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Our file: 2010-02-03

September 2, 2010

The Honourable Jim Prentice, P.C., M.P.  
Minister of the Environment  
Environment Canada  
Les Terrasses de la Chaudière  
North Tower, 28th Floor  
10 Wellington Street  
Gatineau, QC K1A 0H3

Andrew Rollo  
Project Manager  
Raven Underground Coal Mine  
Canadian Environmental Assessment  
Agency  
805 - 1550 Alberni Street  
Vancouver, BC V6G 1A5

Dear Honourable Jim Prentice and Mr. Andrew Rollo:

**Re: Request that all public comments related to Compliance Coal Corporation's proposed Raven Underground Coal (RUC) Project be immediately posted on the Canadian Environmental Assessment Registry (CEAR reference number 10-03-55529)**

**Request that the public comment period be extended, to account for the current inadequate public participation process**

On behalf of CoalWatch Comox Valley we hereby request that you ensure that all public comments received by the Canadian Environmental Assessment Agency (the "Agency") related to the environmental assessment of the above-noted project be immediately posted on the Canadian Environmental Assessment Registry (the "Registry"). This request is made pursuant to previous requests to the Agency made by CoalWatch, Arthur Caldicott, and others that have been rejected.

Until all members of the public have an opportunity to actually see and respond to these comments, the Agency's current public comment process is clearly inadequate to constitute meaningful public participation. Accordingly, we request that the close of the public comment period scheduled for September 20<sup>th</sup>, 2010, be extended for a full 30 days after the public comments are posted on the Registry website.

## **Background**

On August 6, 2010, the Agency invited the public to comment on a background document that sets out a description of the proposed RUC Project and the conduct of a Comprehensive Study environmental assessment of the proposed RUC Project.<sup>1</sup> This is a critical stage in the federal process because it determines the extent and form of public participation in the environmental assessment of the proposed RUC Project.

On August 16, 2010, CoalWatch wrote to Ministers Prentice and Penner requesting that they refer the RUC Project to a joint federal/provincial independent expert Review Panel for a full public hearing. Hundreds of citizens have expressed their concerns about the potential effects of the proposed RUC Project, with many supporting CoalWatch's request. However, the Agency has refused to post citizen comments on the Registry, thereby denying the public the opportunity to:

- inform themselves about the issues by reading public comments; and
- use that information in making their own citizen submissions.

## **An Issue of Fundamental Democratic Process: The Importance of Posting Public Comments**

Public comments should be on the website because citizens have a right to view public comments first-hand and assess their contents. Otherwise citizens are deprived of vital information that could enrich their views and submissions -- and government loses the advantage of people learning from each other and thus presenting better information to government.

When public comments are withheld from the Registry website, the public comment process is no longer a virtual town hall meeting where citizens know what each other are saying, and conduct an open dialogue with each other and government. Instead, the process is reduced to one where individual citizens cannot see what other citizens have commented. This deprives citizens of critical information that their fellow citizens have submitted. It leaves the concerned citizen isolated and uninformed, making submissions into an opaque Black Box of Government that is hidden from view.

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<sup>1</sup> "News Release: Raven Underground Coal Mine Project - Public Comments Invited", online: <<http://www.ceaa.gc.ca/050/document-eng.cfm?document=44465>>, last accessed August 31, 2010. The Agency is required to provide this opportunity because the proposed mine falls under the *Comprehensive Study List Regulation*. AMEC Earth and Environmental, August 2009. "Raven Underground Coal Project – Project Description", p. 1 Online: <[http://a100.gov.bc.ca/appsdata/epic/documents/p351/1250101234662\\_067793eb3891ab678f34f2237aeb3fe8083ebab679d1eaa8371bd9aab8dc5fed.pdf](http://a100.gov.bc.ca/appsdata/epic/documents/p351/1250101234662_067793eb3891ab678f34f2237aeb3fe8083ebab679d1eaa8371bd9aab8dc5fed.pdf)>, last accessed August 31, 2010.

