

# Administrative Penalty Director's Decision

**Named Party:** CST Coal Canada Limited **BA Code:** A7PZ

**File No.** 2023-002

## Preliminary Penalty Assessment

| Number of Counts Identified | Base Assessment Amount                 | Factor Variance(s)     |                  |
|-----------------------------|----------------------------------------|------------------------|------------------|
| Count 1                     | \$3 500                                | + \$1 000<br>+ \$1 000 |                  |
| Count 2                     | \$17 500                               |                        |                  |
| <b>Total Counts: 2</b>      | <b>Total Base Assessment: \$21 000</b> | <b>Total Variance:</b> | <b>+ \$2 000</b> |

**Preliminary Penalty Assessment: \$23 000**

## Director's Decision Summary

On November 5, 2024, I, Jon Keeler, Director, Field Operations East, Oil Sands Mining, for the Alberta Energy Regulator (AER), spoke with Mitch Clegg, Manager, Environmental and Regulatory Affairs, for CST Canada Coal Limited (CST Coal) to discuss the Preliminary Administrative Penalty Assessment (PA). Mr. Clegg declined meeting in person to discuss the investigation findings and PA and chose instead to review the PA and respond back in writing by November 26, 2024, if CST Coal had any additional information to provide.

The PA identified the following counts and penalty assessments.

## Count 1

On or about January 2, 2023, the Alberta Energy Regulator became aware that, on or about December 29, 2022, in the Province of Alberta, CST Canada Coal Limited did contravene section 4.2.4 of Approval 00155804-01-00 which states; “The approval holder shall only release mine wastewater from the mine wastewater handling facilities in TABLE 4.2-A, unless otherwise authorized in writing by the Director”, thereby contravening section 227(e) of the *Environmental Protection and Enhancement Act*.

| BASE PENALTY TABLE           |               |       |          |       |
|------------------------------|---------------|-------|----------|-------|
| Type of Contravention        |               |       |          |       |
| Potential For Adverse Effect |               | Major | Moderate | Minor |
|                              | Major         | 5000  | 3500     | 2500  |
|                              | Moderate      | 3500  | 2500     | 1500  |
|                              | Minor to None | 2500  | 1500     | 1000  |

### Type of Contravention: Major

The primary purpose of the *EPEA* is the protection of the environment. The requirements mandated by the *EPEA* ensure that activities undertaken pursuant to the Act, such as those required in an approval, are conducted in a manner that mitigates risks to the environment.

The purpose of condition 4.2.4 of *EPEA* Approval 00155804-01-00 is to ensure mine wastewater is released in a manner that does not enter and impact the environment. Accordingly, the type of contravention is assessed as “Major.”

CST was only authorized to release mine wastewater to the water handling facilities listed in Table 4.2-A of *EPEA* Approval 00155804-01-00. The facilities in Table 4.2-A are designed to manage mine wastewater and prevent the release of untreated wastewater into the environment. Per Figure 1, mine wastewater was intended to flow through the reclaim bypass line into cell 1 of the plant site settling pond. In this case, the reclaim bypass line was frozen, and mine wastewater was diverted to the reclaim line leading to the pump house. The pump house was equipped with a level sensor that should have triggered a high-level alarm when the sump in the pump house was 85 percent full. However, it was determined that the level sensor was giving an incorrect reading due to material buildup against the sensor face and a high-level alarm was not triggered. CST staff were unaware that the pump house sump was full until it overflowed, and the mine wastewater traveled around the Milner pump house and into the Smoky River. The mine wastewater also entered the Milner pump house through the intake.

## Potential for Adverse Effect: Moderate

On December 29, 2022, from approximately 09:40 a.m. to 12:30 p.m., for just under three hours, mine wastewater was overflowing out of CST's pump house, and releasing into the nearby Smoky River. Although expected to recover naturally, there was actual impact to a water body with short-term impacts on localized areas in the aquatic environment. A Senior AER Limnologist/Water Quality Specialist assessed the impacts to the environment from the release and noted that total suspended solids (TSS), and metals associated with TSS, exceeded provincial guidelines. There was also an impact to a third party (Milner) plant and clarifier, which was designed for river water, not mine wastewater. Milner concluded the impact to their operation was low, because at the time of the incident they were not fully operating.

