

Peter Vaughan
Environmental Media Foundation Inc.

12 May 2021.

FORMAL SUBMISSION OF QUESTION TO WITNESS
KAREN TEAGUE, COFFEY TETRA INTERNATIONAL LTD.

Please enter this entire document as a formal IAC Inquiry submission, for public viewing.

TO THE FINGERBOARDS PUBLIC INQUIRY CHAIRMAN
MR NICK WIMBUSH.

Dear Mr Wimbush.

In response to your instructions for stakeholder to submit questions 2 days before a witness is to appear, please accept this communication as a question directed to the witness Karen Teague, who is scheduled to appear before the panel on behalf of Coffey Tetra International Ltd, on Friday 14 May .

Note: If possible I would prefer to cross-examine Karen Teague via Zoom myself during the hearing, however if public stakeholders are being excluded that right, please present the question below to Karen Teague in my name, and conduct an appropriate cross-examination.

QUESTION:

Ms Teague. On page 5, (EES PDF, appendix AO19, Human Health Risk Assessment, there has been inserted a legal disclaimer.

It states under the heading, “Third Parties” the following statement:

“It is not possible to make a proper assessment of this report without a clear understanding of the terms of engagement under which the report has been prepared, including the scope of the instructions and directions given to Coffey, and the assumptions made by the relevant Coffey consultants who prepared the report.”

The disclaimer is clear and definitive in its instruction, which is also a form of legal advice: that it is, **“not possible” to make a proper assessment of this Coffey report, without a, “clear understanding” of those terms of engagement.**

From those instructions, it is clear that the public must see the, “Terms of Engagement” before reading and properly assessing this Coffey Report.

I have attached to this question, a document showing an email-chain. This represents the effort I made to obtain a copy of those, “Terms of Engagement” through communication with Kalbar Operations CEO Mr Jozsef Patarica and a Coffey employee Mr Dan Moriarty. But to date, neither party has supplied the document to me, the IAC Inquiry Panel or other stakeholders.

It is of note, that the IAC Panel is in the same position of disadvantage as the public and other stakeholders, if these “Terms of Engagement” are not released.

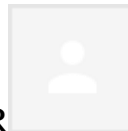
Question:

- 1: Why won't Coffey release these “terms of engagement” to the public or the IAC panel hearing ?
- 2: How can this report be considered intelligently, if it is not being read with consideration to the Terms of Engagement, as advised by Coffey in the disclaimer on page 5 of the very report ? (Human Health Risk Assessment).
- 3: Is it possible that within the redacted “Terms of Engagement”, there may exist certain warnings, that could have changed the conclusions a reader may have reached through not viewing those “Terms of Engagement “ ?

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EMAIL CHAIN ATTACHMENT.

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RE: KALBAR ESS - COFFEE REPORTS. DISCLAIMER

Jozsef Patarica

Fri, 2 Oct 2020,
20:25

<jozsef.patarica@ >

to me, Bruce, Richard, Victor, daniel.moriarty@, Jane,
tim.bull@

Dear Mr Vaughan

I advise again that each of the Coffey reports includes details of the scope, methodology, assumptions and information relied on in its preparation, and can therefore be read as a stand-alone report. The disclaimer included by Coffey in their reports does not alter this fact.

However, if you continue to have concerns about Coffey's terms of engagement, you can raise this in a submission on the EES and at the inquiry hearing.

Regards

Jozsef Patarica

Chief Executive Officer

T:

E: Jozsef.Patarica@

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From: Environmental Media Foundation <

Sent: Thursday, 1 October 2020 5:05 PM

To: Jozsef Patarica <jozsef.patarica@ >; Bruce Abernethy (DELWP) <bruce.abernethy@ >; Richard Wynne (VICMIN) <richard.wynne >; Victor Hugo <victor.hugo >; daniel.moriarty@ Jane J Homewood (DELWP) <jane.homewood >; Environmental Media Foundation < >; tim.bull

Subject: Re: KALBAR ESS - COFFEE REPORTS. DISCLAIMER

Mr Patarica.

