

## INTRODUCTION

The Ministry of Environment and Climate Change Strategy is seeking input and feedback on the Public Interest Bonding Strategy. The Public Interest Bonding Strategy was created to address the minister's 2020/2022 mandate commitment on bonding (also referred to as financial assurance):

*“With support from the Minister of Energy, Mines and Low Carbon Innovation, take steps to ensure owners of large industrial projects are bonded moving forward so that they – not British Columbians – pay the full costs of environmental clean-up if their projects are abandoned.”*

### What is the Public Interest Bonding Strategy?

The objective of the Public Interest Bonding Strategy is to ensure that owners of industrial projects, not the people of British Columbia, pay the full costs of environmental clean-up and reclamation, even if projects are abandoned.

While most companies responsibly manage their environmental risks, some are either unwilling or unable to do so. Financial assurance is a mechanism by which the B.C. provincial government (the Province) ensures that the owners of industrial projects carefully plan for and address environmental risks. This is achieved by securing the funds required to properly complete any necessary environmental clean-up and site reclamation.

Some industrial projects in B.C. have not been required to provide sufficient financial assurance to cover the full costs of environmental clean-up and reclamation. Additionally, there are situations where industrial projects are not cleaned up or remediated because there is no clear legal requirement for owners to do so. This poses a risk that companies could abandon a site without addressing environmental liabilities, resulting in clean-up and reclamation costs having to be borne by government, poor environmental outcomes, and increased risks to industry's social license to operate. A legal obligation to clean up and reclaim the industrial project must exist before financial assurance can be required.

Recent instances of companies becoming unwilling or unable to complete their environmental clean-up and reclamation activities have highlighted the need to review how the Province approaches financial assurance. The Public Interest Bonding Strategy involves a comprehensive two-phased review:

- **Phase 1** (2021 – 2023) – Review of financial assurance mechanisms under the *Environmental Management Act* and the *Mines Act*, focusing on **foreseen** clean-up and reclamation costs for existing active and new projects that pose high environmental and financial risk.
- **Phase 2** (2023 – 2025) – Review of financial assurance mechanisms for foreseen and **unforeseen** clean-up costs under a broader range of statutes (including the *Land Act*, *Forest Act*, and *Environmental Assessment Act*), with the aim of improving co-ordination of financial assurance across ministries.

Historic sites with no ongoing industrial activities are out of scope, as the ability to collect financial assurance has passed. Clean-up and reclamation of these sites is currently managed through the Province's Crown Contaminated Sites Program and via regulation of contaminated sites under the *Environmental Management Act*. The focus of the Public Interest Bonding Strategy is to prevent the creation of future contaminated sites.

## Guiding Principles of the Public Interest Bonding Strategy

The vision of the Public Interest Bonding Strategy is for B.C. to have effective and efficient financial assurance practices that ensure industry funds are available for environmental clean-up and reclamation, while continuing to support responsible industry production and investment. To achieve this vision, the strategy is driven by a set of guiding principles. These principles describe what success looks like, and act as key criteria to inform potential options or outcomes.

- **Polluter Pays**

The overarching principle of the strategy is the polluter pays principle, where the owners of industrial projects, not the people of B.C., pay the full cost of environmental clean-up and reclamation of industrial projects. The strategy will seek to ensure that the Province has the authority to require environmental clean-up and reclamation whether financial assurance is held or not, to collect and use financial assurance where necessary, and to recover costs spent on clean-up.

- **Consistent with the *United Nations Declaration on the Rights of Indigenous Peoples Act***

The strategy will work to ensure that new policies and legislation are consistent with the spirit and intent of the principles of the United Nations Declaration on the Rights of Indigenous Peoples.

- **Risk-based approach**

The strategy will focus on projects with the highest environmental and financial risk first, and identify strategies to address all projects consistently.

- **Maintain industry competitiveness and financial viability**

The strategy will reinforce the polluter pays principle, while minimizing negative impacts on industry competitiveness and financial viability.

- **Reduce and mitigate environmental risk**

The strategy will help reduce environmental and financial risk by motivating progressive clean-up and reclamation throughout a project's lifecycle. It will strengthen the incentive for companies to limit or avoid environmental damage at their industrial sites to decrease the amount of financial assurance required or to have their financial assurance returned to them at the end of the project's lifecycle.

- **Transparent and accountable decisions**

The strategy will support decision makers with new tools and resources for determining financial assurance requirements.

- **Consistent, compatible, and fair decision-making**

The strategy will help to ensure that policies and legislation relating to financial assurance are consistent across government.

## Purpose of Discussion Paper

The Ministry of Environment and Climate Change Strategy invites you to contribute your knowledge and ideas on B.C.'s financial assurance strategy. This discussion paper aims to gain insight and feedback from Indigenous peoples, industry, non-governmental organizations, and other parties to help inform effective and efficient solutions to deliver on the

mandate commitment. It lays out some ideas on improved bonding approaches and is designed to promote discussion. We want to hear your thoughts on:

- Questions posed in the Areas for Discussion sections;
- Issues or concerns you think we should be aware of;
- Ideas or solutions you or your organization wishes to share; and
- Anything you wish to share on the topic of how to improve the Province's approach to financial assurance.

You are invited to participate in the online discussions and to submit your ideas until May 28, 2022 at 4:00 p.m., through <https://engage.gov.bc.ca/govtogetherbc/consultation/public-interest-bonding>.