Under the *Administrative Penalty Regulation*, the amount of an administrative penalty is assessed based on the potential for the contravention to cause an adverse effect rather than the actual adverse effect it may have caused. In this case, the actual impacts to the environment were short-term and localized. However, had CST not discovered and contained the release when it did, the impacts could have been greater on the aquatic environment. The impact to Milner was "low" but could have been greater if Milner was fully operating. Accordingly, the potential for adverse effect is assessed as "Moderate."

**Base Assessment:** \$3500

## Count 2

On or about January 2, 2023, the Alberta Energy Regulator became aware that, on or about December 29, 2022, for 5 days or part days, in the Province of Alberta, CST Canada Coal Limited did contravene section 2.1.1 of Approval 00155804-01-00 which states; "The approval holder shall immediately report to the Director by telephone any contravention of the terms or conditions of this approval at 1-780-422-4505", thereby contravening section 227(e) of the *Environmental Protection and Enhancement Act*.

| BASE PENALTY TABLE           |               |       |          |       |
|------------------------------|---------------|-------|----------|-------|
| Type of Contravention        |               |       |          |       |
| Potential For Adverse Effect |               | Major | Moderate | Minor |
|                              | Major         | 5000  | 3500     | 2500  |
|                              | Moderate      | 3500  | 2500     | 1500  |
|                              | Minor to None | 2500  | 1500     | 1000  |

## Type of Contravention: Major

The primary purpose of the *EPEA* is the protection of the environment. The requirements mandated by the

*EPEA* ensure that activities undertaken pursuant to the Act, such as those required in an approval, are conducted in a manner that mitigates risks to the environment. The subject requirement to report any contravention of the terms or conditions of the approval immediately is necessary to ensure appropriate regulatory oversight and an appropriate response from the company. Accordingly, the type of the contravention is assessed as “Major.”

The evidence shows that CST was aware of the release on December 29, 2022, yet did not report the release until January 2, 2023.

### **Potential for Adverse Effect: Moderate**

Under the *Administrative Penalty Regulation*, the amount of an administrative penalty is assessed based on the potential for the contravention to cause an adverse effect rather than the actual adverse effect it may have caused. In this case, the actual impacts were short-term and localized. However, had CST not discovered and contained the release when it did, the impacts could have been greater on the aquatic environment. The impact to Milner was minor but could have been greater if Milner was fully operating. Accordingly, the potential for adverse effect is assessed as “Moderate.”

Section 237(2)(a) of *EPEA* allows the AER to impose a daily administrative penalty amount for each day or part of a day which the contravention occurs or continues. The AER finds it appropriate in this matter to apply a daily penalty to reflect the length of time CST failed to report the contravention of the terms or conditions of their approval. In this case, the release of mine wastewater occurred on December 29, 2022, and was not reported until January 2, 2023. This results in the imposition of a daily penalty amount for a total of five (5) days or portions of a day on which the contravention occurred or continued.

**Base Assessment:** \$3500 X 5 days = \$17 500

### **Factors to be Considered to Vary the Assessment**

- (a) the importance to the regulatory scheme of compliance with the provision;
- (b) the degree of wilfulness or negligence in the contravention;
- (c) whether or not there was any mitigation relating to the contravention;
- (d) whether or not steps have been taken to prevent reoccurrence of the contravention;
- (e) whether or not the person who receives the notice of administrative penalty has a history of non-compliance;

- (f) whether or not the person who receives the notice of administrative penalty has derived any economic benefit from the contravention;

any other factors that, in the opinion of the Director, are relevant.

### Factors Applicable to this Case

| Factor from above | Amount Varied | Description/Comments                                                                                                                                                                                                                                                                                                                     |
|-------------------|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a)               | +\$1000       | Following approval conditions is a cornerstone of the regulatory scheme. In particular, following <i>EPEA</i> approval conditions is essential in preventing or mitigating impacts to the environment. (\$500 added for releasing wastewater in contravention of the approval, and \$500 added for failing to report the contravention.) |
| (b)               | +\$1000       | CST did not have specific written procedures or training documents in place for the control room monitoring system on the date of the incident (\$500 added) and did not follow their internal reporting procedure (\$500 added).                                                                                                        |
| (c)               | Neutral       | Factor not applied.                                                                                                                                                                                                                                                                                                                      |
| (d)               | Neutral       | Factor not applied.                                                                                                                                                                                                                                                                                                                      |
| (e)               | Neutral       | Factor not applied.                                                                                                                                                                                                                                                                                                                      |
| (f)               | Neutral       | Factor not applied.                                                                                                                                                                                                                                                                                                                      |
| (g)               | Neutral       | Factor not applied.                                                                                                                                                                                                                                                                                                                      |

### Discussion

On November 26, 2024, the AER received a written submission from CST Coal in response to the PA in connection with the December 29, 2022, overflow of wastewater into the Smoky River from CST Coal's pump house facility. CST Coal did not dispute that the release occurred and was not immediately reported to the AER. The Director considered the entire submission, including the four main arguments CST Coal raised in its submission. A summary of these issues and the AER's responses is provided below.