This is not a matter for Coffey Tetra International, as the responsibility rests with Kalbar Operations, which is the owner of the Coffey - authored, Kalar Operations EES reports. I think it is very disingenuous for you to try and palm off responsibility for this matter to your previous consultants - Coffey.

The disclaimer included in the Coffey reports is clear and unambiguous, it states that: "... it is not

possible to make a proper assessment of this report without a clear understanding of the terms of engagement under which the report has been prepared". I have read many reports from other EESs, and I have never seen one where the authors have inserted a proviso that required a reader to have a detailed understanding of the "terms of engagement" contract, before they proceed to consider the report. Coffey has obviously included that disclaimer on their reports for a good reason. And the public can only imagine what those reasons may be, but they are clearly being told to go no further, until they have seen the "terms of engagement". One could assume that you have omitted details in your description of the correspondence you have recently conducted with Coffey over this matter, to avoid legal issues that may arise from you misrepresenting Coffey's position, and in your vagueness you hope to fool other readers of this correspondence.

In your email you claim to represent Coffey's position on this matter, yet you have failed to supply proof of their position by supplying the actual correspondence you have recently conducted with them on the matter. Your silly behavior over Covid19 during the release of the EES, has ruined your credibility, so I certainly don't trust your word on this matter, when you claim to be representing the position of Coffey.

If Coffey didn't want the "terms of engagement" published, then why did they highlight its existence, and the requirement for it to be read in order to properly understand their EES reports ?

The Coffey disclaimer is obviously a legal statement, comprising a warning to an unwary reader, yet if the public are not given access to it, they are put at a great disadvantage, depending on their interests in the matter, including commercial interests, if they are an affected landowner. And you should be reminded that the EES public exhibition period, is part of a formal government process, governed under administrative law, outside the weak EE Act.

You claim the "terms of engagement" are part of a commercial document or contract, yet you offer no path to resolve the issue, be it with the intervention of an independent arbiter, or the separation of the commercial aspects of the contract from the "terms of engagement", in order to make them suitable for public release. It seems clear that you are trying to find an excuse to hide those conditions from the public, however you should be aware that this matter will be raised as a formal submission.

I formally request that Kalbar Operations send me formal written notification, that it is refusing to release to myself, and the public at large, the: "terms of engagement" (as identified by Coffey Tetra in a disclaimer inserted on its EES reports prepared for Kalbar Operations), and that Kalbar Operation include reasons for that decision.

Regards

Peter Vaughan

EMF. Inc.

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On Thu, Oct 1, 2020 at 3:54 PM Jozsef Patarica <jozsef.patarica> wrote:

Dear Mr Vaughan

Thank you for being patient.

I have received a response from Coffey in regard to their disclaimer.

They advise that it is standard industry practice to include a statement setting out the limitations that apply to a technical report and the restrictions regarding the use of the report. The disclaimer includes reference to the terms of the engagement between Coffey and Kalbar as well as the scope of the engagement.

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Each of the reports prepared by Coffey includes details of the scope, methodology, assumptions and information relied on in the preparation of the report. This information is the basis for the assessments and provides transparency on how assessment of impacts was conducted and supports the conclusions reached in the reports.

As the terms of engagement primarily relate to the commercial arrangements between the companies and are not relevant to the interpretation of the Coffey reports, Coffey do not consider it is necessary to release these terms.

Regards

Jozsef Patarica

Chief Executive Officer

T: +

E: Jozsef.Patarica@

From: Jozsef Patarica

Sent: Tuesday, 29 September 2020 4:04 PM

To: Environmental Media Foundation <>; Jane J Homewood (DELWP) <jane.homewood@>; Richard Wynne (VICMIN) <richard.wynne@>; Vesna Rendulic <vesna.rendulic@>; Victor Hugo <victor.hugo@>; Bruce Abernethy (DELWP) <bruce.abernethy>; nicole.bland; daniel.andrews@; Media - DELWP (DELWP) <media@>; dan.moriarty; tim.bull

Subject: RE: KALBAR ESS - COFFEE REPORTS. DISCLAIMER

Dear Mr Vaughan

I acknowledge receipt of your numerous emails on this same topic, which copy a significant number of people into them.

