

WHAT WE HEARD:

Proposal for Changes to the *Mines Act*

135

Online responses

20

Emails

5

Written Submissions

Introduction

Budget 2019 provided the Ministry of Energy, Mines, and Petroleum Resources (EMPR) with \$20 million over the next three years to fulfil government's commitments to improve permitting and increase industry safety. Using this funding, EMPR has separated its regulatory functions through the creation of a new Mines Health, Safety and Enforcement Division (MHSE), separate from the Mines Competitiveness and Authorizations Division (MCAD). These two divisions will work together to achieve regulatory excellence.

EMPR has also created the Mine Audits and Effectiveness Unit (Audit Unit), which will be the ministry's independent oversight unit. The Audit Unit is mandated to assess mining sector compliance, safety and environmental performance to determine the effectiveness of the regulatory framework for mining in British Columbia in mitigating risks to human health and safety, and the environment.

These changes respond to and were informed by lessons learned from the Mount Polley disaster, recommendations made by the Office of the Auditor General for B.C. (OAG), and from the unanimous report from the Mining Jobs Task Force (MJTF) comprised of representatives from Indigenous communities, industry, municipal government, an environmental non-governmental organization, labour, post-

secondary/training and the financial sector. The changes are also aligned with other provincial regulators with permitting responsibilities separated from enforcement.

The OAG found that compliance and enforcement (C&E) for mining had been neglected and that existing activities were inadequate to protect the province from significant environmental risk. In providing the Overall Recommendation, the OAG stated an expectation that C&E for mining would be outside of EMPR based in part on the risk of regulatory capture. The OAG did not provide a specific model to implement or another jurisdiction to replicate.

EMPR therefore undertook a comprehensive review of the OAG findings and drivers behind the Overall Recommendation, as well as the Chief Inspector of Mines investigation into Mount Polley, engagement with staff, and labour, Indigenous representatives and industry through the Mining Jobs Task Force. EMPR also reviewed best practice in other jurisdictions and here in B.C. In its review, EMPR also considered the full scope of responsibilities under the *Mines Act*, in particular, the responsibility for health and safety on mine sites.

Changes resulting from this review were announced as part of Budget 2019, with a significant investment in the ministry to support

restructuring and introduction of the new Audit and Effectiveness Monitoring function.

EMPR is proposing amendments to the *Mines Act* that formalize and support these changes and modernize certain C&E provisions to enhance government's ability to hold owners and operators of mines accountable.

"Maintaining B.C.'s competitiveness as a mining jurisdiction for investment must remain a main core consideration when contemplating legislative amendments under the Mines Act. The increasing complexity and incremental costs of recent and considerable changes to B.C.'s regulatory continuum for mining operations are putting added stress and expense on the ability of our province's mining operations to remain competitive in today's tight foreign capital markets and highly volatile commodity markets. Exacerbating this situation, B.C.'s mining operations are price takers, and unable to pass on these increased costs to their customers."

- Mining Association of British Columbia

Engagement Process

On September 21st, 2019, EMPR released an Intentions Paper, outlining EMPR's proposal for legislative amendments to the *Mines Act*. The Intentions Paper was open for a 35 day public engagement period, which concluded on October 25th, 2019. Over this time, EMPR received 134 survey responses, 20 emails, and six written submissions. Responses were received from across the province and included a private citizen, mining industry representatives and unspecified contributors.

The following Report summarizes the feedback received and highlights key findings and next steps. The feedback received has been organized under each of the three overarching proposals outlined in the Intentions Paper.

Formalize structural separation between regulatory functions

Overall, EMPR received positive feedback for its proposal to separate regulatory functions by establishing a new statutory decision-maker (SDM) for permitting, distinct from the health, safety, and enforcement functions, which will remain with the Chief Inspector of Mines.

Respondents to the public engagement suggested that the new SDM for MCAD should be focused on the environment, using the example of Mount Polley to illustrate the importance of protecting the environment and holding mines accountable. Respondents also stated that the SDM should have the authority to deny *Mines Act* applications if the proposed activity poses unmitigated risks to the surrounding environment, including watersheds and critical habitat for species at risk.

Respondents were clear that they support clear separation between the divisions and for the SDMs to be accountable for their decisions.

