

## 2 BACKGROUND

In 2014, the Elk Valley Area Based Management Plan (ABMP), also known as the Elk Valley Water Quality Plan was submitted to the Ministry of Environment (MOE) as required by Ministerial Order M113. Following approval of the ABMP by the Minister of Environment, Permit 107517 was issued authorizing effluent discharges from Teck Coal mining operations in the Elk Valley. A requirement of the permit is the formation an Environmental Monitoring Committee (EMC) to review monitoring submissions required under the permit and provide technical advice to the Permittee (Teck Coal Limited), the Ktunaxa Nation Council (KNC), and the Director. These Terms of Reference (TOR) set out the operating parameters of the EMC.

## 3 SCOPE

The scope of the EMC is defined in section 12.2 of Permit Number 107517 (the Permit) issued to Teck Coal Ltd. on November 19, 2014. The EMC is primarily a forum to share technical information and Traditional Knowledge, and for problem-solving related to the environmental matters of monitoring, adaptive management and reporting activities of the ABMP and the EMA permits.

The EMC will be active throughout mine operations as required by the Permit. The area to be considered by the EMC is the designated area (the Elk River watershed and Canadian portion of Koochanusa Reservoir).

The EMC is a non-regulatory body.

## 4 EMC MEMBERSHIP

Notwithstanding the regulatory obligations of the BC Ministry of Environment and Teck, it is the responsibility of all member agencies to appoint staff to sit on the EMC and to determine their level of participation.

Members:

- Ministry of Environment (MoE)
- Ministry of Energy and Mines (MEM)
- Environment Canada (EC)
- Ktunaxa Nation (KNC)- three representatives (technical rep, CCRIFC rep and Traditional Knowledge representative)
- Teck Coal Limited (Teck)
- Interior Health Authority (IHA) - (limited to health related monitoring and assessments)
- Independent scientist/academic

Each member agency/organization is expected to appoint one representative (except for the KNC, which has three representatives) and one alternate participant. The function of the alternate is to attend meetings when the member is unavailable, to ensure, as much as possible, that each member organization/agency is represented at all EMC meetings.

The Traditional Knowledge (TK) representative will be appointed by KNC in order to ensure that the Ktunaxa worldview and TK is meaningfully considered within the preparation of advice. Additional groups and individuals (e.g. First Nations, Non-Government Organizations, etc.) are welcome to attend the annual public meetings offered by the EMC.

The EMC may be supported from time to time by technical working groups to provide specific technical advice. Technical working groups will be decided by the EMC depending on the topic being discussed.

An independent facilitator (the “Facilitator”) will be appointed by consensus of the Province, Teck and KNC, to facilitate EMC meetings and to act as the EMC secretariat. The Facilitator will provide administrative support to the EMC, including organizing logistics for meetings, providing notice of meetings to EMC members, receiving and distributing meeting information to members, finalizing and distributing meeting agendas, and taking and preparing meeting notes. Notes of the meetings will be circulated for approval by all members of the EMC.

The Facilitator is not considered a member of the EMC and as such the Facilitator’s role is to meet administrative requirements of the EMC.

### 4.1 Term of Appointment for EMC members

In order to ensure transfer of knowledge and continuity within the EMC, EMC member appointments are expected to be for three years with the opportunity for re-appointment based upon the decision of each member agency. A staged rotation of members is desirable to ensure continuity within the committee.

## 5 GOALS AND OBJECTIVES OF THE EMC

The Objectives of the EMC as outlined in Permit 107517 are as follows:

- Provide science-based and/or traditional knowledge based advice to Teck, the KNC and the Director on issues related to :
  - recommended revisions to the water quality targets specified in the EVWQP, based on the review of monitoring results and Adaptive Management Plan reports;
  - environmental monitoring programs, data assessments ,and adaptive management associated with implementation of the ABMP and the EMA permits;
  - maximizing effectiveness and coordination of environmental monitoring activities conducted under the ABMP and the EMA permits; and
  - facilitate integration of traditional knowledge into environmental monitoring and activities conducted under the ABMP and the EMA permits.
- Support communication of environmental monitoring results collected under the ABMP and the EMA permits to Ktunaxa Nation members and the public by:
  - Compiling and analyzing relevant environmental data and information; and
  - Providing information in a plain language format.
- Provide advice to support continual improvement in monitoring activities conducted under the ABMP and the EMA permits.

