

October 8, 2014

Office of the Information and
Privacy Commissioner
PO Box 9038
4th Floor – 947 Fort Street
Victoria, BC V8W 9A4

Dear Commissioner Denham:

RE: Request that the Commissioner Investigate Government's Apparent and Potential Breaches of the *Freedom of Information and Protection of Privacy Act* in Restricting Public Access to Documents Related to the Mount Polley Mine Disaster

Request that the Commissioner Recommend Reform to the *Act* to Require Routine Public Posting of Mining Permits and Related Amendments; Orders; and Engineering, Safety Inspection and Tailings Storage Facility Reports, as Required in Other Jurisdictions

The Environmental Law Centre at the University of Victoria respectfully requests that you exercise your powers under sections 42(1)(a) and 42(2)(a) of the *Freedom of Information and Protection of Privacy Act* (FIPPA)¹ to investigate an apparent systematic series of breaches of the Act by the British Columbia Government, arising from its refusal to promptly release documents in possession of government related to the Mount Polley tailings dam collapse. Government's delay in releasing documents that should be released relevant to the greatest mining environmental disaster in BC history is a matter of clear and pressing public interest.

Whether or not you find statutory breaches by Government, we request that you recommend reform of the *Act* to require routine public posting of critical environmental information such as impact assessments; permits; amendments; orders; and engineering, tailings storage facility and safety inspection reports, as is currently required in a number of other jurisdictions. It is alarming that the Government of British Columbia is delaying and refusing the release of documents of the sort that are routinely required to be posted *online* in places like Ontario and

¹ [RSBC 1996] C. 165.

the USA. The fact that such documents are currently being withheld by the provincial government is also a striking failure to serve the public interest, as required by s.25 of FIPPA.²

Furthermore, as discussed below, the delay in the release of these documents may prevent critical evidence and witnesses to events at Mount Polley from ever coming to the attention of the engineering panel appointed by the provincial government to investigate the disaster.

A. Apparent Breaches of FIPPA

Government has committed apparent statutory breaches of FIPPA by generally delaying or refusing timely access to key documents related to the Mount Polley disaster. As noted below, this appears to be a general and deliberate policy to withhold all such documentation. This deprives the public of key information at a time when such information is urgently needed – when the public must have information about the most pressing environmental issue facing British Columbia today.

The release of this information is necessary to educate the public about the documented history of the Mount Polley mine. Perhaps more important, it is also necessary to bring forward witnesses who may recognize and respond to the troubling information that is likely in those documents. For example, a single 2010 Tailings Storage Facility Report³, that an enterprising *Vancouver Sun* reporter has uncovered, reveals reports of:

- a previous crack in the dam,
- the failure of a large percentage of the sensors in the dam, and
- the failure to fully construct buttressing.⁴

It is vital that similar reports from other years not be concealed from people who may have vital additional information⁵ to give to the expert engineering panel on such issues. That panel is to finish its report by January 31, 2015 – so the need for public disclosure is *urgent*.

The provincial government's refusal to provide timely access is not only highly troubling, but verges on the absurd. For example, government has refused specific requests to provide the following:

² See Appendix A: [RSBC 1996] C. 165, s.25.

³ These tailing storage facility reports make up a part of the *Annual Environmental and Reclamation Reports* (as appendices).

⁴ See Appendices D, E and F.

⁵ As discussed below, mine workers and members of the public may have additional information – which they *may not know* is relevant – to add to aspects of the Tailings Storage Facility Reports to which Premier Clark has indicated the panel has access – “the dam crack information ... is forming part of her government's inquiry” (See Appendix E: Rob Shaw, “‘Sense of coverup’ on Mount Polley safety reports, NDP leader charges”, *The Vancouver Sun* (26 September 2014).

- **A copy of the 1992 and 1997 Environmental Assessment documents for the Mount Polley Mine.**

It is only because the public libraries are not under the control of a secretive provincial government that the public has – after some pains and happenstance – obtained the 1992 environmental assessment document which has sat for two decades in the public realm on the shelves of the Williams Lake public library.⁶

On August 18th 2014, the Environmental Law Centre formally requested that the Environmental Assessment Office provide the Environmental Assessment documents for Mount Polley Mine from 1992 and 1997 (See Appendix B). On September 11th 2014, the Director of Client Communications and Engagement for the Environmental Assessment Office (EAO) responded:

“...[We] are not in a position to make them available to you at this time. Once a determination has been made as to whether the file contents are or are not applicable to any of the investigations or reviews, we will be in touch. You do have the option of filing a Freedom of Information request, if you wish.” (See Appendix C)

The official’s reference to the option of filing a freedom of information request was ironic, since, in fact, a formal request pursuant to section 5 of FIPPA had already been made (See Appendices A and B). This bureaucratic request would unduly delay the release of documents that should legally have been produced forthwith. This bureaucratic response is especially troubling, in light of your recent report documenting the system-wide failure of government to respond to freedom of information requests within legal time limits. As you pointed in *A Step Backwards: A Report Card on Government’s Access to Information Responses*, Government routinely breaches legal time limits in responding to formal requests – and the Government’s timeliness has deteriorated significantly in the last two years.⁷

- **Copies of the routine Tailings Storage Facility Reports for the Mount Polley Tailings Storage Facility.**

Again, it is fortunate that the Government of British Columbia has not had censorship control over local public libraries. For years, the company has been required to file annual environmental and reclamation reports with the public library.⁸ By chance, an enterprising *Vancouver Sun* reporter discovered a copy of the 2010 Tailings Storage Facility Report on the

⁶ Note that the 1997 extension documents have still not been obtained. Cariboo Regional District Public Library, Williams Lake Branch.

⁷ See the CBC news article and the link to the Commissioner’s report at <<http://www.cbc.ca/m/touch/canada/britishcolumbia/story/1.2775926>>.