## The Province's Relationship with Indigenous Peoples

The Province is committed to reconciliation with Indigenous peoples in accordance with the principles of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration), the Calls to Action of the Truth and Reconciliation Commission, and the *Declaration on the Rights of Indigenous Peoples Act* (Declaration Act). As such, the Province is committed to working in consultation and collaboration with Indigenous peoples in the development of policy or legislation that impacts or is of interest to them, in alignment with the principles of the UN Declaration.

As part of the Province's commitment to reconciliation, this paper has been informed by past engagement on related topics, as well as by the work and publications from Indigenous organizations. Engagement opportunities for Indigenous peoples will be provided during the consultation period to help inform future work and recommendations. Following engagement on the discussion paper, the Public Interest Bonding Strategy may recommend policy changes and will continue to work with Indigenous peoples to ensure that future engagement and collaboration are consistent with the UN Declaration and the Province's commitment to reconciliation.

### Draft Principles that Guide the Province's Relationship with Indigenous Peoples

#### Principle 10

The Province recognizes that a distinctions-based approach is needed to ensure that the unique rights, interests, and circumstances of Indigenous peoples in B.C. are acknowledged, affirmed, and implemented. The Province respects the distinctions-based rights and diversity of Indigenous peoples—First Nations, Métis and Inuit—in B.C. It also respects the unique needs, interests, and perspectives of intersectional populations, including Indigenous Elders, women, youth, children, 2SLGBTQIA+ people, peoples with disabilities and Indigenous peoples living in urban settings.

## What is financial assurance?

This discussion paper focuses on the application of financial assurance for environmental costs and reclamation.

Financial assurance, also known as bonding or security, provides a guarantee that the owners of industrial projects will be able to cover the costs of complying with the requirement to clean-up and reclaim their projects. The purpose of financial assurance is:

- to promote forward-looking planning of environmental clean-up and reclamation, and to encourage the progressive implementation of those activities; and
- to ensure timely clean-up and reclamation without additional costs to the Province should an owner of an industrial project be unable or unwilling to perform the required actions themselves.

Types of financial assurance include bilateral arrangements where industry provides funds to government or to a third party for cleanup (e.g., cash, pooled funds, or qualifying environmental trusts), other forms that involve a third party (e.g., surety bonds, guarantees, irrevocable letters of credit), and security interests (e.g., liens) on the assets of industry so the value of those assets is available to government in priority over other creditors if industry fails to comply with its environmental obligations. Insurance is a form of financial assurance that is sometimes used for unforeseen costs.

See [Appendix 1](#) for an overview of the diverse types of financial assurance.

## Types of environmental clean-up and reclamation

Environmental clean-up and reclamation costs may be foreseen and unforeseen. Foreseen costs are associated with meeting legal requirements to address planned disturbance under specific conditions in an authorization (e.g., a permit requirement) or under legislation. Unforeseen costs are associated with unanticipated environmental damage resulting from accidents, spills, or catastrophic events. The Public Interest Bonding Strategy will address foreseen costs in Phase 1 and unforeseen costs in Phase 2.

## Current Status

### Liability to government

Incomplete clean-up and reclamation of an industrial project without sufficient financial assurance exposes the Province to financial risks of an uncertain magnitude. The Province may be required to address environmental and/or health and safety risks associated with abandoned sites, which could result in costs of tens of millions of dollars annually. There are also economic, social, and cultural implications, including risks to Indigenous peoples, local stakeholders, and neighboring jurisdictions.

Existing potential liability to government is uncertain due to inconsistent tracking and management of environmental clean-up and reclamation liabilities and financial assurance across the natural resource sector. Additionally, financial assurance is not currently required for some sectors/industries.

### Impacts on Indigenous Communities

Indigenous peoples have a unique connection to, and constitutionally protected interest in, their lands and the Province is committed to developing and implementing solutions arising from the Public Interest Bonding Strategy through collaboration with Indigenous peoples. Effective financial assurance mechanisms are important tools to protect the land and ensure that industrial projects pay the full cost of clean-up and reclamation. In developing solutions to address the Minister's 2020/2022 mandate commitment on bonding, Indigenous peoples will be engaged through multiple pathways throughout the Public Interest Bonding Strategy.

### Legal framework for financial assurance across the natural resource ministries

Natural resource sector agencies typically have authority to require financial assurance through an authorization for a regulated activity (e.g., a tenure or permit). In B.C., this authority is divided between six agencies (Ministry of Environment and Climate Change Strategy, Ministry of Energy, Mines and Low Carbon Innovation, Ministry of Agriculture and Food, Ministry of Forests, Ministry of Land, Water and Resource Stewardship, and the BC Oil and Gas Commission), and includes eleven discrete acts and their associated regulations. Owners of industrial projects often need to interact with several natural resource agencies to obtain the necessary authorizations and may be required to provide multiple financial assurances. The exception is for oil and gas projects where the BC Oil and Gas Commission has authority to issue authorizations under the *Environmental Management Act*, *Land Act*, *Water Sustainability Act*, *Heritage Conservation Act*, and *Forest Act*.

