

Ministry of Energy and Mines, Ministry of the Environment

An Audit of Compliance and Enforcement of the Mining Sector, Released 05/16

<http://www.bcauditor.com/pubs>

Initial PAC Meeting- [06/06/16]

1st Action Plan Update

2nd Action Plan Update

Rec. #	OAG Recommendations	Action Planned	Target Date	Assessment of Progress by Entity ¹	Action Taken ²
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¹The Select Standing Committee on Public Accounts (PAC) will request an update (i.e Assessment of Progress and Actions Taken column completed) on a yearly basis from the audited organization until all recommendations are fully implemented or otherwise addressed to the satisfaction of the PAC.

² This action plan and their subsequent updates have not been audited by the OAG. However, at a future date that Office may undertake work to determine whether the entity has accurately represented their progress in addressing the recommendations. The results of that work will be reported in a separate report prepared by the OAG.

Please provide your email response to:

Attention: Bruce Ralston, Chair of the Select Standing Committee on Public Accounts

Email: publicaccountscommittee@leg.bc.ca and Mary.Newell@leg.bc.ca

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1.0	<p><u>Overall recommendation:</u> We recommend that the Government of British Columbia create an integrated and independent compliance and enforcement unit for mining activities, with a mandate to ensure the protection of the environment.</p> <p>Given that the Ministry of Energy and Mines is at risk of regulatory capture, primarily because MEM’s mandate includes a responsibility to both promote and regulate mining, our expectation is that this new unit would not reside within this ministry.</p>	<p><u>Published response:</u> It is the legislative framework in BC that drives compliance and enforcement activities not the organizational structure. Many provincial governments across Canada have agencies and ministries with the role of promoting and regulating an industry. In the absence of evidence by the Auditor General that this has compromised the integrity of the ministry or its staff, Government does not support the need for a reorganization of the ministries; however we are prepared to further discuss this with the OAG. Government will establish a Mining C&E Board that will address the need for greater integration between the ministries, as well as with the Environmental Assessment Office.</p> <p><u>Additional notes:</u> Within 90 days of the audit release, government will establish a mining compliance and enforcement board to oversee an integrated and co-ordinated regulatory approach to mining in the Province of B.C. The board, comprising the Deputy Minister of Energy and Mines, the Deputy Minister of Environment and the Associate Deputy Minister of the Environmental Assessment Office, will:</p>	Establish Board by Aug 1, 2016	Alternative action taken	Draft Terms of Reference for Board developed. First meeting Scheduled.

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1.0 cont.		<ul style="list-style-type: none"> • Provide guidance and oversight to the full scope of compliance and enforcement for mines in British Columbia (including but not limited to the <i>Mines Act</i>, <i>Environmental Management Act</i>, and <i>Environmental Assessment Act</i>). • Oversee compliance and enforcement plans to map out proactive annual activities based on a risk-based approach. • Oversee strategic improvements to further compliance and enforcement effectiveness through integration and coordination, planning, training, policies, procedures and tools, evaluation and public reporting. <p>Additionally, the board will undertake a scan for jurisdictions with independent compliance and enforcement mining units looking for best practices and models. The board will review the findings and consider their application within B.C.</p>			

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Detailed Action Plan - Prepared for the Select Standing Committee of Public Accounts

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1.1	<p><u>Strategic planning:</u> We recommend that government develop a strategic plan that would detail the activities of an integrated and coordinated regulatory approach, and the necessary capacity, tools, training and expertise required to achieve its goals and objectives.</p>	<p><u>Published response:</u> A Mining C&E Board will be established to oversee an integrated and coordinated regulatory approach to mining in the Province of B.C. The Board will be accountable to the Deputy Minister of Energy and Mines, the Deputy Minister of Environment and the Associate Deputy Minister of the Environmental Assessment Office.</p> <p>The board will develop compliance and enforcement plans to map out proactive annual activities based on a risk-based approach. The board will also be responsible for furthering longer term strategic improvements in other areas such as: enhancing training; developing policies, procedures and tools; conducting evaluations; and expanding public reporting.</p> <p>MEM will appoint a new Deputy Chief Inspector of Mines for compliance and enforcement to oversee and implement improved C&E.</p>	To Board Sept 2016	No action taken	
1.2	<p><u>Permit language:</u> We recommend that government ensure historical and current permit requirements are written with enforceable language.</p>	<p><u>Published response:</u> The ministries agree that permits must be written with measureable and enforceable requirements. Both ministries will develop policy to ensure enforceable and measurable requirements are used in all new and amended permits.</p>	Nov 2016	Partially implemented	Permits are reviewed when amendments are applied for throughout life of mine.