⁸ Cariboo Regional District Public Library, Williams Lake Branch.

shelves of the public library (See Appendix D).⁹ However, while the 2011-2013 environmental and reclamation reports are also available in the library, the attached Tailings Storage Facility Reports¹⁰ are reportedly missing.¹¹

When the reporter asked the provincial government for the 2011-2013 Tailings Storage Facility Reports, Chief Inspector of Mines Al Hoffman apparently responded with a written statement saying that he has advised the ministry not to release or comment on materials related to the Mount Polley investigation. “Sharing or commenting on the information contained in these materials could impact the integrity of the ongoing investigations,” Hoffman said. He added that after the investigation is complete, findings and other “appropriate” documentation will be made available to the public and media (See Appendix D).¹²

We submit that these routine documents – which have always been intended as public documents, since they are routinely filed in the public library – must be disclosed to the public forthwith. Indeed, if the documents are not disclosed, the engineering panel investigation may be incomplete. Already, one worker has come forward with a very different description of events than that given by the company and government. That worker claims that the dam was not being properly maintained, and that the company had failed to reinforce the dam as planned.¹³ Disclosure of the requested Tailings Storage Facility Reports is likely to raise *additional* issues that will likely bring forward *additional* witnesses and evidence for the engineering panel.

Disclosure of such documents is necessary for informed public debate about – and fulsome government consideration of – the regulatory changes needed to avoid a repetition of this environmental disaster. Disclosure is clearly necessary in the public interest. Indeed, these documents are a classic example of documents that must be disclosed under the “public interest” provision in s.25 of FIPPA.

⁹ See Appendix D: Gordon Hoekstra, “Crack in Mount Polley mine’s dam noted in 2010 inspection report”, *The Vancouver Sun* (26 September 2014); See Appendix F: Vaughan Palmer, “No cracks in the B.C Liberals’ stonewall on Mount Polley”, *The Vancouver Sun* (29 September 2014).

¹⁰ These tailing storage facility reports make up a part of the *Annual Environmental and Reclamation Reports* (as appendices).

¹¹ Note that the 2011 Safety Review has also not been filed with the library. See Appendix M: B.C Tap Water Alliance, *Polleygate: What did they know and when did they know it?* (Vancouver: BCTWA, 2014).

¹² See Appendix D: Gordon Hoekstra, “Crack in Mount Polley mine’s dam noted in 2010 inspection report”, *The Vancouver Sun* (26 September 2014).

¹³ See Appendix P: Brian Hutchinson, “Anger and confusion after worst disaster in Canadian mining history darkens B.C. town”, *The National Post* (12 September 2014).

Government's Apparent Breach of s. 25(1)(b) of FIPPA¹⁴

We submit that by establishing a general policy of withholding such basic documents as the Environmental Assessment report and routine Tailings Storage Facility Reports, the provincial government is in breach of s. 25(1)(b) of FIPPA, which states:

Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

...(b) the disclosure of which is, for any other reason, clearly in the public interest.

In response to a previous submission from the Environmental Law Centre, you articulated the test for when a public body is obliged to release documents under s. 25(1)(b). You stated:

In considering whether to disclose information pursuant to s.25(1)(b), a public body must conduct a two-step analysis.

- *First, there must be an urgent or compelling need for disclosure of the information.*
- *Second, there must be a sufficiently clear public interest in disclosure of the information in question.*

In order for there to be a clear public interest, the information must contribute in a substantive way to the body of information that is already available to enable or facilitate effective use of various means of expressing public opinion and making political choices¹⁵

...

The potential interest of the public in learning about an issue does not necessarily make disclosure of that information “clearly” in the public interest; rather, it must further the education of or debate among the public on a topical issue.¹⁶[Emphasis Added]

¹⁴ Our complaint regarding a breach of section 25 is complementary to the BCFIPA's complaint and the current investigation. The current investigation concerns determination of the BC government's section 25 “duty to warn” – that is, section 25(1)(a), the duty to disclose to the public information “about a *risk* of significant harm to the environment or the health or safety of the public or a group of people”¹⁴. We noted in our 2011 submission that British Columbians had been relatively lucky, in that “the withholding of information by public bodies [had] not yet resulted in a worst-case scenario”; after Mount Polley, this statement no longer holds true. Clearly, the duty to forewarn the public, and potentially avert major disasters is extremely important. Also important is the duty to publicly disclose information “clearly in the public interest” *after* a disaster – section 25(1)(b). We respectfully submit a complaint concerning a breach of section 25(1)(b) *following* the Mount Polley disaster.

¹⁵ The Supreme Court of Canada (SCC) has also provided recent guidance on the meaning of “public interest”. In *Grant v. Torstar Corp.*, the SCC found that to be of public interest, the subject “must be shown to be one *inviting public attention*, or about which the public has some substantial concern because it *affects the welfare of citizens* or one to which *considerable public notoriety or controversy has attached*. ” [Emphasis added] (*Grant v. Torstar Corp.*, 2009 SCC 61, [2009] 3).

¹⁶ *Investigation Report F13-05 – Information & Privacy Commissioner for B.C.*, pp. 10-1.1

Regarding the first step, we have discussed above why there is an “urgent or compelling need” for disclosure of this information. If these basic documents are not released, information may be excluded from the public realm at a time when critical deliberations and decisions are being made about important environmental and mining policies. If these basic documents are not released, long-term political and policy decisions may be made on the basis of an incomplete set of evidence and facts.

The second step raises the issue of whether it is in the “public interest” to disclose the Mount Polley Environmental Assessments and Tailing Storage Facility Reports. Disclosure of such basic documents will clearly “contribute in a substantive way” to the body of available information so that the public can make “political choices”. It will clearly “further the education of or debate among the public on a topical issue”.

The Mount Polley Mine disaster:

- has affected a wide range of citizens and First Nations communities;
- has created risk to both the environment and public health;
- may create hundreds of millions of dollars in potential taxpayer liability to clean up;
- is surrounded by intense public debate in major media about the adequacy of BC mining regulations; and
- raises profoundly important questions about the lack of transparency of the Government of British Columbia.