The legal framework under which financial assurance is required may impose limits on what statutory decision makers can require financial assurance for. Discretion for natural resource sector ministries to require financial assurance is

sometimes limited to the foreseen costs that will be incurred (e.g., site reclamation), rather than unforeseen costs (unexpected and accidental events). There are some notable exceptions, such as hazardous waste transport licenses that require both insurance and financial assurance. However, B.C.'s legal framework and financial assurance toolkit could be improved for some industrial sectors. Opportunities for improvement are discussed in greater detail throughout this paper.

### ***Environmental Management Act and Mines Act***

Phase 1 of the Public Interest Bonding Strategy focuses on the *Environmental Management Act* and the *Mines Act*.

The Ministry of Environment and Climate Change Strategy administers the *Environmental Management Act*, which regulates industrial and municipal waste discharges, pollution, hazardous waste, and contaminated site remediation. The *Environmental Management Act's* Waste Discharge Regulation prescribes what industries, trades, businesses, operations and activities ("activities") require authorizations to discharge or release waste to the air, water and land under the act.

The *Environmental Management Act* includes provisions for collecting financial assurance from industries for waste discharge authorizations and for remediation activities. It enables a director to require financial assurance as a condition of a permit or approval for waste discharges that are not otherwise covered in a regulation or code of practice. As a result, nearly all activities and facilities authorized under the act can be subject to a financial assurance requirement at the discretion of statutory decision makers.

The *Mines Act* enables the chief permitting officer to require financial assurance for reclamation and environmental protection. The Ministry of Energy, Mines and Low Carbon Innovation administers financial assurance requirements for the reclamation of major mines under the *Mines Act* and on behalf of the Ministry of Environment and Climate Change Strategy under the *Environmental Management Act* for the costs of maintaining compliance with the *Environmental Management Act* discharge permit over the life of the mine.

The Province currently holds an estimated \$2.31B of financial assurance for mines in British Columbia. The reclamation liability for each major mine is reviewed and updated every five years by the Major Mines Office, with input from the Ministry of Environment and Climate Change Strategy. The financial assurance requirements under both acts may not cover all risks associated with decommissioning of industrial sites. Therefore, the Public Interest Bonding Strategy may propose amendments to the *Environmental Management Act* and the *Mines Act*.

### **Alignment with other government projects**

#### **Mining reclamation security policy**

The Ministry of Energy, Mines and Low Carbon Innovation has developed an interim reclamation security policy (the Interim Policy) specific to mining. The Interim Policy applies to major mines and is being implemented under the existing legal framework. The broader work to address Phase 1 of the Public Interest Bonding Strategy will consider opportunities to improve the legal framework for financial assurance, and the tools and mechanisms that support this framework. This includes major mines regulated by the *Mines Act* as well as other industrial projects regulated under the *Environmental Management Act*.

The Interim Policy aims to ensure reclamation liability cost estimates for major mines are consistently and efficiently calculated, reviewed, and reflected in the required reclamation security. It (and associated tools under development) will help reduce the differential between the reclamation liability and the financial assurance amounts held.

The Public Interest Bonding Strategy will review the Interim Policy for tools and approaches that may apply to the broader scope of the strategy, and the Interim Policy will be updated as needed following the conclusion of the strategy.

## AREAS FOR DISCUSSION

The Public Interest Bonding Strategy is seeking comment on nine discussion areas to strengthen the financial assurance strategy in British Columbia. They are provided as a starting point for discussions and are organized into three broad categories:

- A. LEGAL FRAMEWORK** – Clear statutory obligations for regulated entities meant to ensure environmental protection, mitigation, and clean-up and reclamation of industrial sites.
- B. STATUTORY LIABILITY TOOLS** – Sufficient to hold companies' responsible for the costs of environmental clean-up and reclamation.
- C. FINANCIAL ASSURANCE MECHANISMS** – Sufficient to guarantee companies can and will pay for foreseen liabilities and to backstop liability tools.

These categories include the consideration of tools that could play a critical and complementary role in ensuring industry pays for environmental clean-up and reclamation. When applied in a co-ordinated way, they can manage risk effectively and at an achievable cost.

### A. LEGAL FRAMEWORK

The following areas for discussion include desired outcomes and potential opportunities to strengthen the overarching legal framework for financial assurance requirements in British Columbia.

#### **Outcome One: Improved environmental clean-up and reclamation requirements regarding closure and decommissioning of industrial projects**

Environmental clean-up and reclamation requirements are necessary to ensure that owners of industrial projects do not abandon their projects without paying for decommissioning, environmental clean-up and reclamation. In this context, requirements are tools within the legal framework for financial assurance. If there is no financial assurance in place, the Province is put at greater risk of funding site closure. As we develop the Public Interest Bonding Strategy, we may need to consider:

- Potential tools to support consistent closure and decommissioning requirements for industrial projects and opportunities for improvement.
- Opportunities to clarify the purpose and use of financial assurance (e.g., what financial assurance can be used for and when it is no longer required).

Clear and consistent requirements ensure that financial assurance can be used for site closure and decommissioning, and provides the owners of industrial projects with certainty as to when financial assurance held by the Province will be returned.

### OPPORTUNITIES

The Public Interest Bonding Strategy may propose updates to the legal framework for financial assurance that could:

- **Clarify and define “environmental clean-up and reclamation.”**  
These terms mean different things to different people. What they mean in the context of the Public Interest Bonding Strategy will affect industry as it will determine what clean-up measures are in scope and how much financial assurance will be required.

