BC's Auditor General Report on Mining Sector

May 09, 2016

On May 3, 2016, BC's Auditor General released *An Audit of Compliance and Enforcement of the Mining Sector* (the "Audit"). The Audit examined if the Ministry of Energy and Mines ("MEM") and the Ministry of Environment ("MoE") were adequately protecting British Columbia from potential environmental risks related to BC's mining sector. The Audit found that "MEM and MoE's compliance and enforcement activities (for) the mining sector are inadequate to protect the province from significant environmental risks."

In response, BC will create a Mining Compliance and Enforcement Board to oversee an integrated regulatory approach to mining. This board will be a new independent government agency for the regulation of the mining industry in BC.

The Audit pointed out a number of significant deficiencies in the current regime's management of environmental risk, including:

- MEM's mandate to promote the mining industry conflicts with its role as a regulator.
- MEM's planning is weak and its compliance and enforcement program is inadequate.
- MoE's compliance and enforcement framework has significant gaps.
- MEM and MoE both lack sufficient resources dedicated to monitoring, compliance and enforcement.
- The language of permits is often inconsistent and difficult to enforce.
- Neither MEM nor MoE uses a permitting approach which ensures that the polluter, not the taxpayer, pays for environmental impacts.
- The security provided by industry to cover potential costs of a catastrophic environmental mishap is insufficient.
- Neither MEM nor MoE were conducting adequate monitoring and site inspections.
- Ineffectual enforcement tools led to delayed and unsuccessful enforcement.
- MEM and MoE did not report sufficient information to the public or legislators about the long-term risks of mining, the effectiveness of MEM and MoE's oversight and the performance of mining companies.
- Fees for discharging pollutants into the environment have not been updated since 2004.

In addition to the creation of the Mining Compliance and Enforcement Board, the Audit, among other things, also recommended:

- A strategic plan which details the activities of an integrated and coordinated regulatory approach.
- Mining permits written with measureable and enforceable language.
- Accurate reclamation liability estimates and adequate security to cover potential costs.
- Security mechanisms to protect taxpayers from the costs of an environmental disaster.
- Pollution discharge fees that act as a deterrent and reduce pollution at mine sites.
- A cost recovery model for permitting and compliance verification.
- Public disclosure of the rationale for granting a permits under s. 137 of the *Environmental Management Act* that allow the construction and operation of facilities for the treatment, disposal recycling, storage and destruction of waste, or the introduction of waste into the environment.
- Clear and comprehensive reclamation guidance for industry.
- Incentives for environmentally responsible behaviour.
- Specific deadlines for remedying non-compliance.

The complete Audit is available here.

If you would like more information about this report, please contact the authors, or your usual lawyer in BLG's Mining Group or BLG's Environmental, Municipal, Expropriation and Regulatory Group.

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