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West Coast Environmental Law DEREGULATION BACKGROUNDER

BILL 32 – WASTE MANAGEMENT AMENDMENT ACT, 2002, PROPOSED PART 4.1

Proposed Changes To The *Waste Management Act* Exempting Mines From Parts Of The Contaminated Sites Regime

On Monday, April 15, 2002, the government introduced amendments to the *Waste Management Act* that will exempt mines from parts of the contaminated site process in BC. The changes signal the beginning of a shift away from the *Waste Management Act's* liability regime, which holds current, as well as past owners and operators, potentially responsible for environmental contamination.

Bill 32 reduces environmental protection, has the potential to let polluters escape from their obligation to clean up polluted mine sites and puts taxpayers more on the hook for costly clean ups.

Bill 32:

- Will not maintain current standards of environmental protection, contrary to Minister Joyce Murray's announcement.
- Will diminish the role the Ministry of Water, Land and Air Protection (MWLAP) plays in preventing environmental contamination from mining.
- Increases the potential for British Columbians to be left on the hook for environmental problems resulting from mining.

Background

Changes of this nature were considered by the previous government in 2000. At that time, the mining industry had raised concerns about duplication of site inspection requirements and about the allocation of corporate liability for environmental impacts associated with mineral exploration. When these changes were initially proposed, environmental groups raised serious concerns about the importance of the liability regime, and the need to ensure that the public does not bear the costs of cleaning up contamination from mining activities.

In response a small group of environmental NGO representatives met with representatives of the mining industry. The result was a Joint Submission to the government proposing measures that would address industry needs while maintaining environmental protection. Environmental NGOs agreed, and recommended, that limited exemptions from the *Waste Management Act* occur in some cases, provided that the accountability mechanisms in the system are strengthened.

Bill 32 drops balanced approach

Bill 32 gives industry its liability exemptions, but drops the associated accountability mechanisms that were the condition of support for environmental organizations.

How does Bill 32 change the status quo?

- The primary regulatory authority at mines will now be the Ministry of Energy and Mines (MEM), which is also responsible for promoting mineral exploration in BC. MWLAP loses much of its authority to protect the environment at mine sites.

- MWLAP will no longer be able to issue remediation orders at active mines, except in limited circumstances, such as a request by the Chief Inspector of Mines. It also will no longer be able to issue pollution prevention or pollution abatement orders to previous owners where mineral exploration activity is occurring; these provisions will only apply to current mine site owners.
- It exempts previous owners from liability for future contamination provided certain – as yet unknown – conditions are met.¹ Entrenching this exemption without defining the conditions under which it will occur is a real concern. Stringent conditions are essential to ensure that the environment remains protected and that British Columbians will not be responsible for future clean up costs where environmental problems occur.
- It exempts mines from the financial security provisions of the *Waste Management Act*, meaning that only the reclamation bonding process operated by the Ministry of Energy and Mines will apply to mine sites. This reclamation bonding process only addresses restoring the mine site and is well known to be inadequate for that purpose. It does not ensure against environmental risk factors, and is inadequate to address such unforeseen events such as a tailings dam failure or a clean up from contamination.²

What could Bill 32 mean?

- More abandoned contaminated mine sites.
- Public liability replacing private liability for mine site clean up.

West Coast Environmental Law is concerned that these changes to the *Waste Management Act* are the first step in giving companies the right to pollute, without having to worry about the environmental problems they leave behind. Under the current system, the *Waste Management Act* ensures that contaminated land across the province can be cleaned up by holding previous owners potentially responsible. This operates as an incentive to polluters to take responsibility themselves, instead of walking away from environmental harm.

These liability provisions are particularly important with respect to mines. Even the mining industry has acknowledged the importance of this law in ensuring environmental problems are remedied. It was these provisions of the *Waste Management Act* that brought companies to the table to strike a deal to clean up the abandoned Britannia Mine on Howe Sound;³ the largest point source of toxic metals contamination in North America.

These proposed changes could expose the public to significant liability for clean-up of mine sites. In the well-known Britannia Mine case, the liability cost was in the tens of millions of dollars. If past owners are exempted under the proposed changes, the public could be on the hook for future similarly expensive clean ups.

If a private agreement is concluded on a mine site sale or transfer, the government will no longer be able to force the company that caused the contamination to clean it up. Even where a reclamation bond is in place, it will not necessarily protect the public from having to pay costs associated with environmental problems arising at a mine site. Without appropriate conditions, these changes mean that there could be even more abandoned mines in BC in a few years time.

¹ Bill 32 provides a regulation making power to develop criteria for these transfer agreements, but until these criteria are established, and entrenched in regulation, it means that mine transfers could occur freely.

² The size of financial security under the reclamation bonding process does not include environmental contingencies, such as spills. If the amount is calculated based on reclamation costs alone, and a spill occurs, the coverage provided through this process will be inadequate.

³ See “Britannia Cleanup costs ex-owners \$30 million”, Vancouver Sun, p. B1/B4, Friday, April 13, 2001.

What can be done differently?

Among other things, the Joint Submission recommended that:

- Reclamation bonding requirements under the *Mines Act* be strengthened; this is all the more important since Bill 32 exempts mines from the *Waste Management Act* financial security provisions. These requirements must be adequate to address any potential environmental risk.
- Accountability, notification, public consultation, and site investigation mechanisms for mine site sales or transfers need be strengthened before any mines should be exempted from the liability provisions of the *Waste Management Act*. Deferring these critical issues to a regulation process exposes the BC environment and BC taxpayers to potential liability.
- That an integrated ecological site assessment process be developed, that would deal with the concerns and permitting responsibilities of MWLAP and MEM in a more efficient way. Until this process is developed and finalized, no changes should occur to the existing legislation.

The safeguards necessary to provide for these legislative exemptions are not in place. There is a need for a transparent, rigorous and accountable process to consider the merits of these changes on a case-by-case basis if such changes are to proceed. Given the scope and extent of the government's agenda, and the pace at which legislative activity is occurring, we have serious concerns about whether these important mechanisms to ensure the balanced application of the Act will be developed in a timely way, if at all.