



File: ENVA-30200-20/TENCO-05-06

Reference: 394512

December 16, 2022

SENT VIA EMAIL

Mark Gray
Chairman
Telkwa Coal Limited
MGray@allegiancecoal.com.au

Dear Mark Gray:

On October 22, 2022, Telkwa Coal Limited (TCL) provided the Environmental Assessment Office (EAO) with a letter requesting that the environmental assessment (EA) of the Tenas Project transition from a review under the 2002 *Environmental Assessment Act* (2002 Act) to a review under the 2018 *Environmental Assessment Act* (2018 Act). I am writing to advise TCL that Elenore Arend, the Chief Executive Assessment Officer (CEAO), has issued an order (the Transition Order) and the Reasons for the Decision that outline the transition details of the Tenas Project to the 2018 Act. The Transition Order and the CEAO's Reasons for Decision have been posted to the [Tenas Project EPIC website](#).

To ensure a smooth and efficient transition for TCL and all EA participants, I would like to provide you with a description of the purpose and content of the Transition Order and its impacts on the EA process, including changes to the existing Section 11 Order and additional information required by the EAO from TCL to conduct our effects assessment. This letter also serves a notice to TCL regarding the key issues identified during the Application Review phase of the 2002 Act from the working group, Indigenous groups, and the public. The Application Review phase resulted in four information requests, which are included in the CEAO's Transition Order. Finally, in this letter I will lay out next steps in the EA process under the 2018 Act.

The Purpose and Content of the Transition Order

The Transition Order is a legal document issued by the EAO that specifies which phase in the EA process the Tenas Project will transition to under the 2018 Act. The Transition Order describes any changes or variations to the process and procedures that were

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originally established under the 2002 Act in the EAO's Section 11 Order, and additional information needed by the EAO from TCL to conduct our assessment of potential effects from the Tenas Project on valued components and on Indigenous interests.

In transitioning to the 2018 Act, several key documents that were finalized earlier in the EA under the 2002 Act will continue to be applicable. These include the Section 11 Order, the Application Information Requirements, and the Application. Pending TCL's submission of the additional information requested in the Transition Order, and the EAO's acceptance of that information, the CEO has determined that the Tenas Project will transition to the 150-day Effects Assessment and Recommendation phase of the Act, as illustrated in the 2018 EA process diagram below:

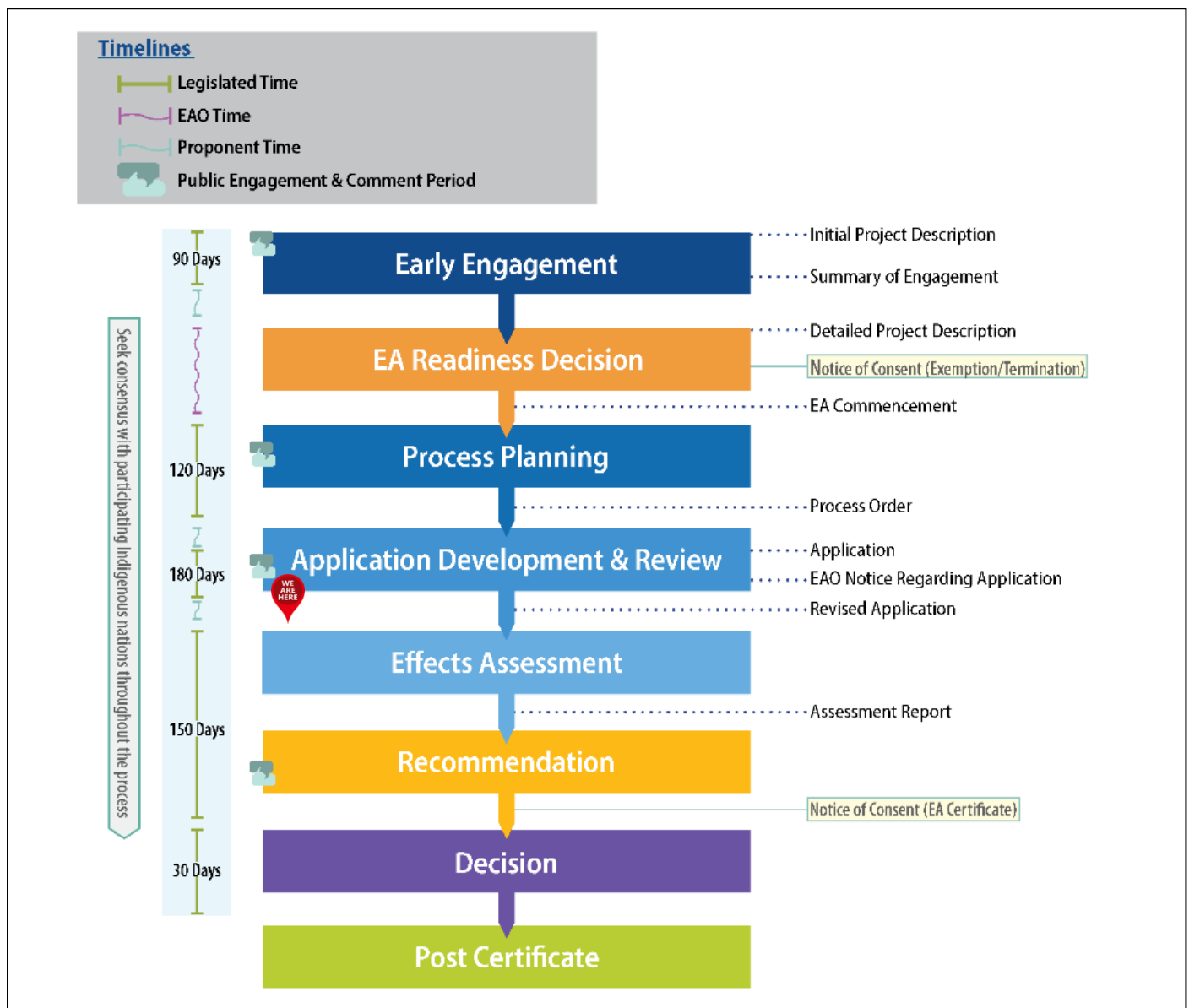


Figure 1 - Overview of the 2018 EA Process

Changes to the EAO's Section 11 Order

On June 25, 2019, the EAO issued a [Section 11 Order](#) under the 2002 Act to establish the formal scope, procedures and methods of the EA for the Tenas Project. The Transition Order varies parts of that Section 11 Order to align with the 2018 Act, including changing the name of the working group to the technical advisory committee (TAC), and allowing an opportunity for potentially affected Indigenous nations to self-identify as participating Indigenous nations, as defined in the 2018 Act.

While the Transition Order varies the Section 11 Order to reference the TAC, I will note that under the 2018 Act, the role and membership of the TAC remains the same as that of the working group under the 2002 Act, which is to provide technical advice to the EAO and to participating Indigenous nations.

The Transition Order also varies the Section 11 Order to remove Schedule B and Schedule C, and to replace reference to specific Indigenous nations with the term participating Indigenous nations. Indigenous nations have 30 days following the issuance of the Transition Order to self-identify as a participating Indigenous nation. Participating Indigenous nations are afforded certain procedural rights in the EA, including access to dispute resolution and the ability to provide consent or lack of consent at the Decision phase. All other components of the Section 11 Order remain to guide the assessment under the 2018 Act.

Required Assessment Matters under Section 25 of the Act

Section 25 of the 2018 Act¹ sets out matters that must be assessed in every EA. In drafting the Transition Order, the EAO compared what has already been included in TCL's Application with requirements under Section 25 of the Act. The EAO determined that, to fully meet the requirements under Section 25 of the Act and before the Effects Assessment and Recommendation phase can begin, TCL must provide the EAO with the following assessments which were not provided in TCL's Application:

- Any positive effects to Indigenous interests or Indigenous nations that are anticipated as a result of the Project;
- The positive and negative indirect effects of the Project;
- Disproportionate effects on distinct human populations, including populations identified by gender;
- The Project's effects on current and future generations;
- A description of how the Project is consistent with any land-use plan of the government or an Indigenous nation; and
- The Project's greenhouse gas emissions.

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¹ Available from: <https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/18051#section25>

What We Have Heard During Application Review and Information Requests

As this letter and the associated Transition Order and Reasons for Decision are being issued at the end of the Application Review phase under the 2002 Act, I am providing you with a summary of the key issues raised by the working group, Indigenous groups, and members of the public. The EAO has directed TCL to provide responses to all feedback received from these EA participants in the Application Review working group issues tracking tables and in the public comment tracking tables, as one of the requirements for commencing the Effects Assessment and Recommendation phase.

Feedback from the Working Group

The working group provided multiple rounds of comments on TCL's Application, which are included in issues tracking tables posted on the EAO's website at: [Working Group ITT \(Round 1\)](#) and [Working Group ITT \(Round 2\)](#). It is the EAO's view that most of these comments were adequately addressed by TCL during Application Review under the 2002 Act. I anticipate that the remainder of outstanding comments will be addressed either by TCL in your responses to information requests, by the EAO in the Effects Assessment and Recommendation phase, or are comments related to post-EA permitting processes that will be addressed at an appropriate later stage, should an EA Certificate be issued for the Tenas Project.