The committee reviews submissions and associated supporting studies required in condition 12.2 of the permit. Specifically, the EMC will review submissions and provide technical advice to Teck, the KNC and to the Director regarding monitoring submissions in sections:

- Section 9.2 Elk Valley Groundwater Monitoring
- Section 9.3 Local Aquatic Effects Monitoring
- Section 9.4 Regional Aquatic Effects Monitoring
- Section 9.5 Calcite Monitoring

The EMC will also provide input to Teck regarding reports which are required under sections:

- Section 2.7 Re-evaluation of Limits
- Section 5.1 Tributary Evaluation and Management
- Section 9.7 Lake Koochanusa Burbot Baseline Study 2015
- Section 9.8 Chronic Toxicity Testing
- Section 9.9 Human Health Risk Assessment

- Section 10.2.4 Annual Reporting
- Section 10.3 Groundwater
- Section 10.4 LAEMP
- Section 10.5 RAEMP
- Section 10.6 Calcite
- Section 10.7 Lake Koochanusa
- Section 10.8 Water Quality Modelling
- Section 11. Adaptive Management
- Section 12.3 Third Part Audit

The EMC confirms the scope of the third party audit (as required in Permit 107517) a minimum of 9 months prior to the audit submission deadline.

The EMC may also review other pertinent monitoring data relevant to water quality and fish in the Fording and Elk Rivers and Lake Koochanusa.

The EMC must recognize the extent and limitations of its mandate.

## **6 RELATIONSHIP TO OTHER COMMITTEES**

The existence of the EMC does not preclude other relationships between Provincial Agencies, the Ktunaxa Nation, and Teck. In addition, the EMC is one component of Provincial-Ktunaxa engagement regarding Teck Coal mining operations and does not fully discharge the Crown's obligations to consult and accommodate Aboriginal title and rights.

The EMC may serve a role in information sharing with other committees ("Information"). The EMC will not distribute or make available Information without the express permission of the member that made the information available to allow for redacting of proprietary or business sensitive communication. The Facilitator will be responsible for coordination and dissemination of Information to other committees. A list of these committees and a summary of what they do is provided below.

### Elk Valley Cumulative Effects Framework

The Cumulative Effects Framework is a new approach for assessing and managing cumulative effects in BC, with policy, procedures and tools to enable periodic assessment of cumulative effects at a broad strategic scale. The framework includes defining values for the assessment, assembling data on the current conditions, identifying trends including likely future impacts, assessing and reporting of the current conditions against management objective. An Interagency team reviews the assessment report and provides recommendations for mitigating emerging risks.

### Lake Koochanusa Monitoring and Research Working Group

The primary role of the Lake Koocanusa Monitoring and Research Working Group is to monitor transboundary environmental impacts to Koocanusa Reservoir through identification and implementation of monitoring and research in the reservoir. Additional roles can be found in the Lake Koocanusa MR working group proposal document. The working group exchanges information with and provides advice to the EMC. The EMC may also provide recommendations to the Lake Koocanusa Monitoring and Research Working Group

#### Traditional Knowledge Working Group

The EMC will consider Ktunaxa Traditional Knowledge (TK) in reviewing and preparing recommendations with respect to all aspects of its mandate. It is anticipated that TK will be provided from an Elk Valley TK Working Group which will be established through other agreements or mechanisms.

The primary role of the Traditional Knowledge Working Group will be to ensure that Traditional Knowledge is considered in all aspects of monitoring, management, and regulatory initiatives in the Elk Valley. The WG will consist of Ktunaxa knowledge holders and the Traditional Knowledge representative on the EMC. The working group will provide recommendations to the EMC on issues in regards to its mandate.

#### Kootenay Mine Development Review Committee

The KMDRC is a committee set out under Section 6 of the *Mines Act* for the review of mining projects. It is chaired by the Province, and serves as a forum for authorization processes related to the mines including the *Mines Act* permit (mine infrastructure, reclamation, bonding), *Environmental Management Act* permits (waste management), and others. Its membership is project-dependent, and for the SE Coal projects it is made up of provincial agencies, First Nations, regional and local government, and federal agencies. Meetings and agendas are based on provincial needs associated with authorization processes occurring from time to time over the life of the project.

