

# BC MINING LAW REFORM



## A note about Environmental Assessment

## University of Victoria Environmental Law Centre



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Strong environmental assessment laws are essential in order to protect the environment from mining.

The original draft of this publication contained a section on environmental assessment, which incorporated *A Blueprint for Revitalizing Environmental Assessment in British Columbia*—a joint policy statement issued by the Environmental Law Centre, West Coast Environmental Law, Ecojustice and Pacific Centre for Environmental Law and Litigation.

The *Blueprint* called for the new law to include the following components:

- BC's assessment regime establishes and meets substantive sustainability objectives;
- BC's assessment regime ensures climate targets are achieved;
- First Nations' jurisdictional authority is recognized and reflected in assessment process and outcomes;
- Jurisdictions collaborate in discharging their assessment responsibilities to the highest standard;
- Robust and informed public participation is established as a key component of assessment;
- Assessments contribute to the protection of human rights and environmental justice;
- Higher-level assessment and planning are tiered with project assessment to address strategic issues and manage cumulative effects;
- An independent body provides oversight and guidance to ensure BC's assessment regime meets its purposes;
- All projects and activities with implications for sustainability are assessed and tracked;
- New requirements strengthen the information base and ensure evidence-based decision-making;
- New decision-making requirements promote transparent, accountable assessment decisions;
- A right to appeal decisions provides a safety mechanism to ensure accountability;
- Strengthened monitoring and enforcement ensures sustainability after the assessment; and
- Appropriate funding enables the new assessment structure and processes to succeed.

The entire *Blueprint* statement is found at: <http://www.elc.uvic.ca/wordpress/wp-content/uploads/2018/04/2018-04-BlueprintForRevitalizingEAinBC-FINAL-v2.pdf>.

After the Blueprint was developed, the Province passed a new Environmental Assessment Act (Bill 51) which incorporated some—but not all—of the recommendations above. Government is currently developing new regulations for the Act. West Coast Environmental Law, the Environmental Law Centre, and members of the Mining Law Reform partnership are currently working on the evolving regulations, which will determine, to a great measure, how effective the Act will ultimately be. West Coast Environmental Law is taking a lead role in advocating regulations that could come closer to meeting the proposals in the *Blueprint*.

In particular, a new **Reviewable Projects Regulation** is being developed that will define the type of projects that must be assessed under the new law. That new Regulation must require:

- Environmental assessments for all mines, including placer mines;
- Environmental assessments for mining exploration activities when requested by First Nations or local communities;
- A new environmental assessment when a mine undergoes a major expansion such as the expansion at Mount Polley Mine before the disaster.

Environmental advocates are also making submissions to Government on the need for additional Environmental Assessment Act regulations, including:

- A **Balanced Evidence Regulation**, to reform the traditional corporate bias of the bulk of evidence considered in assessments -- and ensure that the body of evidence considered is objective and thoroughly peer-reviewed;
- A **Participant Funding Regulation**, to enable communities to participate fully and fairly in the environmental assessment process; and
- An effective **Regional and Strategic Assessment Regulation**.

Environmental advocates are in the process of developing a number of additional proposals for progressive regulations. To follow the latest proposals for regulations environmental assessment reform, see the websites of West Coast Environmental Law and the Environmental Law Centre.

1. **RECOMMENDATION: Fully implement and legislate A Blueprint for Revitalizing Environmental Assessment in British Columbia.**

**2. RECOMMENDATION:** Require environmental assessments for all mines; for mining exploration activities when requested by First Nations or local communities; and for major expansions of existing mines.

**3. RECOMMENDATION:** Implement regulations to ensure that the evidence in the environmental assessment process is balanced, objective, and thoroughly peer-reviewed; that funding for participants in environmental assessments is ample and stable; that needed Regional and Strategic Assessments are effectively implemented; and that perpetual-care costs are fully considered in the assessment of all mines.