A former Commissioner ruled that a matter is “clearly in the public interest” if it is of “clear gravity and present significance to the public interest.”¹⁷ Decisions of the Office of the Information and Privacy Commissioner also confirm that the public interest is heightened in matters surrounded by controversy.¹⁸ Very few public issues raised have been of such clear gravity and present significance to the public interest – and the Mount Polley Mine disaster has created the highest level of controversy. See the attached editorials and article (Appendices N, O, and P) as an example of the importance of the public and policy debate that has arisen around this matter.¹⁹

In sum, we submit that there is an urgent and compelling need for disclosure of information related to the Mount Polley disaster, which is “clearly in the public interest”. It is also significant to note that s.25(1)(b) applies despite any other provisions in FIPPA.²⁰

¹⁷ [2002] B.C.I.P.C.D. No. 38, at para 65.

¹⁸ [2002] B.C.I.P.C.D. No. 38, at para 148.

¹⁹ See Appendix N: Citation: Vancouver Sun, “Editorial: Tailings Pond Breach (SIC.) Warrants Scrutiny”, *The Vancouver Sun* (7 August 2014); See Appendix O: Time Colonist, “Editorial Opinion”, *The Times Colonist* (8 August 2014); See Appendix P: Brian Hutchinson, “Anger and confusion after worst disaster in Canadian mining history darkens B.C. town”, *The National Post* (12 September 2014).

²⁰ See Appendix A: [RSBC 1996] C. 165, s.25(2).

Thus, following the Mount Polley disaster, the Tailing Storage Facility Reports, and any other relevant information on the tailings breach, should have been *proactively* released under s. 25(1)(b). Indeed, according to the wording of s.25(1)(b) such documents should have been released *without a request* and “without delay”. Certainly, when *requests* for such routine and historical documents were received, the provincial government should have promptly released them.

Instead, information following the disaster has been released selectively by government officials. This selective release of information has the potential to mislead the public about important public policy questions. For example, Ministers have vigorously resisted the possibility that the dam disaster could have been avoided by diligent regulators and could have been predicted. Premier Christy Clark claimed that it was a “mystery” how the tailings pond breached.²¹ Energy and Mines Minister Bill Bennett called the breach an “extremely rare” occurrence²² (See Appendix H).²³ Bennett went on to refute reports “that there had been red flags at the mine over the years” (See Appendix I).²⁴ Environment Minister Mary Polak also claims “she was not aware of workers formally raising concerns about the tailings pond before it breached” (See Appendix K).²⁵

In support of government’s claim that the event could not have been predicted, Bill Bennett, British Columbia’s Minister of Energy and Mines, told the media on August 18th:

“You know, what happens at mines sites where they have tailings ponds is they actually have electronic sensors within the dam. They keep track of water pressure, they keep track of any sort of movement, *if there is any kind of tremor or if the dam moves, even just a millimeter, these sensors are supposed to pick it up. And I’m told that the sensors did not pick up anything in the case of Mount Polley.*”²⁶ [Emphasis Added]

²¹ See Appendix G: Stephen Hume, “Independent review needed following Mount Polley collapse”, *The Vancouver Sun* (10 August 2014); Global News, “Raw: Christy Clark speaks about Mount Polley mine disaster”, *Global BC* (7 August 2014), at 4:17 - 4:38.

²² Bennett failed to mention the 46 “dangerous or unusual occurrences” that have reported at tailing ponds in B.C between 2000 and 2012 (See Appendix H: Canadian Press, “Science matters: Mount Polley: A wakeup call for Canada’s mining industry”, *Beacon News* (27 August 2014).

²³ See Appendix H: Canadian Press, “Science matters: Mount Polley: A wakeup call for Canada’s mining industry”, *Beacon News* (27 August 2014).

²⁴ See Appendix I: Andrea Woo, “Water meets drinking criteria, but long-term effects unknown”, *Vancouver Sun* (07 August 2014).

²⁵ This is in stark contrast to the reports from Knight Piseold engineers that the “embankments and the tailing pond were getting large” and the Ministry of Environment’s claim that “it warned Mount Polley ... five times” – the most recent warning being in May, which suggested “the amount of wastewater in storage exceeded allowable levels” (See Appendix L: Bob Mackin, “Mine Disaster: Government shirked legal duty to warn public, says advocate”, *The Tyee* (11 August 2014); See Appendix K: Sunny Dhillon, “Mine workers said to have reported safety worries in months before spill”, *Vancouver Sun* (08 August 2014).

²⁶ CBC Radio, “Independent Review of Mount Polley, Public vs. Private School, *CBC Radio Almanac British Columbia* (18 August 2014), at 16:45 – 17:06.

Yet, it is only because a *Vancouver Sun* reporter discovered the 2010 Tailings Storage Facility Report in the Williams Lake library – a report of the same type that the government is now refusing to release – that a critically important fact about those sensors has come to light (See Appendix D). The 2010 Tailings Storage Facility Report showed that, at the time of that inspection, a full 40 per cent of the aforementioned electronic sensors were *broken* and needed to be replaced – and that this problem had persisted for *four years*. It is clearly *not* in the public interest that selective information be released about the Mount Polley disaster without the release of important context (such as that found in the aforementioned routine historical documents).²⁷

We note also that the same 2010 Tailings Storage Facility Report additionally reported that a 10-15 metre long tension crack existed in the tailing pond perimeter wall – the “same embankment where a section failed” and caused the tailings disaster (See Appendix D).²⁸ The report also indicates that a buttress was meant to be constructed along the entire length of the dam as an added safety precaution, but instead, had only been completed on one side (See Appendix F).²⁹

Yet none of this information was released by the government. The people of British Columbia are only aware of it because an enterprising reporter found himself with time on his hands at the public library (See Appendix F).³⁰

It is important to note that the public has no way of knowing whether these sensors or the tension crack had since been repaired (or, alternatively, whether they led to the disaster). This is because the government continues to refuse to release the other Tailings Storage Facility Reports.³¹ Yet such reports would have routinely been released in many jurisdictions, as noted below. Because such reports have not been released in British Columbia, the debate about important mining policy and law issues is seriously impoverished.

It is also critical to note that information about the crack in the dam, about the damaged sensors, about the incomplete buttressing is exactly the kind of information that would likely cause mine workers and other potential witnesses to come forward and present their evidence to the independent engineering panel. There are a number of Mount Polley employees with relevant information concerning problems³² with the dam, but they may not come forward with fulsome information if documents like the 2010 report are concealed.