#### Government-to-Government Forum/Strategic Engagement Agreement

The Government-to-Government Forum is chaired by Ministry of Aboriginal Relations and Reconciliation, and serves as a forum for government-level discussions between the Province and the Ktunaxa Nation.

#### South East Coal Permitting Program

The South East Coal Permitting Program (SECPP) has been established to ensure that the environmental assessments and permitting for current and future Teck Coal Ltd (Teck) operations, as well as activities related to the Elk Valley Area Based Management Plan, are conducted in a high quality and timely manner in accordance with regulations and current agreements. Governance for SECPP is provided by the Southeast Coal Board (Board). The project scope of SECPP is the five coal mines that Teck operates in southeastern British Columbia. All of the mines require a significant number of regulatory approvals over the next three years, including up to three Environmental Assessments, to maintain coal production. The SECPP is linked to the provinces engagement with the KNC through the establishment of a SE coal Sub Committees under the SEA.



## Limitations

1. The EMC cannot direct Statutory Decisions. The EMC may advise the Province in matters pertaining to the Director's regulatory role.
2. The EMC does not prevent/restrict the Ktunaxa Nation and Teck from interacting directly with the Province and Teck on matters within the scope of the EMC.
3. The EMC cannot stop or interrupt the Permittee from carrying on its operations or making decisions regarding permits applications, subject to regulatory requirements.
4. The EMC is not a replacement for direct Government-to-Government agreements or discussions, direct Teck-to-Ktunaxa Nation agreements or discussions, or direct Teck-to-BC Government discussions; rather it is supplemental.
5. EMC does not deal with Health and Safety considerations.

## 7 MEETINGS

The EMC will hold a minimum of 4 face to face meetings per year, plus one or more annual public meeting(s) for the first two years. Thereafter, the frequency of meetings will be determined by the committee.

Special meetings may be called at any time by the chair with agreement of committee members to address issues as they arise.

The EMC annual public meeting will be held in a different community (e.g., Fernie, Sparwood, Elkford, Tobacco Plains/Grasmere, Cranbrook) in the Elk Valley area each year. The meeting format will be determined by the EMC and will include participation by a majority of the EMC.

Conference calls will be utilized for the majority of the other meetings.

## 8 DELIVERABLES

- Committee meeting minutes drafted by the Facilitator and distributed to EMC members and pre-determined public interest groups;
- EMC Technical recommendations based upon reviews of monitoring information provided to the Director, KNC, and Teck and recorded in meeting minutes or EMC approved memorandum;
- An annual interpretative plain language report prepared by Teck or its consultant and approved by the EMC for presentation to the general public in the Elk Valley regarding the results of the monitoring undertaken under the EMA permit, the status of implementation of activities and commitments under the ABMP, and an appendix listing all non-confidential recommendations made by the committee.

## **9 ISSUE MANAGEMENT AND DISPUTE RESOLUTION**

The EMC will strive for consensus when making recommendations and decisions. There may be situations when consensus may not be reached. The minutes shall document the issues and opinions along with the views and conclusions of EMC members. The minutes of the EMC will be reviewed by Teck and the Director to inform actions and decisions relating to the EMA Permit monitoring and ABMP implementation.

Consultation by the Ministry of Environment may be undertaken with specific members to fully understand the differing opinion. Where a decision is before the Director, the Director may seek a resolution prior to making the decision.

For EMA related decisions by the Director, once a decision is made, should a person feel aggrieved by the decision, there is an appeal mechanism available to the Environmental Appeal Board.

## **10 LIMITS OF THESE TERMS OF REFERENCE**

Nothing in these Terms of Reference limits or abrogates the responsibilities or duties assigned to individual ministries or agencies under their own legislation.

## **11 AMENDMENT**

These TOR may be revised at any time upon request of a committee member. These TOR will be reviewed 1 year after the acceptance date. Consensus of all committee members must be obtained on any amendment to the TOR.

## **12 SUPPORT**

Teck will consult with the Ktunaxa Nation Council on a funding mechanism for the participation of the three Ktunaxa Nation Council representatives on the committee. Teck will resource the Independent Facilitator and Independent Scientist/academic participation on the committee.