➤ **Improve plans for site decommissioning and reclamation (closure plans) and require them consistently for additional industries and projects.**

Closure plans could be used to ensure industrial project sites are properly cleaned-up and reclaimed in a timely way. They are a planning tool that help to identify preliminary closure activities that can be taken throughout the life of a project to ensure that environmental clean-up and reclamation is ongoing and not left until a project's end-of-life. Proactive planning offers industry a more cost-effective way to decommission industrial project sites – and with improved environmental outcomes.

The Public Interest Bonding Strategy may consider when to require closure plans, what tasks should be included in them, and how and when they should be updated. For example, closure plans could be an appropriate tool to require site-specific closure cost estimates, which the Province can use to set financial assurance amounts. Accurate, site specific, liability cost estimates support better planning for closure and decommissioning of industrial projects by quantifying the scale of the clean-up and associated costs, thereby providing data to support the Province with determining the appropriate amount of financial assurance to require for a given project.

## QUESTIONS

- In defining environmental clean-up and reclamation, what key elements are most important to you, your industry or your organization?
- What do you think are the most important considerations when determining which industrial projects should require a closure plan?

## Outcome Two: Improved tools to support transparent and accountable financial assurance decisions

Financial assurance requirements can be specified within the legal framework (as mandatory authorization requirements), by policies and procedures, or by a combination of these tools. This discussion area considers opportunities for improving the legal framework while [Category C](#) considers the need for financial assurance mechanisms to complement the legal framework, and provide support and clarity to statutory decision-makers.

## OPPORTUNITIES

- **Require financial assurance for specific types of industrial projects:**  
The Public Interest Bonding Strategy is considering opportunities to improve tools within the legal toolkit for financial assurance that could require financial assurance for specific types of industrial projects. A new risk-based approach may be considered to determine which projects and/or industrial sectors to prioritize. See Section C -Financial Assurance Mechanisms, [Outcome 6](#) for some preliminary considerations on risk.
- **Set the appropriate amount and form of financial assurance to require.**  
This could include a pre-defined calculation that sets the amount of financial assurance to require. The types of allowable financial assurance and other rules could also be listed.
- **Confirm the amount of liability against which financial assurance is collected.**  
We will consider updating the legal toolkit to enable the amount of financial assurance required to decrease if liability decreases (i.e., progressive reclamation may lead to a decrease in environmental risk).

## QUESTIONS

- What is your feedback on how to support transparent and accountable financial assurance decisions?

### Outcome Three: Additional types of financial assurance

B.C.'s legal framework for financial assurance does not currently allow for the use of pooled funds. While other forms of financial assurance (e.g., surety bonds and irrevocable letters of credit) are specific to an industrial project or property, a pooled financial assurance tool may cover multiple sites or a specific industry. Pooled financial assurance tools require the owners of industrial projects to contribute to government or industry held and managed pooled funds. The amount contributed corresponds with the amount required for environmental clean-up and reclamation of an industrial project. Like other forms of financial assurance, pooled funds could be used if an owner of an industrial project is unwilling or unable to fulfil their environmental clean-up and reclamation obligations. Pooled funds are a form of financial assurance that could potentially offer the same protection for the Province at a lower cost to industry than traditional financial assurance instruments.

As we develop the Public Interest Bonding Strategy, we are considering: how other jurisdictions use pooled funds, including different types of pooled funds; when and how the owners of industrial projects contribute to the funds; the circumstances in which funds are used; and their associated costs and benefits.

#### OPPORTUNITIES

The Public Interest Bonding Strategy may consider opportunities to allow for the use of pooled funds to support:

➤ **More efficient use of fees and interest.**

The strategy may review how the fees and interest associated with financial assurance payments could be used to support funding environmental clean-up and reclamation. For example, interest and carrying costs that would currently be paid to a financial institution could instead be accrued in a pooled fund and be available to offset industry clean-up and reclamation costs.

➤ **Alternative payment options.**

The strategy could consider ways to support alternative financial assurance payment options for the owners of industrial projects. One potential option could be to require owners to pay all or a portion of their required financial assurance into a pooled fund that, with growth on principle, would pay for the full costs of environmental clean-up and reclamation for companies that default on their clean-up obligations.

➤ **More affordable payment options.**

This may include review and consideration of payment options and tools for making payment of financial assurance more affordable. For example, pooled funds may be financially attractive to facilities because they allow companies to combine their money in one single account and invest the money as a single investor. This reduces overall cost to invest and provides for larger, better investment opportunities.

#### QUESTIONS

- How could pooled funds be used as a tool to support the [Guiding Principles](#) of the Public Interest Bonding Strategy?



## B. STATUTORY LIABILITY TOOLS

Statutory liability tools hold companies legally responsible for the costs of cleaning up environmental damage that has happened or is imminent. Strong liability tools improve the Province's ability to recover funds spent on environmental clean-up and reclamation. They complement the use of financial assurance, which may not be effective in all cases. For example, in some situations, the Province may need to pay for environmental clean-up and reclamation with the intent of recovering costs in the future. This might be necessary where the Province must act quickly to address an imminent environmental or health and safety risk, and where financial assurance has not been required for a project or is insufficient.