After persistent demands from CoalWatch and others, the Agency has agreed to a half-measure of disclosure. The Agency agreed to deliver copies of the public comments to Coal Watch at two points: on August 31, 2010, and at the end of the public comment period, on September 20, 2010. Apparently the public comments are also being given to the proponent corporation. However, this does not constitute government disclosure of these vital documents to interested members of the public at large.

Unlike real-time public posting of documents as they are received by government, this provision of bundled comments will not allow real-time citizen dialogue on the issues. In fact, the second half of public comments will not be delivered even to CoalWatch until the *end* of the public comment period – when it will be too late for CoalWatch or citizens to make use of them at all in making their own submissions.

The Agency's current closed process facilitates the dissemination of unbalanced information about the public comments filed with government. On August 31, 2010, Compliance Coal Corporation issued a news release about the comments that had been filed, only quoting from positive public comments. (See Appendix I<sup>2</sup>) Without access to the largely negative comments submitted to the Agency, members of the public are reliant on the Corporation for a description of the nature of the public comments so far.

To counter this, CoalWatch has now taken the initiative to post the first bundle of public documents they received at the end of August, but citizens who normally look to *government* for information about government processes may be unaware of the CoalWatch site, or the fact that it has posted the limited number of documents.

The Agency's refusal to post comments at this stage of the process does a disservice to the public who are unable to see the comments that have been submitted, as those comments come in. This lack of transparency dramatically diminishes the public's opportunity to have their concerns inform government's decision about whether to establish an independent Review Panel. The public interest demands that all parties who are interested in this project and its potential impact be provided with a truly meaningful opportunity to comment on the environmental assessment process.

In refusing to post public comments, the Agency advanced the argument that they cannot post public comments because they would have to be translated into both official languages. This is clearly not the case, given that the following disclaimer was adequate for the entries posted as public comments in the recent Prosperity Mine environmental assessment:

***Disclaimer*** Some of the following material originates with organizations not subject to the Official Languages Act and is available only in the language in which it was written.

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<sup>2</sup> Compliance Coal Corporation, (August 31, 2010) "News Release: CEAA releases Raven Project public comments", see Appendix I.

The Agency has also claimed that public comments were only posted in the Bute Inlet Hydroelectric Project process because a Review Panel had ordered it. This is not correct. In that case comments were posted months *before* the Review Panel was even established.

The point is that the Agency has clear discretion to post the public comments. Section 55.1(2)(u) of the *Canadian Environmental Assessment Act (CEAA)* provides the Agency with broad discretion to include on its website “any other information that the responsible authority or the Agency, as the case may be, considers appropriate”. Section 21.2 of the *CEAA* requires that the Responsible Authority ensure there are opportunities for public participation. The Agency is capable of posting public comments on the Registry within a reasonable amount of time, as evidenced by the thousands of entries posted during the recent environmental assessment of the proposed Prosperity Mine.

Most important, citizens have a right to know what Government is hearing. The public interest demands that the participation be transparent, to ensure that people have a meaningful opportunity to voice their concerns and engage in a public dialogue about coal mining on Vancouver Island.

The *CEAA* recognizes the fundamental importance of public dialogue to enhance the legitimacy of the process and the value of the outcome. The Agency echoes these principles on their website:

*Public participation is an important element of an environmental assessment process. It strengthens the quality and credibility of environmental assessments. The public is an important source of local and traditional knowledge about a proposed project's physical site and likely environmental effects.*<sup>3</sup>

The public interest demands that this right to participate be encouraged, respected and upheld. The Agency's narrow interpretation of their obligations under the current process is not enough.

The current opaque and unilateral process for public participation on the momentous decision to site a coal mine in the Comox Valley area is contrary to the spirit of the *Canadian Environmental Assessment Act*. It is fundamental to the integrity of the environmental assessment process that the public be provided with a transparent and meaningful opportunity to submit, review and respond to comments through the government's Canadian Environmental Assessment Registry.