²⁷ See Appendix D: Gordon Hoekstra, “Crack in Mount Polley mine’s dam noted in 2010 inspection report”, *The Vancouver Sun* (26 September 2014); See Appendix F: Vaughan Palmer, “No cracks in the B.C Liberals’ stonewall on Mount Polley”, *The Vancouver Sun* (29 September 2014).

²⁸ See Appendix D: Gordon Hoekstra, “Crack in Mount Polley mine’s dam noted in 2010 inspection report”, *The Vancouver Sun* (26 September 2014).

²⁹ See Appendix F: Vaughan Palmer, “No cracks in the B.C Liberals’ stonewall on Mount Polley”, *The Vancouver Sun* (29 September 2014).

³⁰ See Appendix F: Vaughan Palmer, “No cracks in the B.C Liberals’ stonewall on Mount Polley”, *The Vancouver Sun* (29 September 2014).

³¹ Appendices to the 2011-2013 *Annual Environmental and Reclamation Reports*.

³² Mount Polley employees have said that they had concerns about the tailings pond, indicated the water was too high and the pond was in danger of breaching, said it was looking dangerous, and indicated that they told both the company and their union of these concerns before the accident (See Appendix K: Sunny Dhillon, “Mine workers said to have reported safety worries in months before spill”, *Vancouver Sun* (08 August 2014).

It should be noted that the whistleblowing foreman, Gerald MacBurney, came forward with immensely important information in response to the original news of the disaster.³³ Similarly, public disclosure of the information in the concealed tailings storage facility reports may well remind other workers of problems or information that those individuals have heretofore not considered relevant. Technical information in inspection reports may identify specific problems and trigger worker memories of things that they observed at the tailings facility.

Other Apparent FIPPA Breaches

It is also arguable that government has not only breached its duty to proactively release routine historical documents like the environmental assessment reports and the Tailings Storage Facility Reports— but has breached sections 6(1), 13(2)(f), 13(3) and 15(3)(a) of FIPPA by failing to respond in a timely manner to requests for release of the above documents.

The aforementioned reporter from the *Vancouver Sun*, Gordon Hoekstra, indicates that the government “*refused to provide*” the 2007-2013 Tailings Storage Facility Reports on Mount Polley (See Appendix D).³⁴ In a written statement, Chief Inspector of Mines, Al Hoffman, stated that “he has advised the Ministry not to release or comment on materials related to the Mount Polley investigation”, which he concluded would “impact the integrity of the ongoing investigations”.³⁵

In addition, as discussed above, on August 18th 2014, one of our staff lawyers made an FOI request³⁶ for the 1992 original Mount Polley environmental assessment and 1997 environmental assessment certificate extension, and was told by the EAO that due to the ongoing investigations, they were “not in a position to make [the documents] available” until it had been determined the files were “not applicable to any of the investigations or reviews” (See Appendices B and C).

Furthermore, it has also been alleged that the government has also refused to release similar public documents to the Official Opposition (See Appendix M).³⁷ If true, this refusal would hinder the Opposition in discharging its vital public interest role of holding government to account in the Legislature. It would also be inconsistent with long-standing parliamentary traditions, under which *all* members of the Legislature receive information they request that is necessary for them to discharge their role of holding the administration of the day to account.

³³ See Appendix P.

³⁴ See Appendix D: Gordon Hoekstra, “Crack in Mount Polley mine’s dam noted in 2010 inspection report”, *The Vancouver Sun* (26 September 2014).

³⁵ See Appendix D: Gordon Hoekstra, “Crack in Mount Polley mine’s dam noted in 2010 inspection report”, *The Vancouver Sun* (26 September 2014).

³⁶ See Appendices A and B: The request was made pursuant to s.5 of FIPPA.

³⁷ See Appendix M: B.C Tap Water Alliance, *Polleygate: What did they know and when did they know it?* (Vancouver: BCTWA, 2014).

At the very least, these actions demonstrate, if not a systematic and widespread policy, a disturbing refusal to release previously *published and distributed* public documents.

These denials by the Government of British Columbia to readily provide information to the public on such an important issue are arguably in breach of several sections of FIPPA:

First, s.6(1) requires that the head of a public body must make *every reasonable effort* to assist applicants; denying FOI requests for documents which were otherwise available through the public library suggests that this s.6(1) duty was breached.

Furthermore, in the case of the Environmental Law Centre's request, the documents in question were the 1992 environmental impact assessment and the 1997 certificate extension. While these documents may include advice and recommendations to or from the Ministry of Environment – which the head of a public body may refuse to disclose per s.13(1) – the statute is explicit that the head of a public body *must not refuse to disclose*:

- an environmental impact statement or similar information (s.13(2)(f)) or
- a document which is over 10 years old (section 13(3)).³⁸

Thus, there is an apparent breach of s. 13(2)(f) and 13(3) which we ask you to investigate.

Furthermore, environmental impact assessments and related documents such as certificate extensions are routinely releasable and normally placed on the e-PIC (Project Information Centre) website of the Environmental Assessment Office.³⁹ There is absolutely no justification for a selective refusal of the same documentation for the Mount Polley mine.

However, it should be noted that the government is relying on s.15 to withhold these documents. As Environment Minister Mary Polak has stated, government is withholding these documents to “protect the integrity and independence of [the] investigations to ensure that [they] do not compromise the ability to prosecute under the *Mines Act* or other legislation, should the investigation determine that to be warranted” (See Appendix E).⁴⁰

It is absurd to suggest that release of a 1992 Environmental Assessment Report or routinely-published Tailings Storage Facility Reports that were published and released to public libraries could affect prosecutions.

Section 15 deals with “disclosure harmful to law enforcement”, and law enforcement, as defined under Schedule 1 to FIPPA, includes “investigations that lead or could lead to a penalty or

³⁸ See Appendix A: [RSBC 1996] C. 165, s.13.

³⁹ See <http://a100.gov.bc.ca/appsdata/epic/html/deploy/epic_home.html>.

⁴⁰ See Appendix E: Rob Shaw, “‘Sense of coverup’ on Mount Polley safety reports, NDP leader charges”, *The Vancouver Sun* (26 September 2014).

sanction being imposed.”⁴¹ However, pursuant to section 15(3)(a), the head of a public body *must not refuse to disclose* “a report prepared in the course of routine inspections by an agency that is authorized to enforce compliance with an Act”.