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1.3	<p><u>Security – adequate coverage:</u> We recommend that government safeguard taxpayers by ensuring the reclamation liability estimate is accurate and that the security held by government is sufficient.</p>	<p><u>Published response:</u> As seen in the 2014 Chief Inspector’s Annual Report, “In the past few years, the value of security deposits has increased to reflect more closely the true costs of reclamation. The total value of securities held by the Province has risen from \$10 million in 1984 to more than \$773 million by the end of 2014.”</p>	Feb 2017	Partially implemented	Cross jurisdictional scan of best practice initiated

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1.4	<p><u>Security – catastrophic events:</u> We recommend that government review its funding mechanisms to ensure taxpayers are safeguarded from the costs of an environmental disaster.</p>	<p><u>Published response:</u> Environmental disasters, like the one seen as a result of the Mount Polley tailing facility breach, can result in damage both on and off a mine site. It is the responsibility of the mine operator to ensure sufficient environmental liability insurance is held to meet the risk of such disasters.</p> <p>The <i>Environmental Management Act</i> contains authority for spill response actions and cost recovery to require persons in possession or control of any polluting substance to prepare contingency plans and to implement those plans at their expense in the event of a spill. The Act also provides for the recovery of costs should action to respond to a spill be declared by the Minister.</p> <p>This Act is being amended to proactively require potential polluters to pay into a spill preparedness and response organization. These amendments are due for introduction to the Legislature this year</p>	Mar 2017	Partially implemented	<p>On April 5, 2016, the Province announced the launch of public engagement inviting British Columbians to review and comment on a new intentions paper around spill preparedness and response in B.C.</p> <p>The intentions paper summarizes amendments to the Environmental Management Act (EMA), introduced on Feb 29, 2016, provide the legal foundation to establish a new spill preparedness and response regime (regime) to address environmental emergencies in B.C.</p>

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1.5	<p><u>Environmental Management Act waste discharge fees:</u></p> <p>We recommend that government review its fees under the <i>Environmental Management Act</i> and ensure that the fees are effective in reducing pollution at mine sites.</p>	<p><u>Published response:</u></p> <p>The Ministry of Environment is committed to reviewing the fee structure for waste discharges under the <i>Environmental Management Act</i>. Work has already been initiated to assess current fees, as well as conduct a cross-jurisdictional scan of fees imposed by other provinces and territories.</p>	Mar 2017	No action taken	
1.6	<p><u>Cost recovery:</u></p> <p>We recommend that government adopt a cost recovery model for permitting and compliance verification activities that is consistent across all ministries in the natural resources sector.</p>	<p><u>Published response:</u></p> <p>The Ministry of Environment recognizes that other natural resource sector ministries, including the Environmental Assessment Office, have begun imposing fees on industry for permitting and compliance verification activities. The ministry will be examining the imposition of fees for these activities.</p> <p>Effective April 1, 2015 permit fees were introduced under the <i>Mines Act</i> and the existing inspection fees were raised. This enabled a budget increase of approx. \$9.3M to the Ministry of Energy and Mines in Budget 2016.</p>	Mar 2017	No action taken	