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<sup>3</sup> Canadian Environmental Assessment Agency, “Basics of Environmental Assessment”, online: <[http://www.ceaa.gc.ca/010/basics\\_e.htm#6](http://www.ceaa.gc.ca/010/basics_e.htm#6)>.

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September 2, 2010  
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Therefore we urge the Agency to post all public comments on the Registry immediately.

Sincerely,



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Calvin Sandborn  
Legal Director, Environmental Law Centre



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Carly Chunick  
Barrister and Solicitor, Devlin Gailus



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Sarah Sharp  
Articled Student, Environmental Law Centre

## APPENDIX I

### COMPLIANCE ENERGY PRESS RELEASE



## News Release

*For Immediate Release  
August 31, 2010*

### **CEAA releases Raven Project public comments**

Public comments to the Canadian Environmental Assessment Agency (CEAA) were released to the Raven Underground Coal Project today, following a request by the project. This is the first of at least four federal and provincial public comment periods.

"It's good to see open dialogue about the project," said John Tapics, Raven Underground Coal Project President and CEO. "This project will bring hundreds of jobs to the area so it's important that people take the time to get accurate information."

In its comments, the public expressed interest in job creation and the opportunity for families to find local employment.

"I am in favour of development on the Island, as there are few jobs for young or old folks in this area," wrote an engineer from Parksville. "With proper controls and monitoring for this project, I believe it could be developed with little adverse environmental impact and considerable economic and infrastructure benefit."

Another resident commented, "We need the jobs and the economic prosperity that this mine will bring to our region and Canada."

In terms of environmental impacts, one writer commented, "The project plans an enclosed shipping facility which will virtually eliminate coal dust in Port Alberni," and another wrote, "I believe there will be adequate Provincial and Federal oversight."

Noting the project will produce metallurgical coal that will be combined with iron ore to make steel, one resident commented it is important to know the percentage of metallurgical coal the proposed mine might produce. "...If the planned project is largely metallurgical coal then the project should be given a chance," he wrote. "As metallurgical coal is fundamental in steel production, and we all benefit from steel in the vehicles we drive, household implements we use, etcetera, to oppose the Raven Project out of hand is simply a hypocritical, not in my backyard response." Technical studies have confirmed at least 80% of the coal from the project will be metallurgical coal used for making steel.

(more...)



Many comments expressed concern for the environment, including farmed shellfish, air quality, and traffic.

“These concerns will be addressed through the comprehensive federal and provincial environmental review process that is underway,” said Tapics. “Strict federal and provincial environmental regulations are in place to protect the environment.”

Aquatic ecologists, air quality scientists, hydrogeologists, archaeologists and many other scientists have been studying the proposed location of the project to build an understanding of current conditions including surface and groundwater, aquifer mapping, fish habitat and air quality. This information will be submitted as part of the environmental review process and technical consultants will use this information to design the project to eliminate or minimize potential environmental and social impacts.

“Our job is to eliminate or minimize the environmental impact of the project,” said Tapics. “We have located the proposed site where it will have the least environmental impact. The environment will be an important priority through every step of the project.”

The proposed project is located approximately six kilometres west of the Buckley Bay Ferry terminal and contained in an up to 3100 hectare area with surface facilities expected to cover approximately 200 hectares. There are no plans to expand the project beyond this area.

More information about the project is available on the BCEAO website at [www.eao.gov.bc.ca](http://www.eao.gov.bc.ca), the CEAA website at [www.ceaa-acee.gc.ca](http://www.ceaa-acee.gc.ca) and the Raven Project website at [www.theravenproject.ca](http://www.theravenproject.ca).

The CEAA public comment period continues until September 20, 2010. The BC Environmental Assessment Office public comment period for the draft Application Information Requirements is expected to be announced this fall.

The proposed Raven Underground Coal Project is a project of the Comox Joint Venture. The joint venture has been created to explore the possibility of developing the Raven Underground Coal Project on Vancouver Island.

Compliance Coal Corporation, a Canadian resource company with corporate offices located in Vancouver British Columbia, is the majority partner in the Comox Joint Venture.

For more information, please contact:

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