The Tailings Storage Facility Reports, while carried out by the company’s engineers, not a Ministry, would in our view be included under this exception. If routine inspection reports by government officials cannot be withheld, it follows that routine inspection reports required for compliance with the *Mines Act* – delegated pursuant to mining ministry guidelines⁴² – would also fall under this exception.

The key point is that release could not possibly be “disclosure harmful to law enforcement” as contemplated by s.15. Unlike police investigation reports – which s.15 addresses – such routine Tailings Storage Facility Reports could not possibly “tip off” the subject of the Mount Polley investigation and compromise a future prosecution. The fact is that the company being investigated and the regulators that may have made mistakes already have all these documents. The only people without the documents – the people being kept in the dark – are the *public* of British Columbia, including the people who live by or near Hazeltine Creek, Polley Lake or Quesnel Lake.

Neither could release of this information harm the engineering investigation pursuant to the *Mount Polley Investigation and Inquiry Regulation*. Inquiries routinely make this type of evidence publicly available to honour the “open court” principle. It is paternalistic for government to suggest that the professional judgment of the engineers appointed to this investigation will be impaired by release of such basic, historic documents. Regardless, there is no statutory authority for government to refuse to disclose the documents on this basis.

In sum, the apparent and potential breaches described above undermine the transparency and accountability functions – and ultimately, the core⁴³ – of FIPPA.

B. The Key Issue – An Urgent Need for Law Reform

The current level of public disclosure of information about this incident is obviously inadequate. This concealment of information is likely to impair our ability to understand what happened at Mount Polley, and to make sure it never happens again. The Mount Polley Mine disaster has revealed that three things are seriously broken in British Columbia:

- the Mount Polley Mine tailings dam;

⁴¹ See Appendix A: [RSBC 1996] C. 165, Schedule 1.

⁴² Knight Piésold Consulting, *Mount Polley Mining Corporation Mount Polley Mine – Tailing Storage Facility Report on 2010 Annual Inspection* (Vancouver: Knight Piésold Ltd.: 2011).

⁴³ The two pillars of FIPPA are (1) *Ensuring accountability of public bodies* and (2) Protecting personal privacy. Accountability is promoted through public disclosure and transparency. See Appendix A: [RSBC 1996] C. 165, s.2.

- the British Columbia environmental regulatory system; and
- the openness of government in sharing routine and historical documents about environmental assessments and safety inspections.

In regard to the last of these, we ask you to make recommendations for a number of reforms to FIPPA to enhance public disclosure, and ultimately, accountability, transparency, and open government.

While Mount Polley has again highlighted the inadequacies in Government transparency, the problem is certainly not new. In 2011, the B.C Auditor General's Office carried out an audit of the EAO's oversight of certified projects; the audit concluded that the "Environmental Assessment Office is not making appropriate monitoring, compliance and outcome information available to the public to ensure accountability."⁴⁴

The Auditor General determined that the findings of compliance and enforcement activities are not regularly published. Furthermore, there is the problem of delayed public disclosure. As outlined in our 2012 submission⁴⁵, there is evidence of a systemic province-wide failure to disclose information to the public under s.25 in a *timely* manner. Your law reform recommendations in response, in Investigation Report F14-05, addressed a key part of the problem. The "major recommendation" was that government "remove the requirement of temporal urgency" from s.25(1)(b) as "[t]here should be a mandatory obligation in FIPPA for a public body to proactively disclose information to the public or to an affected group of people when it is clearly in the public interest to disclose even without there being temporal urgency."⁴⁶

In your 2010-2011 annual report, you identified the basic principles that should apply:

- "the best way to respect the spirit in which FIPPA was enacted is to *make the proactive release of information in the hands of government the default practice...*"
- a FIPPA request "*should be a last resort, only when it is readily apparent that exceptions to the right of access are likely to be applicable.*"⁴⁷

Implementation of your recommendations could go a long way towards addressing the problems described above.

⁴⁴ Office of the Auditor General of British Columbia, *An Audit of the Environmental Assessment Office's Oversight of Certified Projects*, (Victoria, OAGBC: Report 4 2011).

⁴⁵ Environmental Law Centre, *Submission to the Information and Privacy Commissioner: Request for an Investigation into Disregard of Section 25 of FIPPA by Government Bodies* (Victoria, ELC: 2012).

⁴⁶ OIPC Investigation Report F14-05.

⁴⁷ Office of the Information and Privacy Commissioner for British Columbia, *2010-2011 Annual Report*, (Victoria: OIPC, 2011).

Two Key and Necessary Reforms

In addition, however, there are two reforms in particular that would help address all of the above problems:

- Government should take steps under s.71(1) of FIPPA to establish that all mining permits and related amendments; orders; and engineering, tailings storage facility, and safety inspection reports fall under a category of record which must be made publicly available *without* a request for access, and
- Government should require that these same documents be posted on a centralized online database, routinely and in a timely manner.

Establishing Categories of Records That Must Be Publicly Made Available

One way to ensure the appropriate release of information in terms of important public-interest environmental information would be for ministerial action to be taken pursuant to s. 71(1) of FIPPA. Pursuant to this section, the Minister responsible for FIPPA:

“may establish categories of records that are in the custody or under the control of one or more ministries and are available to the public without a request for access under [FIPPA]”.

In light of the importance of access to public-interest environmental information and considering recent breaches surrounding access to environmental assessments and reports, we submit that environmental studies should be established as a s.71(1) category at the earliest possible opportunity. This would not be a difficult or time-consuming task in the slightest, and could certainly be done without consultations with the companies involved.

Requiring the Posting of Documents on an Online Database

The law needs to be reformed to require the online posting of mining permits and related amendments; orders; and engineering, tailings storage facility, and safety inspection reports. With mining in particular, under the *Mines Act*, the Chief Inspector of Mines must submit an annual report. These reports can only be accessed directly from the regional mines office – making the information largely *inaccessible*.⁴⁸ Inspection reports are currently scattered in different files and locations (such as the Mount Polley Annual Environmental and Reclamation

⁴⁸ Maya Stano and Emma Lehrer, *Fair Mining Practices: A New Mining Code for British Columbia*, (Victoria: Fair Mining Collaborative, 2013).