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1.7	<p><u>Decision making – Use of section 137 of the Environmental Management Act</u></p> <p>We recommend that government be transparent to the public as to its rationale for granting a permit under section 137 of the <i>Environmental Management Act</i>. Specifically, information should include how factors such as economic, environmental, and social attributes were considered in the determination of public interest.</p>	<p><u>Published response:</u></p> <p>As provided for in Section 137 of the <i>Environmental Management Act</i>, Cabinet may consider factors that are in the public interest and beyond those that a ministry director may consider. Discussions underlying the approval of an OIC are a matter of Cabinet confidentiality. However, the results of Cabinet decisions, when they are issued in the form of OICs, are published on the BC Laws website.</p>	n/a	No action taken	Action outside of the purview of the Ministries
1.8	<p><u>Reclamation guidance:</u></p> <p>We recommend that government develop clear and comprehensive reclamation standards and guidance for industry.</p>	<p><u>Published response:</u></p> <p>Internal work has begun on developing additional guidance materials on a range of reclamation aspects, including erosion and sediment control plans, closure management manuals, reclamation security, etc.</p>	February 2017	No action taken	

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1.9	<p><u>Incentives:</u> We recommend that government create effective incentives to promote environmentally responsible behavior by industry.</p>	<p><u>Published response:</u> The ministries agree that it is useful to consider incentives as part of the compliance and enforcement regime governing mines and will continue to consider additional opportunities to recognize and reward good environmental performers. Furthermore, it is expected that expanded public reporting of compliance and enforcement activities will serve as a very effective incentive for promoting environmentally responsible behaviour.</p>	Mar 2017	No action taken	
1.10	<p><u>Risk-based approach:</u> We recommend that government develop a risk-based approach to compliance verification activities, where frequency of inspections are based on risks such as industry's non-compliance record, industry's financial state, and industry's activities (e.g., expansion), as well as risks related to seasonal variations.</p>	<p><u>Published response:</u> Compliance verification activities conducted by the ministries are founded on a risk-based approach; however, the ministries commit to review policies in this regard. The annual compliance and enforcement planning that will take place at the Mining C&E Board, established under recommendation 1.1, will also be risk-based to optimize the capacity and effectiveness of the ministries' collective compliance and enforcement resources.</p>	Mar 2017	Partially implemented	Compliance verification activities conducted by the ministries are founded on a risk-based approach; however, the ministries commit to review policies in this regard.

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1.11	<p><u>Systematic compliance verification</u> We recommend that government systematically monitor and record compliance with high-risk mine permit requirements.</p>	<p><u>Published response:</u> As with recommendation 1.10 above, a risk-based approach to compliance and enforcement workforce planning will uncover poor performers for closer scrutiny.</p>	Nov 2016	Partially implemented	Compliance verification activities conducted by the ministries are founded on a risk-based approach. The ministries will review policies in this regard.

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1.12	<p><u>Qualified professionals:</u> We recommend that government establish policies and procedures for the use and oversight of qualified professionals (QP) across the natural resources sector. These policies and procedures should have the following:</p> <ul style="list-style-type: none"> • Guidance for staff that outlines the specific nature and amount of oversight expected of a QP's work; • Updated guidance for staff for recognizing and responding to misconduct by a QP; • Controls in place to ensure that there is no undue influence on the QPs by industry; and • Controls in place to ensure that recommendations by QPs are adhered to. 	<p><u>Published response:</u> MEM's efforts are guided by the <i>Mines Act</i> and the Health, Safety and Reclamation Code for Mines in British Columbia. In particular, the Code Review currently underway is considering specific matters such as the need for a qualified individual designated as a mine dam safety manager to oversee all work associated with a tailings storage facility and will clarify the roles and responsibilities of the Engineer of Record at a mine.</p> <p>The Mining C&E Board, established under recommendation 1.1, will consider how MOE and MEM can strengthen the use and oversight of qualified professionals in the mining sector specifically.</p> <p>The Ministry of Forests, Lands and Natural Resource Operations has established a Qualified Persons in the Natural Resource Sector Framework. This framework guides the development and implementation of Qualified Persons policies and procedures specifically for the mining sector. The framework is based on the three essential components of guidance, competency and accountability and ensures the interests of government; resource users, qualified persons and other stakeholders are recognized and addressed.</p>	Mar 2017	Partially implemented	<p>A wide variety of qualified persons work in the natural resource sector providing knowledge and expertise to support decision-making and operational activities. A Qualified Persons Cross-Ministry Working Group (QP working group) is looking at how qualified persons working for resource users can be better utilized, and to develop a common framework and tools for examining and supporting the use of qualified persons.</p> <p>Specific changes are being considered in the review of the Health, Safety and Reclamation Code for Mines in BC.</p>

