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West Coast Environmental Law DEREGULATION BACKGROUNDER

BILL 54 – MISCELLANEOUS STATUTES AMENDMENT ACT 2002

Changes to Mining Laws threaten private property rights and environmental protection

The BC government introduced Bill 54 in the Legislature May 15th; this Bill amends 23 different statutes. Our focus here is on amendments to 3 laws that will have an impact on how the mining industry conducts itself in BC. According to the government's press release the bill will "streamline processes and encourage mineral exploration by clarifying rights and cutting red tape."

However, this Bill does much more than simply "cut" red tape and "clarify" rights – it allows the government to waive the application of pollution laws for certain mining activities and it increases the mining industry's rights of access to private and public land.

Bill 54:

- Exempts some, not yet specified, mining operations from permit requirements and pollution laws
- Increases mining industry rights of access to private land and repeals an existing protection against interference with private land
- Gives mining approvals precedence over most other land use designations

EXEMPTION FROM PERMITS AND POLLUTION LAWS

Bill 54 proposes two main regulatory exemptions that are of serious concern. First, it provides an exemption from the permit requirements of the *Mines Act*; and second, it provides a further exemption for these same activities from the *Waste Management Act*.

a) *Mines Act* permit exemption. Currently under the *Mines Act*, mining companies are required to obtain a permit before conducting mining activity. As part of the application process, mining companies are often required to propose environmental protection measures for damage to watercourses resulting from the mine. The *Mines Act* already provides that where the Chief Inspector of Mines is satisfied that a permit is not required because of the nature of the work, the company can be exempted from this requirement.¹

Bill 54 adds another exemption, stating that the Chief Inspector can exempt a mine from the permit requirements if the proposed activity meets the "prescribed requirements" for an exemption. These requirements are to be included in a yet undrafted regulation. The exemption is overly broad and could apply to mining works that harm the environment.

From a land use planning perspective, exemptions on mineral exploration could limit the ability of government to impose terms and conditions that would ensure compatibility with established land use zones and habitat protection concerns.

¹ *Mines Act*, s. 10(2).

This proposed change is particularly disturbing when read in association with the amendment to the *Waste Management Act*.

b) *Waste Management Act* pollution exemption. The *Waste Management Act* is BC's primary environmental protection law. It contains a prohibition against releasing pollutants into the environment without a permit. In other words, anyone who causes pollution, who has not been granted a permit, has broken the law and may be prosecuted. This Act contains a number of specific exemptions from this prohibition, most of which are for activities that are in compliance with a permit issued by the Minister of Water, Land and Air Protection, or are otherwise regulated.

However, Bill 54 will allow mining operations that are exempted from permitting under the *Mines Act*, to also be exempted from the pollution provisions of the *Waste Management Act*. This means that these mining activities could be conducted with no regulatory oversight from the Ministry of Mines, and would be immune from prosecution for any environmental damage under the *Waste Management Act*.

In practice, the Ministry of Mines has been the primary regulator of mining activity at mine sites, and the Ministry of Water, Land and Air Protection has played a strong role in ensuring that levels of environmental protection are maintained. If this Ministry no longer has the ability to commence prosecutions for environmental harm as a result of some mining activities, the public and the environment will be left unprotected from the, as of yet undefined, exempted activities

INCREASING MINING INDUSTRY RIGHTS TO PRIVATE LAND

Mining laws have long guaranteed considerable access to the land to encourage mineral development. In BC, the *Mineral Tenure Act* contains a right to enter onto private land to explore for minerals. Until now, it has also contained provisions that limit the extent to which mining can prevail over activities on private land.

Bill 54 begins to erode these protections. It repeals a section of the *Mineral Tenure Act* that prohibits mining companies from obstructing or interfering with activities on private land, including existing buildings, in pursuit of mineral development. This means that a mining company could potentially exercise greater rights that prevail over those of a private landowner.

Bill 54 also tips the scales in favour of mining industry access when it comes to disputes with private landowners. It prevents the Mediation and Arbitration Board (created to resolve certain land use disputes) from denying access to mineral claims even where it determines there would be undue interference with a landowner's buildings or operations. Instead, the Board is now limited to specifying the conditions on which access must be permitted and the compensation to be paid in exchange for the access.

INCREASING MINING INDUSTRY RIGHTS TO PUBLIC LAND

Bill 54 also increases mining industry access to public land by specifying that a land use designation or objective does not or will not preclude application by a mineral claim holder for any form of permission, or approval of that permission, required for mining or exploration activity. The only exceptions listed are

for parks, ecological reserves, protected heritage property or areas specifically prohibiting mining under the *Environment and Land Use Act*.

The explanation for this provision is that it increases the certainty that mineral claim holders (and their investors) will be allowed to proceed to the application phase for further work. In practice it means that any future exclusion of mineral development activities through land use zones will have to be formally legislated under a designation that prohibits mining. It is also important to consider this change as part of a broader range of changes affecting mineral exploration in particular. These changes include a move to allow claim staking to be done by marking a map from regional offices; reducing the regulation of mineral exploration through the 'streamlining' of the Mineral Exploration Code; and the proposal to increase the status of a mineral claim from a 'chattel' to an interest in land, which would increase rights to compensation for claim holders.

These increases in company rights and reduction in company responsibilities come on the heels of a new mining tax subsidy in the form of 'flow through' tax credit for mineral exploration investors. These weighty concessions to a single sector undermine the stated commitment to balanced land use planning and the fair treatment of all tenure holders.

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