

B.C. introduces Bill 6 to align the province's mining sector with global best practices

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Introduction

On June 22, 2020, the Government of British Columbia introduced Bill 6 – 2020: *Mines Amendment Act, 2020* (Bill 6) in the Legislative Assembly. The proposed amendments will restructure the Ministry of Energy, Mines and Petroleum Resources by establishing a new Mine Audits and Effectiveness Unit to be led by a Chief Auditor as well as the creation of a Chief Permitting Officer. The intention of the proposed restructuring is to separate regulatory accountabilities, establish an auditing function for the Ministry and strengthen compliance and enforcement. The government also suggests that the proposed amendments will produce a more efficient and timely permitting decision-making process. Overall, the changes contemplated in Bill 6 will align B.C.'s mining regulatory framework with global best practices. While there will be new risks for mining companies associated with these changes, they reflect B.C.'s commitment to position itself as a global leader in responsible mine development.

Background to Bill 6

The *Mines Act* regulates the life cycle of all mining activities in B.C., including the issuance of permits, inspections and investigations, and compliance and enforcement actions. The *Mines Act* and its regulatory regime are further supported by the requirements of the *Health, Safety and Reclamation Code for Mines in BC*. At present, the Chief Inspector of Mines is responsible for, among other things, the efficient and effective permitting of mines *and* the oversight of health, safety and enforcement of these mines.

In May 2016, the Auditor General of British Columbia released a report entitled "An Audit of Compliance and Enforcement of the Mining Sector" (the AG Report) which was a comprehensive review of the compliance and enforcement activities of the British Columbia Ministry of Energy, Mines and Petroleum Resources (MEM) and Ministry of the Environment. The AG Report was critical of the MEM, in particular in light of the Mount Polley tailings storage facility failure, and concluded that the MEM's compliance and enforcement functions suffered from insufficient resources, infrequent inspections and a lack of enforcement. It noted that a compliance and enforcement function is at odds with the MEM's primary function of promoting mine development within British Columbia and called for an independent regulator.

In 2017 and again in 2019, the Mining Association of Canada (MAC) announced revisions to its Guide to the Management of Tailings Facilities and the Towards Sustainable Mining Tailings Management Protocol that address procedures and systems for responsible tailings

management as part of MAC's Towards Sustainable Mining initiative. Most mine operators in Canada are members of MAC and MAC has taken a leading role in tailings management within the global mining industry to demonstrate the capacity of the industry to self enforce best practices. On September 19, 2019, in part as a response to the AG Report, B.C. released its *Intentions Paper: Regulatory Excellence and Continuous Improvement in the Mining Sector, Proposal for Legislative Changes to the Mines Act* [PDF] (the Intentions Paper). The Intentions Paper set out the proposed amendments, which included:

- the separation of permitting authority from compliance and enforcement regulatory responsibility within the MEM; and
- the establishment of an Audit Unit to provide oversight.

The release of the Intentions Paper triggered a public consultation period that spanned from September 19, 2019 to October 25, 2019. The public consultation period produced 134 online survey responses, 20 email responses and five written submissions from industry, Indigenous and environmental organizations. On February 7, 2020, B.C. released its *What We Heard report* arising from the public consultation process. Finally, on June 22, 2020, B.C. introduced Bill 6 in the Legislative Assembly in the first step towards formalizing the proposed amendments.

Summary of Bill 6

Bill 6 will strengthen compliance and enforcement over mining projects in B.C., while also potentially allowing for a more efficient and timely permitting process by separating compliance and enforcement from the branch of the MEM responsible for permitting. Key aspects of Bill 6 include the following:

- The creation of a new Audit Unit to focus on compliance and enforcement. The Audit Unit will be independent from the rest of the MEM and will be granted the authority to enter mines, gather information, and engage other persons or parties for the purposes of annual audits. The Audit Unit will produce annual reports summarizing the results of its audit findings, as well as its related recommendations.
- The Chief Auditor will be granted the authority to order immediate remedial action where an audit discloses a hazard that poses an imminent threat to persons, property or the environment. Similarly, the Chief Inspector of Mines will be granted the authority to enter a mine in emergency circumstances and the MEM will be authorized to recover security costs for the maintenance and security of closed or abandoned mines. The Chief Inspector of Mines will also see its authority expanded to allow an investigation where circumstances are present that have the *potential* to cause personal injury, loss of life or property, or environmental damage, as opposed to its current authority for investigating incidents that *have* occurred.
- The limitations period for commencing a prosecution under the *Mines Act* will be expanded from three years to five years.

Bill 6 has been championed as an effort to make B.C.'s permitting process more efficient and expedient. The separation of permitting and life cycle oversight authority may indeed result in efficiencies and more timely decision-making. However, despite B.C.'s industry-friendly tenor, the proposed amendments arise primarily in response to the Mount Polley mine tailings storage facility breach, the criticisms arising therefrom, and the increasing global scrutiny of tailings storage facility management practices in general.

Considerations for industry

It is no secret that the resource sector in Canada has come under increased public scrutiny in recent years. In the mining industry, this has been particularly evident in relation to the management of tailing storage facilities. In the aftermath of the Mount Polley tailings storage facility breach there were numerous pronouncements from regulators, various levels of government, industry organizations and companies on evolving standards for best practices and the commitment of the Canadian mining industry to continue to be a global leader in responsible mine development. Some of these pronouncements, like the proposed imposition of “best available technologies” for tailings storage facilities, caused unintended confusion when such technologies were applied to specific mine developments. For example, the use of dry stack tailings was endorsed following the Mount Polley accident but not subsequently imposed in mine developments in B.C. due to the unsuitability of this practice in a wet coastal climate.

The optics of the MEM’s compliance and enforcement functions and perceived incentives to favour industry over the welfare of communities and stakeholders present difficulties in obtaining community support for mine developments. If compliance and enforcement functions are seen to be independent and not simply reactionary, as contemplated in Bill 6, it should enable the permitting process to focus on practical substantive issues relating to the mine development with the comfort that implementation will be effectively monitored and enforced afterwards. Thus, to the extent that Bill 6 is able to produce efficiencies and timelier decision-making, Bill 6 should be a welcome change to the mining regulatory regime in B.C. However, there are likely to be some growing pains as the new authorities establish their role in regulating the mining industry. In addition, Bill 6 introduces new risks to mining companies (including in relation to limitations periods, which under Bill 6 will be longer than comparable limitations periods in other legislation, as well as the Chief Inspector of Mines’ powers to invite third parties to inspect mine sites without necessarily complying with the mine’s safety protocols).

We encourage mining companies in B.C. to engage closely with the government to assist in realizing the potential efficiencies in Bill 6 while also managing the new risks posed by this legislation. Overall, we view the changes contemplated in Bill 6 as aligning B.C.’s mining regulatory framework with global best practices. While there will be new risks for mining companies associated with these changes, they also present an opportunity for B.C. to demonstrate its leadership in responsible mine development. Such leadership would likely assist mining companies in their relationships with local municipalities and Indigenous groups, as well as the capital markets that finance mining projects around the globe.