#### Argument 1

In the submission, CST Coal disputed the classification of Count 2 as "Major" stating the classification is inconsistent with the nature of the contravention and the AER's own guidance. CST cited an example on the AER's external website of a failure to report the contravention deemed as "moderate." CST further stated, "The AER routinely addresses a failure to immediately report a release through a warning letter."

## **AER Response**

The AER website provided information regarding administrative penalties and examples. The AER looks at each situation individually to decide how to classify a contravention.

The contravention type categorized as “Major” stands. CST failed to report a contravention of its approval as required by the approval, and the contravention of the approval was a release of mine wastewater into the environment (Smoky River) with the potential to cause a greater impact to the aquatic environment. Accordingly, this contravention is more akin to failure to report a release.

The base amount of \$3500, and the addition of \$1000 for Factor (a), stand as is.

## **Argument 2**

CST Coal stated that it is impossible for an approval holder to immediately report an incident on subsequent days and the resulting penalty exceeds legislated maximums applicable to a complete failure to report. CST Coal submitted that the AER has historically treated a failure to immediately report a contravention as a single offence.

## **AER Response**

Not reporting the release for 5 days prevented the AER from ensuring appropriate regulatory oversight and appropriate response from the company. This had the potential to cause a greater impact to the aquatic environment. The imposition of a daily penalty is appropriate given that there was both an unauthorized release and a failure to immediately report the release. This is consistent with previous penalties issued by the AER.

The daily penalties (5 days) stand.

## **Argument 3**

CST Coal stated that there is no support for the conclusion that CST Coal acted willfully or negligently in either Count 1 or Count 2.

## **AER Response**

The investigation found that CST did not have specific written procedures or training documents in place for the control room monitoring system on the date of the incident and did not follow its internal reporting procedures. While these omissions contributed, they are not sufficiently causal to warrant an increase in this case. On review of CST’s submission, I am satisfied in this case that these omissions, while not a defense to the contraventions, do not warrant an increase for Factor (b).

Based on this, Factor (b) is no longer applied.

## **Argument 4**

CST Coal submitted that the assessment omits any consideration of the considerable mitigations and steps taken by CST Coal to prevent recurrence and does not consider the significant degree to which CST Coal fully cooperated in the investigation. The proposed penalty is at the very high end of historical administrative penalties, implies that CST Coal acted willfully or negligently in committing major

contraventions, and omits recognition of CST Coal's immediate and thorough response and cooperation with regulators and its efforts to prevent any reoccurrence.

### AER Response

The Director has further considered CST's mitigating actions and is not persuaded that CST went above and beyond what is otherwise required. Shortly after the incident was reported, the AER requested CST to develop and submit follow-up actions (by letter request). While the Director acknowledges that steps were taken, these steps were not considered above and beyond what is required for a regulated activity.

### Final Penalty Decision

I, Jon Keeler, Director, Field Operations, Oil Sands Mining, for the AER, have fully considered all of the information collected in the investigation and the written submission sent to me from CST Canada Coal Ltd. on November 26, 2024.

I am of the opinion that the contraventions described above did occur and are supported by the evidence.

I find the total amounts in the base penalty for counts 1 and 2 in the PA are reasonable and remain the same.

In response to CST's written submission, Factors (b) listed in the PA is adjusted as noted above. All other factors assessed in the PA remain the same.

### Final Penalty Assessment

| Number of Counts Identified | Base Assessment Amount                 | Factor Variance(s)     |               |
|-----------------------------|----------------------------------------|------------------------|---------------|
| Count 1                     | \$3 500                                | (a) + \$1 000          |               |
| Count 2                     | \$17 500                               |                        |               |
| <b>Total Counts: 2</b>      | <b>Total Base Assessment: \$21 000</b> | <b>Total Variance:</b> | <b>\$1000</b> |

**FINAL PENALTY ASSESSMENT: \$22 000**

**Date:** December 16, 2024

**Director's Signature:** <original signed by>

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Jon Keeler, MBA P.Eng, Director, Field Operations, Oilsands Mining, AER