When provincial funds are spent on site clean-up and reclamation, two things are necessary to recover those funds:

- Ensuring that the persons responsible for creating environmental damage or a threat to the environment are liable for government's costs in remedying the situation if they fail to do so; and
- The ability to collect on that liability.

Financial assurance offers a way to avoid using provincial funds or a means to recover expended funds. In circumstances where the Province is unable to draw upon financial assurance, liability tools enable the government to hold the liable person/company responsible through court proceedings. The following area for discussion provides potential opportunities for strengthening liability tools and the ability to collect on liabilities.

### Outcome Four: Improved liability tools

As we develop the Public Interest Bonding Strategy, we are considering:

- Tools for establishing legal responsibility for recovering funds spent by the Province in fulfilling environmental clean-up and reclamation obligations.
- Options for requiring environmental clean-up and reclamation of the entire industrial site.

### OPPORTUNITIES

The Public Interest Bonding Strategy will look for opportunities to improve liability tools to:

- **Create clear legal obligations for environmental clean-up and reclamation.**  
We may consider opportunities to strengthen the Province's ability to require financial assurance and expand cost recovery mechanisms. For example, financial assurance could be required for the entire industrial site.
- **Develop consistent financial assurance requirements.**  
The strategy may introduce consistent financial assurance requirements for new (future) projects and consider options for requiring financial assurance for some existing industrial sites. For example, we may consider policy changes that would enable the director to impose financial assurance requirements or update an existing requirement, when permits are cancelled, abandoned or transferred.
- **Obtain, review, update and spend financial assurance at appropriate times.**  
We may review how the Province obtains, reviews, and updates financial assurance to identify opportunities for improving liability tools. This may involve assessing options for reviewing and updating financial assurance at appropriate points in the lifecycle of industrial projects, and examining if/when the Province may expend financial assurance funds on environmental clean-up and reclamation activities.
- **Strengthen the Province's ability to collect financial assurance that is required but has not been received.**

There are situations where financial assurance goes unpaid. The strategy may assess options for improving liability tools to strengthen the Province's ability to collect financial assurance.

- **Strengthen the Province's ability to collect funds when the responsible parties are insolvent.**  
We may consider tools for situations where statutory liability exists, but the Province is unable to collect financial assurance or recover funds expended on environmental clean-up and reclamation due to insolvency. The ability to collect financial assurance or recover funds is limited by both the insolvency (i.e., insufficient funds) and federal laws, which create priorities for payments to creditors that can override provincial legislation.
- **Strengthen the Province's ability to collect monies owing.**  
We may consider options for expediting the collection of debts and ways to prioritize debt collection for environmental clean-up and reclamation.
- **Create or expand the liability of directors, officers, and related corporations.**  
The existing legal framework includes rules that establish responsibility for environmental spills and the remediation of contaminated sites. We may consider options to improve responsibility for clean-up and reclamation outside of this framework.

## QUESTIONS

- In determining the required frequency of updates and/or triggers for updating financial assurance, what considerations are most important to you, your industry or your organization?
- Do you have any recommendations for strengthening the Province's ability to collect financial assurance that is required but has not yet been received, and/or is required but the responsible party has become insolvent?

## C. FINANCIAL ASSURANCE MECHANISMS

Financial assurance mechanisms support liability rules. If the owner of an industrial project is unwilling or unable to fulfil their environmental clean-up and reclamation obligations, the Province can draw upon financial assurance to fund necessary mitigations. The following areas of discussion include proposed outcomes and potential opportunities for improving financial assurance mechanisms.

### Outcome Five: Improve risk-based decisions to prioritize financial assurance requirements

The objective of reducing the financial risk to the Province is best met by focusing on projects that pose a high risk of insolvency and abandonment of a site and/or high environmental clean-up costs. Therefore, the Public Interest Bonding Strategy is considering addressing industries/projects with the highest environmental and financial risk first while also identifying strategies to address all projects consistently. Existing active projects and new (future) projects are in-scope.

Taking a risk-based approach would enable the Province to prioritize industries and projects that demonstrate the highest risk factors and phase in financial assurance requirements for those activities first. This may provide an incentive to industry to minimize risk, for example, through investment into the prevention and mitigation of environmental impacts and through undertaking progressive reclamation activities.

As we develop the Public Interest Bonding Strategy, we are considering:

- Maximizing ability to collect adequate financial assurance from new and existing projects. We recognize that meeting financial assurance requirements may be more difficult for existing projects as business and investment decisions have already been made based on current financial assurance requirements.

- Options for prioritizing financial assurance requirements for specific types of existing industrial projects.

## OPPORTUNITIES

The Public Interest Bonding Strategy may propose a risk-based tool or mechanism that could:

### ➤ **Identify and prioritize industries and projects with the highest potential risk.**

Industrial projects do not all pose the same environmental and financial risks to the Province – risk varies by industry/sector and by company/owner. We may consider options for assessing industrial activities against a set of criteria to identify those with the highest potential risk. The criteria may consider both the extent of the environmental impact (or **cost of reclamation and related obligations**) and the likelihood that a company may fail to meet its clean-up obligations (**financial risk**).

Specific projects may also require financial assurance where there is a **financial risk** that a company may default on their environmental obligations. The strategy may consider criteria such as size and range of assets (e.g., single purpose corporation vs. corporation with diversified holdings), ownership (private versus public), compliance history, infrastructure/asset conditions and financial health.