However, respondents were also specific that this should not mean additional red tape or duplication in processes. There were also suggestions that requirements for permitting should be different for small operators compared to large operators and that permitting timelines must be reduced.

Additionally, responses included statements that EMPR should work directly with Indigenous Peoples and local governments in the permitting process. This feedback supports the

Province’s recent commitments to the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

“Permitting and site design should be separate from the “operational - safety” part of a mine site.” – Mining Industry Representative

“The new decision maker for permitting should be given much broader scope. There should be much more weight put on immediate and long term external costs of mining activities.” – Citizen, Vancouver Island/Coast

“The proposed changes to the Mines Act are a step in the right direction, but more needs to be done to protect BC’s fish, wildlife and their habitats. Mines need to be regulated carefully to ensure mining companies adopt sensible environmental practices and pay for their pollution costs.” – BC Wildlife Federation

“There should be a separation between the promotion of the mining industry and permitting.” – Mining Industry Representative

Question 1: <i>Are there any specific areas that you think are important to clarify roles and authorities when making this separation in to law?</i>	
Responses	% of Responses
Must have a clear separation between divisions – support enforcement being separate from permitting	25
Status quo – no change needed	14
SDMs must consider environmental impacts	11
Proposal creates additional red tape	9
SDMs should have mining experience	7
Stricter conditions for exploration	5

Formally establish an independent oversight function

Similar to the separation of regulatory functions, EMPR received positive feedback for its proposal to establish the Mine Audits and Effectiveness Unit (Audit Unit). These changes will establish an independent SDM to oversee the audit function, including making recommendations for improved regulatory effectiveness and provide auditors with the powers necessary to perform their function. Each audit will generate a public report with recommendations for continuous improvement in regulatory oversight that will result in on-the-ground improvements to how mining is done in B.C.

Some respondents indicated that the Audit Unit should reside outside the jurisdiction of EMPR

and be given the mandate to protect the environment. It was suggested that EMPR would not be aligned with the Auditor General’s recommendation if the Audit Unit was to remain within EMPR. Respondents also recommended that auditors be given the authority to force immediate remediation for polluted sites and issue fines. Additionally, some respondents suggested that the Audit Unit should be required to annually inspect all closed mines for geotechnical issues, ground and surface water contamination and revegetation.

Respondents also suggested that early priorities of the Audit Unit include: permit timelines, consistency of SDM decisions, areas of duplication within EMPR, and functionality between government ministries and agencies.

In order for these audits to be effective, a number of respondents stated that clear audit parameters and responsibilities must be established. Other notable responses include recommendations that Audit Unit be comprised of Indigenous representatives and individuals with mining experience.

“The audit unit needs to be able to evaluate what is and is not working to support government and industry.” – Citizen, Thompson/Okanagan

“I believe that in rebuilding the public trust, there must be opportunities for the public to participate or partner in monitoring activities. This is especially so in an era of diminished

resources for inspection audit and independent oversight.” – Citizen, Vancouver Island/Coast

“In addition, members of the oversight group should have at least 10 years experience in various aspects of the industry (such as health, safety, mining methods, tailings disposal etc.) in order to be able to properly Audit the effectiveness of the regulatory regime.” – Mining Industry Representative, Kootenay

“The independent auditor should enter a mine with the goal of creating a safe, sustainable mine. The auditor should be limited to recommendations unless health, safety, or the environment are at immediate risk.” – Citizen, Southwest

Question 2: <i>Please provide your comments or feedback about the proposed change to establish an independent audit unit with the authority to make recommendations for improved regulatory effectiveness. Are there any specific changes or powers you believe should be included?</i>	
Responses	% of Responses
Audit Unit should have the authority to issue fines and protect the environment	19
Audit Unit must be independent of government	13
Status quo – no change needed	7
Auditors should have mining expertise – must consider the environmental impacts	7
Audit Unit should allow for input and recommendations from the public/ local governments	7
Audit Unit should focus on preventative measures and recommendations	6
Audit Unit should oversee all aspects of permitting and mine closures	5
Audit Unit will create additional red tape	5
Support the proposal	5
Audit unit should include Indigenous and industry representatives	5

Enhance compliance and enforcement

The proposed amendments will align key *Mines Act’s* C&E provisions with other regulators. For example, they will provide inspectors and auditors with the authority to bring equipment or people required to conduct their work on to mine sites. This may include individuals with specialized technical expertise or representatives from Indigenous communities.