Reports found through the Williams Lake public library) making them difficult for the public to access.

In contrast, we note that BC touts the first (and one of the few existing in the world) online mineral claim registration systems – Mineral Title Online. This means that miners can access online databases showing mineral claims across the province, and stake a claim from anywhere in the world (without having to physically step foot on the claim area). Ironically, those who live in the area do *not* have access (online or otherwise) to mining permits and related amendments; orders; and engineering, tailings storage facility, and safety inspection reports regarding projects in their communities.⁴⁹

The Auditor General has already recommended that “the EAO provide appropriate accountability information for projects certified through the environmental assessment process”.⁵⁰ Modernizing access to information through the use of technology would be an easy way to achieve this; mandatory posting of *all* key environmental assessment and compliance documents would address the Auditor General’s concerns.

Several jurisdictions already require that these types of documents be made available to the public online. For example, the province of Ontario does a better job than B.C at creating access to such environmental information. The Ontario Ministry of Environment and Climate Change *proactively* makes environmental documentation publicly available via *online databases* such as Access Environment⁵¹ and the Environmental Registry.⁵²

Similarly, the Nunavut Water Board has an extensive online public registry with open access to current and historic documents relating to a host of environmental information relating to mining, industrial, municipal, power, agriculture, conservation and recreational authorizations.⁵³

In the US, the Environmental Protection Agency runs two databases:

- ECHO (enforcement and compliance history online), where enforcement and compliance documents are made publicly available for any type of facility located in the country.⁵⁴ and;
- EIS (environmental impact statement database), where the public can access all environmental assessments as well as follow up comments and documents.⁵⁵

⁴⁹ Maya Stano and Emma Lehrer, *Fair Mining Practices: A New Mining Code for British Columbia*, (Victoria: Fair Mining Collaborative, 2013).

⁵⁰ Office of the Auditor General of British Columbia, *An Audit of the Environmental Assessment Office’s Oversight of Certified Projects*, (Victoria, OAGBC: Report 4 2011).

⁵¹ <<http://www.accessenvironment.ene.gov.on.ca/AEWeb/ae/GoSearch.action?search=basic&lang=en>>.

⁵² <<http://www.ebr.gov.on.ca/ERS-WEB-External/>>.

⁵³ <<http://www.nwb-oen.ca/public-registry>>.

⁵⁴ <<http://www.echo.epa.gov>>.

⁵⁵ <<http://www.epa.gov/compliance/nepa/eisdata.html>>.

The US Federal Energy Regulatory Commission also maintains an extensive database of energy project documentation.⁵⁶

In Florida, *all* state, county and municipal records⁵⁷ are made open for personal inspection by any person; given “advancements in technology”, the Legislature advocates for access to these records “by remote electronic means”.⁵⁸

Conclusion

US Supreme Court Justice Louis Brandeis long ago made the case for Government transparency and release of public information, when he stated:

“Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”

In light of our submissions above, we request that you:

- pursuant to ss. 42(1)(a) and 42(2)(a), investigate the aforementioned apparent breaches of ss. 6(1), 13(2), 13(3), 15(3)(a), and 25(1)(b).
- make recommendations for law reform to provide for mandatory and routine online posting of all mining permits; amendments; orders; engineering, tailings storage facility, and safety inspection reports; and other related documents; and recommend that such documents be established as categories of records that must be made publicly available.

Sincerely,



Calvin Sandborn, Legal Director

⁵⁶ <http://www.ferc.gov/docs-filing/elibrary.asp>

⁵⁷ Public records are defined by statute as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, *made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency*” (Fla. Stat. secs. 119.01 to 119.15 (1995), at 119.01-119.011).

⁵⁸ Fla. Stat. secs. 119.01 to 119.15 (1995), at 119.01(e).



Mark Haddock, Barrister and Solicitor



Zaria Stoffman, Articled Student

c.c. Hon. Bill Bennett, Minister of Energy and Mines

Hon. Mary Polak, Minister of Environment

Appendix A - Cited FIPPA Legislation

Part 1 — Introductory Provisions

Purposes of this Act

- 2 (1) The purposes of this Act are to make public bodies more accountable to the public and to protect personal privacy by
- (a) giving the public a right of access to records,
 - (b) giving individuals a right of access to, and a right to request correction of, personal information about themselves,
 - (c) specifying limited exceptions to the rights of access,
 - (d) preventing the unauthorized collection, use or disclosure of personal information by public bodies, and
 - (e) providing for an independent review of decisions made under this Act.
- (2) This Act does not replace other procedures for access to information or limit in any way access to information that is not personal information and is available to the public.

Part 2 — Freedom of Information

Division 1 — Information Rights and How to Exercise Them

How to make a request

- 5 (1) To obtain access to a record, the applicant must make a written request that
- (a) provides sufficient detail to enable an experienced employee of the public body, with a reasonable effort, to identify the records sought,

(b) provides written proof of the authority of the applicant to make the request, if the applicant is acting on behalf of another person in accordance with the regulations, and

(c) is submitted to the public body that the applicant believes has custody or control of the record.

(2) The applicant may ask for a copy of the record or ask to examine the record.

Duty to assist applicants

6 (1) The head of a public body must make every reasonable effort to assist applicants and to respond without delay to each applicant openly, accurately and completely.

(2) Moreover, the head of a public body must create a record for an applicant if

(a) the record can be created from a machine readable record in the custody or under the control of the public body using its normal computer hardware and software and technical expertise, and

(b) creating the record would not unreasonably interfere with the operations of the public body.

Division 2 — Exceptions

Policy advice or recommendations

13 (1) The head of a public body may refuse to disclose to an applicant information that would reveal advice or recommendations developed by or for a public body or a minister.