## QUESTIONS

- In defining risk criteria, what key elements are most important to you, your industry or your organization?

## **Outcome Six:           Improvements to policies and procedures (or a protocol) to guide transparent and accountable financial assurance decisions**

The ability to require financial assurance exists within the overarching legal framework, and clear policies and procedures could provide tools to help ensure this ability is more effectively used.

This area for discussion considers opportunities for improving policies and procedures, while [Category A – Legal Framework](#) considers opportunities for improving the overarching legal framework for financial assurance.

## OPPORTUNITIES

The Public Interest Bonding Strategy may consider updates to policies and procedures to:

### ➤ **Support fair and consistent financial assurance requirements.**

Policies and procedures provide guidance for decision-making, streamline internal processes, ensure time and resources are used efficiently, and support consistent and transparent outcomes. They complement and support the legal framework for financial assurance by providing decision makers with detailed guidance to ensure government processes and decisions abide by the intent of regulatory requirements. For example, we may consider tools to assist with evaluating the sufficiency of financial tools (i.e., the different types of financial assurance) and the circumstances in which they could be used.

## QUESTIONS

- What type of tools or guidance would you, your industry or your organization like to see to support transparent and accountable financial assurance decisions?

## Outcome Seven: Improved approaches to minimize financial burden on industry while continuing to uphold and strengthen the polluter pays principle

The [Guiding Principles](#) of the Public Interest Bonding Strategy support the development of a financial assurance approach that limits negative financial impacts on companies by minimizing additional costs and/or barriers to market entry, while upholding the polluter pays principle. To achieve this balance, we are considering:

- **Cost to industry.**  
There is a cost to the owners of industrial projects that is associated with providing financial assurance. While this is consistent with the polluter pays principle, the strategy will carefully consider the costs of financial assurance to industry and weigh against the risk of environmental impact and risk of abandonment.
- **Improved social license to operate.**  
Providing financial assurance for environmental clean-up and reclamation can improve a company's social license to operate. Social license to operate reflects stakeholders' opposition to, acceptance of, or support for a project. For example, good project designs (from operation to closure) and post closure and improved environmental performance associated with financial assurance requirements can lead to greater community support. A stronger social license to operate can lead to a reduction in regulatory and consultation costs, fewer project delays and better public relations.
- **Greater attractiveness to responsible investment.**  
Responsible investment is an approach to investment decision making that takes environmental, social and governance (ESG) criteria into account. In recent years, interest in and assets committed to responsible investment have been growing. Companies that provide financial assurance for environmental clean-up and reclamation are more attractive to responsible investors. Increased investor interest can lower capital borrowing costs.

### OPPORTUNITIES

The Public Interest Bonding Strategy may propose financial assurance mechanisms that consider costs to industry while upholding the polluter pays principle. These mechanisms may include:

- **Alternative financial assurance options.**  
The strategy will consider all effective forms of financial assurance. The objective is to ensure that the owners of industrial projects pay 100 percent of environmental clean-up and reclamation costs. Requiring 100 per cent bonding is only one way to achieve this. Other types of financial assurance may be able to provide the necessary protection to the Province, with lower cost for project owners (e.g., pooled funds and pooled trust funds – as discussed in Category A – Legal Framework, [Outcome 3](#)).

Considering several types of financial assurance tools, and/or a combination of tools, in addition to up-front bonds, could mitigate costs to the owners of industrial projects and may allow a better consideration of risk and the assurance required.

- **Transition periods.**  
It may be challenging for companies with existing projects to secure funds for financial assurance. Critical business and investment decisions may have already been made based on current financial assurance requirements. It may be appropriate for the strategy to consider a transition period to enable existing industry projects to satisfy their financial assurance requirement over time. For example, some jurisdictions allow payments to be made over three to five years.

➤ **Risk-based approach to determining financial assurance amounts.**

The strategy may consider developing a framework that scales the amount and type of financial assurance required to the level of risk posed by a specific project. See Category C – Financial Assurance Mechanisms, [Outcome 6](#) for some preliminary ideas on how to assess risk.

## QUESTIONS

- What are your recommendations for how the Public Interest Bonding Strategy can ensure financial assurance mechanisms meet the polluter pays principle, while limiting the negative financial impacts on industry and on the economy?

## Outcome Eight: Improved liability cost estimates

The Province is working on ways to improve industry’s ability to provide accurate environmental clean-up and reclamation cost estimates and improve the ability of the Province to review and determine the amount of financial assurance required for industrial projects. The goal is for environmental clean-up and reclamation liability cost estimates to accurately reflect the full liability of an industrial project over its entire life cycle. This work is already underway for major mines and as we develop the Public Interest Bonding Strategy we may consider:

- Tools to assist with calculating liability cost estimates for industrial projects.
- Options for updating liability cost estimates, and the associated amount of financial assurance held, over the lifespan of industrial projects.

## OPPORTUNITIES

The Public Interest Bonding Strategy may propose new or updated financial assurance mechanisms to:

➤ **Revise and update environmental clean-up and reclamation liability cost estimate information requirements for industrial projects.**

Improvements to environmental clean-up and reclamation liability cost estimate information requirements could promote better project designs and permit applications. There may also be an opportunity to develop a more consistent approach to determining financial assurance between projects and promote increased certainty for industry with respect to the required amount of financial assurance earlier in the project application process.