I am discussing this with Coffey Consultants and will respond to you in due course.

Please be patient.

Regards

Jozsef Patarica

Chief Executive Officer

T: +

E: Jozsef.Patarica@

From: Environmental Media Foundation <>

Sent: Monday, 28 September 2020 10:52 AM

To: Jozsef Patarica <jozsef.patarica@>; Jane J Homewood (DELWP) <jane.homewood@>; Richard Wynne (VICMIN) <richard.wynne@>; Vesna Rendulic <vesna.rendulic@>; Victor Hugo <victor.hugo@>; Bruce Abernethy

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(DELWP) <bruce.abernethy@ >; nicole.bland@; daniel.andrews@; Media - DELWP
(DELWP) <media@ >; dan.moriarty; Environmental Media Foundation <>; tim.bull@

Subject: Fwd: KALBAR ESS - COFFEE REPORTS. DISCLAIMER

ATTENTION ALL.

I STILL HAVE NOT RECEIVED ANY REPLY FROM THE CEO OF KALBAR OPERATIONS TO MY REQUEST BELOW, TO HAVE HIM FORWARD ME THE COFFEY TETRA INTERNATIONAL TERMS OF ENGAGEMENT, CITED IN THEIR EES REPORTS. CLEARLY CREATES A SITUATION THAT IS PROCEDURALLY UNFAIR AND CHALLENGEABLE IN COURT.

Peter Vaughan

EMF inc.

----- Forwarded message -----

From: **Environmental Media Foundation** <>

Date: Fri, Sep 25, 2020 at 2:43 PM

Subject: Fwd: KALBAR ESS - COFFEE REPORTS. DISCLAIMER

To: Jozsef Patarica <jozsef.patarica@ >, Bruce Abernethy (DELWP) <bruce.abernethy@ >, <richard.wynne@ >, Environmental Media Foundation <>

Dear Mr Patarica.

Please read the email attached below.

I formally request that you forward to me the, "terms of operation" under which Coffey (Tetra International), produced a large number of the Kalbar Operations EES reports.

Regards.

Peter Vaughan

EMF INC

----- Forwarded message -----

From: **Environmental Media Foundation** <>

Date: Fri, Sep 25, 2020 at 12:52 PM

Subject: KALBAR ESS - COFFEE REPORTS. DISCLAIMER

To: Bruce Abernethy (DELWP) <bruce.abernethy@ >, <richard.wynne@ >, Jane J Homewood (DELWP) <jane.homewood >, Environmental Media Foundation <>

Dear Mr Abenethy, Homewood: Minister Wynne.

I noticed that on all of the Coffey-Tetra International Reports, that are included within the Kalbar Operations EES document, that the following disclaimer has been inserted on the faceplate preceding the body of the reports:

"It is not possible to make a proper assessment of this report without a clear understanding of the terms of

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engagement under which the report has been prepared, including the scope of the instructions and directions given to Coffey, and the assumptions made by the relevant Coffey consultants who prepared the report."

However, nowhere in the subsequent Coffey reports are the details of those, "terms of engagement" then stated.

The disclaimer inserted by Coffey, is clear in its legal intent. That the findings of the reports have no standing, without an understanding of the "Terms of Engagement".

Will you order Coffey to disclose those terms of engagement, and make them public in a reasonable time prior to the closing date for public submission to that EES ?

If the "terms of engagement" are not released, doesn't that ensure that the limitations clearly expressed in the disclaimer made by Coffey (see above), will apply to the public understanding of those reports ? I.e that the findings expressed in the reports, should be given no credibility.

This is a very important issue that requires serious attention.

Regards.

Peter Vaughan

EMF. Inc.