(2) The head of a public body must not refuse to disclose under subsection (1)

(a) any factual material,

(b) a public opinion poll,

- (c) a statistical survey,
- (d) an appraisal,
- (e) an economic forecast,
- (f) an environmental impact statement or similar information,
- (g) a final report or final audit on the performance or efficiency of a public body or on any of its policies or its programs or activities,
- (h) a consumer test report or a report of a test carried out on a product to test equipment of the public body,
- (i) a feasibility or technical study, including a cost estimate, relating to a policy or project of the public body,
- (j) a report on the results of field research undertaken before a policy proposal is formulated,
- (k) a report of a task force, committee, council or similar body that has been established to consider any matter and make reports or recommendations to a public body,
- (l) a plan or proposal to establish a new program or activity or to change a program or activity, if the plan or proposal has been approved or rejected by the head of the public body,
- (m) information that the head of the public body has cited publicly as the basis for making a decision or formulating a policy, or
- (n) a decision, including reasons, that is made in the exercise of a discretionary power or an adjudicative function and that affects the rights of the applicant.

(3) Subsection (1) does not apply to information in a record that has been in existence for 10 or more years.

Disclosure harmful to law enforcement

15 (1) The head of a public body may refuse to disclose information to an applicant if the disclosure could reasonably be expected to

- (a) harm a law enforcement matter,
- (b) prejudice the defence of Canada or of any foreign state allied to or associated with Canada or harm the detection, prevention or suppression of espionage, sabotage or terrorism,
- (c) harm the effectiveness of investigative techniques and procedures currently used, or likely to be used, in law enforcement,
- (d) reveal the identity of a confidential source of law enforcement information,
- (e) reveal criminal intelligence that has a reasonable connection with the detection, prevention or suppression of organized criminal activities or of serious and repetitive criminal activities,
- (f) endanger the life or physical safety of a law enforcement officer or any other person,
- (g) reveal any information relating to or used in the exercise of prosecutorial discretion,
- (h) deprive a person of the right to a fair trial or impartial adjudication,
- (i) reveal a record that has been confiscated from a person by a peace officer in accordance with an enactment,
- (j) facilitate the escape from custody of a person who is under lawful detention,
- (k) facilitate the commission of an offence under an enactment of British Columbia or Canada, or
- (l) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system.

(2) The head of a public body may refuse to disclose information to an applicant if the information

(a) is in a law enforcement record and the disclosure would be an offence under an Act of Parliament,

(b) is in a law enforcement record and the disclosure could reasonably be expected to expose to civil liability the author of the record or a person who has been quoted or paraphrased in the record, or

(c) is about the history, supervision or release of a person who is in custody or under supervision and the disclosure could reasonably be expected to harm the proper custody or supervision of that person.

(3) The head of a public body must not refuse to disclose under this section

(a) a report prepared in the course of routine inspections by an agency that is authorized to enforce compliance with an Act,

(b) a report, including statistical analysis, on the degree of success achieved in a law enforcement program or activity unless disclosure of the report could reasonably be expected to interfere with or harm any of the matters referred to in subsection (1) or (2), or

(c) statistical information on decisions under the *Crown Counsel Act* to approve or not to approve prosecutions.

(4) The head of a public body must not refuse, after a police investigation is completed, to disclose under this section the reasons for a decision not to prosecute

(a) to a person who knew of and was significantly interested in the investigation, including a victim or a relative or friend of a victim, or

(b) to any other member of the public, if the fact of the investigation was made public.

Division 4 — Public Interest Paramount

Information must be disclosed if in the public interest

25 (1) Whether or not a request for access is made, the head of a public body must, without delay, disclose to the public, to an affected group of people or to an applicant, information

(a) about a risk of significant harm to the environment or to the health or safety of the public or a group of people, or

(b) the disclosure of which is, for any other reason, clearly in the public interest.

(2) Subsection (1) applies despite any other provision of this Act.

(3) Before disclosing information under subsection (1), the head of a public body must, if practicable, notify

(a) any third party to whom the information relates, and

(b) the commissioner.

(4) If it is not practicable to comply with subsection (3), the head of the public body must mail a notice of disclosure in the prescribed form

(a) to the last known address of the third party, and

(b) to the commissioner.

Part 4 — Office and Powers of Information and Privacy Commissioner

General powers of commissioner

42 (1) In addition to the commissioner's powers and duties under Part 5 with respect to reviews, the commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may

(a) conduct investigations and audits to ensure compliance with any provision of this Act or the regulations,

- (b) make an order described in section 58 (3), whether the order results from an investigation or audit under paragraph (a) or an inquiry under section 56,
- (c) inform the public about this Act,
- (d) receive comments from the public about the administration of this Act,
- (e) engage in or commission research into anything affecting the achievement of the purposes of this Act,
- (f) comment on the implications for access to information or for protection of privacy of proposed legislative schemes or programs or activities of public bodies,
- (g) comment on the implications for access to information or for protection of privacy of automated systems for collection, storage, analysis or transfer of information,
- (h) comment on the implications for protection of privacy of using or disclosing personal information for data linking,
- (i) authorize the collection of personal information from sources other than the individual the information is about, and
- (j) bring to the attention of the head of a public body any failure to meet the prescribed standards for fulfilling the duty to assist applicants.

(2) Without limiting subsection (1), the commissioner may investigate and attempt to resolve complaints that

- (a) a duty imposed under this Act has not been performed,
- (b) an extension of time for responding to a request is not in accordance with section 10 (1),
- (c) a fee required under this Act is inappropriate,
- (d) a correction of personal information requested under section 29 (1) has been refused without justification, and
- (e) personal information has been collected, used or disclosed in contravention of Part 3 by

- (i) a public body or an employee, officer or director of a public body, or
- (ii) an employee or associate of a service provider.

Part 6 — General Provisions

Records that ministries must disclose

- 71.1** (1) Subject to subsection (2), the minister responsible for this Act may establish categories of records that are in the custody or under the control of one or more ministries and are available to the public without a request for access under this Act.
- (2) The minister responsible for this Act must not establish a category of records that contain personal information unless the information
- (a) may be disclosed under section 33.1 or 33.2, or
 - (b) would not constitute, if disclosed, an unreasonable invasion of the personal privacy of the individual the information is about.
- (3) Section 22 (2) to (4) applies to the determination of unreasonable invasion of personal privacy under subsection (2) (b) of this section.
- (4) The minister responsible for this Act may require one or more ministries to disclose a record that is within a category of records established under subsection (1) of this section or section 71 (1).
- (5) If required to disclose a record under subsection (4), a ministry must do so in accordance with any directions issued relating to the disclosure by the minister responsible for this Act.