➤ **Improve methods and tools for estimating environmental clean-up and reclamation costs.**

Financial assurance amounts should be closely related to site liability, and be large enough to ensure that environmental clean-up and reclamation obligations are borne by industry. A consistent and accurate approach to estimating clean-up and reclamation costs for industrial projects may improve transparency, reduce uncertainty about financial assurance requirements and lead to better risk management. Proactive risk assessments and improved risk management could result in better designs and a corresponding reduction in overall costs to industry.

## QUESTIONS

- What are your recommendations for improving environmental clean-up and reclamation cost estimates to ensure they accurately reflect liability?

## Outcome Nine: Improve data management systems and tools

Reliable, accurate and timely information is required to properly assess liabilities, to manage financial assurance requirements, and to understand the value of current and potential long-term liabilities to the Province. As we develop the Public Interest Bonding Strategy, we intend to:

- Review other jurisdictions to consider the laws, policies, tools and processes that are already being successfully utilized elsewhere, and assess for effectiveness and applicability to British Columbia.
- Identify opportunities for digital tools to modernize how we work and to improve outcomes. The Public Interest Bonding Strategy will work with natural resource sector partners to improve data management and analysis, helping to support financial assurance policies and programs.

### OPPORTUNITIES

The Public Interest Bonding Strategy may propose new or updated information systems and tools to:

- **Improve transparency with respect to how environmental cleanup and reclamation liabilities are determined.**
- **Improve how the Province manages environmental cleanup and reclamation liabilities and the required financial assurance to back these liabilities.**

Recording and tracking both the potential liability to the Province and the amount of financial assurance is key to identifying areas that could be improved and measuring the long-term success of the strategy in British Columbia.

### QUESTIONS

- What are your recommendations for specific improvements to data management systems and tools that are a priority for you, your industry or your organization?

## CONCLUSION

This discussion paper provides an overview of the Public Interest Bonding Strategy's preliminary considerations with respect to strengthening the financial assurance strategy in the province. It outlines the scope of the discussion, with the aim of soliciting feedback. Feedback will inform a "What we Heard" document that will articulate the next steps for the strategy.

### Considerations for Phase 2

This discussion paper has been written to seek your input with respect to Phase 1. Some preliminary concepts that may be considered in Phase 2 include:

- Improved clean-up and reclamation requirements, and financial assurance mechanisms across a broader range of statutes.
- Better co-ordination or joint bonding requirements where there are overlapping responsibilities between the natural resource sector ministries.
- Ways to protect against unforeseen costs.

The Public Interest Bonding Strategy intends to seek input on Phase 2 after the successful completion of Phase 1.

## Providing Feedback

We want to hear your thoughts on:

- Questions posed in the Areas for Discussion sections;
- Issues or concerns you think the Province should be aware of;
- Ideas or solutions you or your organization wish to share;
- Anything you wish to share on the topic of how to improve the Province's approach to financial assurance.

Feedback is invited until **May 28, 2022, at 4:00 p.m.** During this time, individuals and organizations are invited to submit their feedback by completing the online [feedback form](#) that accompanies this discussion paper.

## GLOSSARY

**Abandoned:** For the purposes of this discussion paper, “abandoned” means the owner of an industrial project is unable or unwilling to perform environmental cleanup and/or reclamation. This term may have different meanings under different legislation. For example, the definition of an “Abandoned Mine” in the *Mines Act* means “a mine for which all permit obligations under this Act have been satisfied and in respect of which the mineral claims have reverted to the government.”

**Bankruptcy and insolvency:** The process governed by the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* whereby a trustee liquidates the bankrupt's assets to distribute among creditors; or, to avoid bankruptcy, negotiates an agreement with creditors.

**Bonding/Financial Assurance:** Providing financial security of any kind, including money, to ensure performance of an obligation arising under an enactment (e.g., orders), a license, a permit, a contract, or another similar obligation, and includes the terms under which the security may be realized.

**Cancelled:** Under section 20(5)(b) of the *Environmental Management Act*, if a person elects to abandon a permit or an approval, the person, despite the abandonment, “is bound by those additional requirements that the director imposes respecting restoration of the environment or the control and monitoring of the waste discharged or the waste that continues to be discharged after abandonment.”

**Closure Plans:** In general, plans for site clean-up and reclamation. Exact definitions may vary according to legislation.

**Contaminated site:** As defined in Section 11 (1) of the [Contaminated Sites Regulation](#) under the *Environmental Management Act*.

**Director:** A person employed under the *Public Service Act* and designated by the minister as a director for the purposes of an act.

**Distinctions-based:** The design and implementation of the action plan reflects that First Nations, Métis and Inuit are distinct peoples with unique cultures, histories, rights and legal traditions in what is now B.C., and the Province’s relationship with each will reflect their respective rights, interests, priorities and circumstances.

**Environmental clean-up and reclamation:** At this stage of the Public Interest Bonding Strategy, this is the cost of all foreseen, authorized, and/or intended impacts. This definition will be further explained in future work.

**Environmental Management Act (EMA) authorizations:** A written permission to discharge waste to the environment. All businesses, governments and property owners must follow the EMA and [Waste Discharge Regulation](#) when discharging waste to air, land or water. Forms of EMA authorizations include permits, approvals, orders or compliance with another EMA regulation or code of practice.

