Consequences of the Mount Polley Dam Failure: Amendments to the Mines Act

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On February 25, 2016, as part of British Columbia's response to the Mount Polley dam failure, British Columbia's Minister of Energy and Mines introduced amendments to the Mines Act, RSBC 1996, c 293, aimed at strengthening the provincial government's regulatory oversight of the mining industry. Bill 8, The Mines Amendment Act ("Bill 8") proposes to increase penalties for prosecutions, allow for administrative monetary penalties and increase director and officer liability under the Mines Act.

Bill 8 is the first legislative change following recommendations from an independent engineering review panel and the Chief Inspector of Mines on the Mount Polley dam failure. Both the Review Panel and the Chief Inspector concluded that the primary cause of the Mount Polley incident was failing to account for the strength and locations of a layer of clay underneath the dam in the tailing storage facility's original design and subsequent dam raises. Both investigations found that general management and regulatory practices also played a part in the tailing pond failure and recommended changes to prevent future dam failures. For instance, the Chief Inspector recommended that the Ministry of Energy and Mines improve its investigative and enforcement capacity and consider a full range of regulatory tools, such as administrative penalties.

Administrative Monetary Penalties
If passed, Bill 8 would allow the Chief Inspector of Mines to impose administrative monetary penalties for contraventions of the Act, orders made under the Act, or terms or conditions imposed under the Act. Corporations could be deemed to contravene the Act and face administrative monetary penalties when a director, officer, agent, employee, or contractor contravenes or fails to comply with the Act.

Bill 8 does not specify the amount of the administrative penalties that will be imposed, instead referring to "prescribed limits" to be set by regulation. This is consistent with the approach taken in other provincial natural resource legislation, including the Forest and Range Practices Act and the Oil and Gas Activities Act.

Administrative monetary penalties provide a new tool in the provincial government's compliance and enforcement tool kit, which currently consists of: (1) pursuing

prosecutions, (2) cancelling a mine's permit, (3) issuing a stop-work order, (4) issuing an order for immediate remedial action, (5) issuing an order for a person to comply with the requirements of the Act, regulations, code, or the mine's permit, or (6) closing the mine.

Increased Penalties for Prosecutions

The proposed amendments would also significantly increase the penalties available in prosecutions under the Act. The Act currently states that offences are punishable by a fine, imprisonment, or both. Under Bill 8, the maximum fine will be raised to $1,000,000 (from $100,000) and the maximum term of imprisonment will be increased to three years (from one year).

More to Come?

Further regulatory changes will likely be announced in the coming months. British Columbia is expected to require that all mines with tailing storage facilities operating in British Columbia establish "Independent Dam Review Boards/ to provide third-party advice at all stages of the TSF lifecycle, from design to closure. A review of the Health, Safety and Reclamation Code for Mines in British Columbia is being conducted to determine how best to implement the remaining recommendations from the Review Panel and the Chief Inspector. This is expected to finish in early 2016 and the government has indicated that revisions could be legally in force by mid-2016. New guidelines for professional engineering practices for dam site characterization assessments are expected to be released by the Association of Professional Engineers and Geoscientists of British Columbia by spring 2016. Further, the Mining Association of Canada is working to implement changes to its tailings management requirements and guidance documents.

A joint investigation led by the British Columbia Conservation Officer Service, and assisted by Environment Canada, Department of Fisheries and Oceans Canada and the Royal Canadian Mounted Police into the Mount Polley Dam failure is ongoing.

By

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