Information Requests from the Working Group

To address specific gaps in TCL's Application identified by the working group, the EAO has issued information requests on [caribou](#) and on [water](#) to TCL.

Feedback from Indigenous Groups

During Application Review under the 2002 Act, the EAO engaged deeply with the following Indigenous groups:

- Office of the Wet'suwet'en Hereditary Chiefs (OW), representing Cas Yex House of Gitdumden Clan and Kwen Bea Yex House of Laksilyu Clan;
- Witset First Nation; and,
- Wet'suwet'en First Nation.

These three Indigenous groups were also members of the working group who provided technical comments on TCL's Application, along with comments relating to potential impacts on their interests in the Tenas Project area. Key interests and concerns raised by Indigenous groups during Application Review included:

- impacts on hunting, fishing, and gathering;
- impacts on wildlife and wildlife habitat – caribou, grizzly bear, moose, fisher;
- impacts on fish and fish habitat – steelhead, salmon, lamprey;
- access to trails;
- ability to continue cultural practices, including food harvesting, on the Yintah;

- impacts on social structures and customs characterizing Wet'suwet'en cultural fabric and governance structures;
- ability to govern in accordance with Wet'suwet'en laws (Inuk Nu'at'en);
- cumulative effects across the Yintah and on affected House Groups; and
- economic opportunities and housing impacts in Wet'suwet'en communities.

Information Requests from Indigenous Groups

Office of the Wet'suwet'en Hereditary Chiefs (OW) identified issues with the Application, specifically with TCL's assessment of impacts on Wet'suwet'en rights. To address these gaps, the EAO and OW developed information requests for TCL to collect socio-cultural and cumulative effects data directly from the affected House Groups. You will need to work closely with OW to gather this data, which will be considered in the EAO's assessment of impacts on Indigenous interests during the Effects Assessment and Recommendation phase. The OW information requests are available on the EAO's website at: [OW Information Requests](#).

Witset First Nation identified issues with the Application, specifically with TCL's assessment of impacts on Witset First Nation's rights. To address these gaps, the EAO and Witset First Nation developed information requests for TCL to collect socio-economic and cumulative effects data directly from the Witset community. You will need to work closely with Witset First Nation to gather this data, which will be considered in the EAO's assessment of impacts on Indigenous interests during the Effects Assessment and Recommendation phase. The Witset First Nation information requests are available on the EAO's website at: [Witset First Nation Information Requests](#).

Feedback from the Public

The EAO held a public comment period on TCL's Application from May 19, 2022, to July 3, 2022, during which 535 individual comments were received from the public along with several technical reports and documents. All public submissions to the EAO and responses from TCL are posted in tracking tables on the EAO's website at: [Public Comment Tracking Table](#) and [Technical Reports Tracking Table](#).

The most comment topics from the public comment the EAO received included:

- Impacts to water quality and quantity;
- Potential for acid rock drainage and concerns about the lack of water treatment;
- Impacts to fish and fish habitat;
- Impacts on recreation (such as steelhead fishing);
- Decreased air quality (such as from dust);
- Increased noise;
- Negative cumulative effects on caribou and other wildlife; and
- Benefits of the Tenas Project to the local economy.

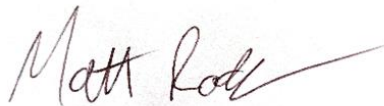
Next Steps

The EAO requires complete and satisfactory responses from TCL to the additional information requested in Schedule A of the Transition Order before the Effects Assessment and Recommendation phase can begin. During that phase, the EAO will complete our assessment of Tenas Project effects on valued components and on Indigenous interests and will produce an assessment report and associated referral materials for the responsible ministers who will decide whether or not to issue an EA certificate. The EAO will seek consensus with all participating Indigenous nations on TCL's responses to the information requests as well as on the information provided by TCL to address the required assessment matters under Section 25 of the 2018 Act.

You will note that as part of the Effects Assessment and Recommendation phase, the EAO will hold a minimum 30-day public comment period to seek feedback from the public on the EAO's draft Assessment Report and other draft documents that will be provided to provincial ministers.

I would appreciate the opportunity to discuss the anticipated timing of TCL responses to the information requested in the Transition Order and your team's work plan as soon as possible. I look forward to continuing to work with TCL during the EA of the Tenas Project under the 2018 Act. If you have any further questions, please contact me at Matthew.Rodgers@gov.bc.ca or at 778 698-9319.

With thanks,



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A/ Project Assessment Director

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