**Foreseen clean-up costs:** Costs that are virtually certain to occur and are associated with the cleanup of authorized pollution or restoration of authorized environmental impacts that are anticipated to result from, and accepted as a result of, legal or authorized activities. Includes costs associated with meeting any legal requirement or any terms and conditions of an authorization that relates to environmental clean-up and reclamation.

**Major Mines Office:** Leads the coordinated authorizations process for major mine permitting across the province. The office works with natural resource agencies including the Ministry of Energy, Mines and Low Carbon Innovation, Ministry of Environment and Climate Change Strategy, Ministry of Forests, and the Ministry of Lands, Water and Resource Stewardship. For more information on major mines in B.C., visit the [BC Mine Information website](#).



**Polluter Pays Principle:** The idea that users and producers of pollutants and wastes should bear the responsibility for their actions. Companies or people that pollute should pay the costs they impose on society.<sup>1</sup>

**Responsible Person:** The *Environmental Management Act* and Contaminated Sites Regulation lay out the polluter-pays principle for remediation liability. Individuals who are responsible for causing contamination are 'responsible persons' and must cover the costs of any required site remediation.

**Statutory decision maker:** Permitting and compliance are under the purview of dedicated ministry staff who make evidence-based decisions based on best available science. These individuals are referred to as statutory decision makers and are given these authorities under legislation (see [FACTSHEET: Statutory decision-makers](#) for more information).

**Statutory liability:** The state of being bound or obligated to do, pay, or make good something because of a particular law enacted and established by the will of the legislative department of government, expressed with the requisite formalities.

**Third-party:** An entity that pays claims on behalf the insured.

**Transfer of permit:** Reference to section 17 of the *Environmental Management Act*.

**Unforeseen clean-up costs:** Environmental clean-up and reclamation costs that result from unauthorized pollution or unauthorized environmental damage. It includes environmental clean-up costs of accidents or spills.

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<sup>1</sup> [Guide to understanding the Canadian Environmental Protection Act: chapter 3.](#)

## APPENDIX 1: Listing of Types of Financial Assurance

**Bank Drafts:** An issuing bank withdraws and secures the Canadian funds from the account holder in an internal account, guaranteeing the amount of the draft. Acceptable under *Bonding Act* regulations.

**Cash:** Canadian currency. Acceptable under *Bonding Act* regulations.

**Certified Cheque:** A type of check for which the issuing bank guarantees that there will be enough cash available in the holder's account when the recipient decides to use the check. A certified check also verifies that the account holder's signature on the check is genuine. Acceptable under *Bonding Act* regulations.

**Corporate Guarantee:** A commitment by a company, often a parent company, that certain obligations will be met.

**Government Pooled Fund:** Funds built up from levies on industry and managed by government.

**Guaranteed Investment Certificates:** A certificate issued by a savings institution and registered in the name of the minister, the interest from which may be payable to the person who takes out the certificate. Acceptable under *Bonding Act* regulations.

**Industry Pooled Fund:** Funds built up by contributions from industry and managed by industry.

**Insurance Corporation of BC Bond:** A bond issued by the Insurance Corporation of BC. Acceptable under *Bonding Act* regulations.

**Irrevocable Letters of Credit:** Instruments where a financial institution promises to pay a specified sum under certain circumstances, such as when the Province declares a project owner to be in default on its environmental clean-up obligations. Acceptable under *Bonding Act* regulations.

**Liens on Property:** A legal right of a creditor to sell collateral property of a debtor who fails to meet an obligation such as conducting environmental clean-up.

**Personal Guarantee:** A commitment from an individual that certain obligations will be met.

**Personal Money Orders:** Money orders issued in Canadian funds by a savings institution, or postal money orders issued by the Canada Post Corporation. Acceptable under *Bonding Act* regulations.

**Pollution Legal Liability Insurance:** Insurance for unanticipated or unforeseen pollution but not valid if the project is willfully abandoned.

**Qualifying Environmental Trust Funds:** A form of trust under the federal *Income Tax Act* intended to cover environmental reclamation costs of mines, landfills and oil and gas pipelines.

**Registered Marketable Canadian or Provincial Government Bonds:** A bond that is fully registered from, issued, or guaranteed by the government of Canada or the government of any province, with a maturity date of no longer than three years, and which is accompanied by a duly executed, irrevocable power of attorney that authorizes the minister to realize the security. Acceptable under *Bonding Act* regulations.

**Short Term Deposits:** A deposit, not to exceed three years, issued by a savings institution and registered in the name of the minister, the interest from which may be payable to the depositor. Acceptable under *Bonding Act* regulations.

**Surety or Performance Bond:** Legally binding contracts between three parties – the principal, the obligee, and the surety. The obligee (usually a government entity) requires the principal (typically a business owner or contractor) to obtain a surety bond as a guarantee against future work performance (e.g., environmental clean-up). Acceptable under *Bonding Act* regulations.

**Treasury Bill Notes issued by Canada or a Province:** Notes issued by the government of Canada or the government of any province. Acceptable under *Bonding Act* regulations.

**Trusts:** where money is held by one party for the benefit of another and may only be used for specific purposes.

It should be noted that not all types of financial assurance listed here are equal or interchangeable. For example, surety bonds and Irrevocable Letters of Credit that transfer risk to a third party are considered very safe while corporate guarantees have higher risk.