Overall, respondents supported EMPR strengthening its C&E provisions, but many suggested that more work should be done to protect the environment and ensure mines are being held accountable. This was reflected with twenty-two per cent of respondents recommended that EMPR increase the reclamation security that is required so that mines are accountable for all remediation costs. Respondents also recommended that EMPR

increase its fine amounts, escalate enforcement action for repeat non-compliance, prohibit future authorizations for repeat offenders, and introduce daily fines for continuing offences. The example of Mount Polley was used by some respondents to demonstrate the importance of enforcement, with some respondents calling for charges to be laid for the tailings breach.

In contrast to the above responses, EMPR also received feedback that the ministry should not change its current practices, but rather hire more inspectors in order to keep pace with the growing volume of mining authorizations. Along with hiring more inspectors, respondents recommended that EMPR continue to focus on human health and the environment by restricting mining activity near community watersheds to protect source drinking water.

Other notable responses called on EMPR to mobilize Indigenous peoples and local communities to monitor and enforce environmental laws. This aligns with what EMPR heard during its Indigenous engagement forums throughout Spring 2019,

where Indigenous representatives raised concerns that B.C.'s mining legislation does not meet the principles of UNDRIP or consider the free, prior, and informed consent of Indigenous Nations.

“Given the potential for environmental impact by mining it is absolutely imperative that there be effective and efficient methods by which the industry is held responsible for protecting and maintaining human health, safety and the environment.” – Citizen, Thompson/Okanagan

“Compliance and enforcement is important however education on the front end is even more important. The government should take some of the new funds and develop training and education for mine operators as this is presently missing in this industry.” – Mining Industry Representative

“We are also in support of aligning the Mines Act’s compliance and enforcement provisions with other regulators. We hope that such alignment will help with transparency regarding the ministry’s activities.” – Association for Mineral Exploration

Question 3: <i>Are there any specific concerns you have with the current Mines Act or oversight of the sector that you believe should be strengthened in these amendments to enhance compliance and enforcement?</i>	
Responses	% of Responses
Mines need to be accountable for remediation – higher bonds	22
Status quo – inspectors are holding mines accountable	16
Should hire more inspectors	12
Must focus on human health and environmental impacts	11
Lack of enforcement caused Mount Polley	6
Need to increase fine amounts	6
Need more inspector accountability and follow-up	5

Key Findings and Next Steps

EMPR appreciates all the survey responses and written submissions that were provided during the public engagement period. EMPR has heard that the environment and human health are top priorities for British Columbians and that respondents want mines held accountable to follow the rules, with enforcement actions taken when rules are broken.

Respondents clearly supported separation between the SDM for permitting and the SDM for health, safety and enforcement. They also want to know that SDMs are accountable for their decisions and that permits are not issued when there is undue risk to the environment.

EMPR heard that respondents support the establishment of an independent oversight unit. Although 13 per cent of respondents suggested that the Audit Unit should be independent of government, the broader focus was that the unit should have the appropriate expertise and tools to do its work. Comments also recommended that public, Indigenous representatives and local governments be provided opportunities to participate in the audit process.

There was support for strengthening of C&E provisions, along with a desire to see more

inspectors in the field, and a progressive regime of fines where enforcement action is escalated for repeat non-compliance. Many respondents also highlighted the need for adequate reclamation bonds or mechanisms to ensure that mines are properly reclaimed by the operators.

Across all three topic areas, respondents wrote about the importance of decision makers and inspectors having mining sector expertise including operational, environmental and engineering backgrounds. A number of respondents commented that the government should have done more to pursue charges in relation to the Mount Polley tailings dam failure. Comments also specified the expectation that public health and safety and mitigation of risk to the environment should be at the forefront of permitting and oversight decisions.

Moving forward, EMPR will consider the feedback received to inform the proposed amendments to the *Mines Act*. Work will continue with Indigenous representatives and industry to ensure that B.C.'s regulatory oversight operates with a focus on environmental protection and Indigenous rights while remaining competitive for the mining and mineral exploration sector in this province.