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1.13	<p><u>Mine design:</u> We recommend that government adequately review mine designs to ensure that they meet government standards, and that government ensure that mines, as constructed, reflect the approved design and standards.</p>	<p><u>Published response:</u> This recommendation is presented at the conclusion of the Audit Report section on the Mount Polley TSF breach.</p> <p>There had been nine design stages over the life of the TSF at Mount Polley Mine. All stages, including the design stage in place at the time of the breach had been prepared by the design engineer; a qualified professional. MEM reviewed and authorized permit amendments for each stage of the TSF. Each stage of construction was certified by the Engineer of Record in the as-built reports. The failure of the TSF was not an enforcement issue.</p> <p>Through legislation like the Engineers and Geoscientists Act, government has created technical bodies to formalize accountability and protect the public interest. As appropriate in their role, in response to the Expert Panel findings on Mount Polley the Association of Professional Engineers and Geoscientists BC is developing professional practice guidelines for dam site characterization assessments. Government is also undertaking a review of the Mining Code with labour, First Nations and industry representatives to determine how best to implement the expert panel findings.</p>	n/a	Fully or substantially implemented	MEM technical staff review all permit and amendment applications

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1.14	<p><u>Policies, procedures and tools:</u> We recommend that government develop policies, procedures and enforcement tools for responding to non-compliances when industry does not meet the timeline specified by the ministry.</p>	<p><u>Published response:</u> The ministries agree on the importance of clear policies, procedures and tools to aid in their compliance and enforcement activities. The ministries will review these in light of the recommendations. The establishment of the Mining C&E Board, under recommendation 1.1, will serve to further inter-ministry collaboration and sharing of best practices. Government will also introduce amendments to the <i>Mines Act</i> to provide for Administrative Monetary Penalties in the spring 2016 legislative session.</p>	Mar 2017	Partially implemented	Policies are under review
1.15	<p><u>Evaluation and adjustment:</u> We recommend government regularly evaluate the effectiveness of their promotional, compliance verification, and enforcement activities and tools and make changes as needed to ensure continuous improvement.</p>	<p><u>Published response:</u> Annual compliance and enforcement planning and reporting will provide a means to evaluate the effectiveness of the program, to ensure ongoing improved targeting of areas of concern and recognition of strong performers. The ministries will address this recommendation through the establishment of a Mining C&E Board under recommendation 1.1.</p>	Mar 2017	No action taken	

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1.16	<p>Public reporting: We recommend that government report publicly:</p> <ul style="list-style-type: none"> • The results and trends of all mining compliance and enforcement activities; • The effectiveness of compliance and enforcement activities in reducing risks and protecting the environment; and • The estimated liability and the security held for each mine. 	<p>Published response: The ministries support public reporting and have been making progress in this area. MOE has been reporting its enforcement actions for many years through published reports and an online searchable database. It reports all of its enforcement actions including orders, administrative sanctions, administrative monetary penalties, violation tickets and court prosecutions. MOE will work with MEM to explore including their enforcement actions in the reporting.</p> <p>In 2012, the Ministry of Environment published all of its permits for industrial and municipal facilities that discharge waste into the environment, including mines. This dataset provides the opportunity for citizens to access province-wide data on those facilities, including information on fees, locations and discharges.</p> <p>The Ministry of Energy and Mines published all dam safety inspections, emergency response plans and related documents online in 2015. The ministry will continue to publish further documents for all major mines in British Columbia.</p> <p>The ministries will report on trends and effectiveness of C&E in the mining sector.</p>	Mar 2017	Partially implemented	<p>MOE has been reporting its enforcement actions for many years through published reports and an online searchable database.</p> <p>MEM has launched a new website with permits, inspection reports and other information on metal and coal mines in BC.</p>

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