Schedule 1

Definitions

In this Act:

"law enforcement" means

- (a) policing, including criminal intelligence operations,
- (b) investigations that lead or could lead to a penalty or sanction being imposed, or
- (c) proceedings ±

Appendix B – Environmental Law Centre FOI Request

From: Mark Haddock
Sent: August 18, 2014 6:30 PM
To: Doug.Caul@gov.bc.ca
Cc: Chris Tollefson
Subject: Mt. Polley assessment & certificate extension

Dear Mr. Caul,

I am putting together materials for a fall semester course in environmental law, and would like to locate some environmental assessment documents that I couldn't find on the EAO website. I understand that the Mt. Polley mine was assessed under the Mine Development Assessment Act, and that a certificate was issued in 1992 and then extended in 1997 under the Environmental Assessment Act of 1995. Can you please advise where I can find the environmental assessment and certificate extension documents? Would they be available through your office? If necessary, please consider this a formal request for them.

Thank you in advance for your assistance,

Mark Haddock
Assistant Teaching Professor
Faculty of Law
University of Victoria
250-721-8180
mhaddock@uvic.ca
Skype: markhaddock
Environmental Law Centre: www.elc.uvic.ca

This message, including any attachments, is confidential and may be protected by solicitor-client privilege. It is intended only for the use of the person to whom it is addressed. Any distribution, copying or other use by anyone else without my express authorization is strictly prohibited. If you have received this email in error, please notify me immediately and delete the message from your system. Thank you.

Appendix C – Response to Environmental Law Centre FOI Request

From: Leake, Greg EAO:EX [Greg.Leake@gov.bc.ca]
Sent: September 11, 2014 11:38 AM
To: Mark Haddock
Cc: Kennedy, Karla EAO:EX
Subject: Mt. Polley Files

Mark:

Since we first discussed this matter, the Government of BC has announced a number of initiatives to investigate or review the incident at the Mt. Polley mine.

We are in the process of having our records reviewed to see whether they are relevant to any of the various ongoing processes and as such, are not in a position to make them available to you at this time.

Once a determination has been made as to whether the file contents are or are not applicable to any of the investigations or reviews, we will be in touch.

You do have the option of filing a Freedom of Information request, if you wish.

I will be out of the office for the next three weeks, so I have included my colleague Karla Kennedy in this email. She will be your contact in my absence.

Cheers,

G.

Greg Leake

Director

Client Communications & Engagement

BC Environmental Assessment Office

(250) 387-2470

Appendix D – Media Stories Cited

Crack in Mount Polley mine's dam noted in 2010 inspection report

Imperial Metals, B.C. government refuse to comment on report, cite ongoing investigation into dam's collapse

BY GORDON HOEKSTRA, VANCOUVER SUN SEPTEMBER 26, 2014



A aerial view shows the debris going into Quesnel Lake caused by a tailings pond breach near the town of Likely, B.C. Tuesday, August, 5, 2014. The pond which stores toxic waste from the Mount Polley Mine had its dam break on Monday spilling its contents into the Hazeltine Creek causing a wide water-use ban in the area.

Photograph by: Jonathan Hayward , THE CANADIAN PRESS

A 2010 dam safety inspection at the Mount Polley gold and copper mine identified several concerns, including the discovery of a 10 to 15-metre long “tension” crack in the earthen dam.

The crack was discovered in the perimeter wall, the same embankment where a section failed Aug. 4 of this year, releasing millions of cubic metres of water and tailings containing potentially toxic metals into Hazeltine Creek and Quesnel Lake.

“A tension crack does not necessarily indicate a plane of weakness in fill materials but it can’t be ignored either,” Knight Piesold, the company’s geotechnical engineering firm at the time, said in its report obtained by The Vancouver Sun.

Knight Piesold recommended a stability assessment be carried out, and told the company the crack should have been reported to them immediately. It was noticed by a grader operator two months before the engineer’s inspection on Oct. 7, 2010, and had been partly covered over with dirt.

No signs of distress were identified at the tailings embankments other than the tension crack, the report said.

Other concerns identified by Knight Piesold included that 40 per cent of 92 instruments that measure water pressure in the dam were broken and needed to be replaced before the height of the dam was raised. The height of the dam is raised on an almost continual basis to contain rising levels of water and tailings.

Replacing the instruments, called piezometers, had already been identified as an issue in 2006 during a more detailed dam safety review conducted by engineering firm AMEC.

The 2010 report offers the first documented details of concerns that had been raised specifically about the tailings dam at Mount Polley mine.

Until now, concerns raised after the dam’s collapse have focused on the challenges the mine faced in dealing with too much water in the tailings storage facility.

It is unknown if the concerns raised in 2010 were addressed by Imperial Metals.

The company declined to respond to questions on if, and how, they had dealt with the issues raised by Knight Piesold.

Steve Robertson, Imperial Metals vice-president of corporate affairs, said the company would not comment during investigations of the dam collapse.

Those investigations are being carried out by the B.C. Conservation Service, B.C.’s chief inspector of mines, the company and a panel of geotechnical experts appointed by the B.C. government.

“It’s an important conversation, but the timing isn’t right. It would best take place after the investigations are complete,” Robertson said Thursday.

“It would be foolhardy to talk about it now,” he said.

Imperial Metals president Bryan Kynoch has said previously the company followed engineers' instructions on dam design and construction.

The B.C. Ministry of Energy and Mines also declined to discuss the concerns raised in the 2010 dam inspection report or make an official available for an interview.

The provincial government also refused to provide the 2011-2013 dam and tailings facility inspection reports, which the company is required to have completed annually by a professional engineer under provincial law.

In a written statement, chief inspector of mines Al Hoffman said he has advised the ministry not to release or comment on materials related to the Mount Polley investigation. "Sharing or commenting on the information contained in these materials could impact the integrity of the ongoing investigations," Hoffman said.

After the investigation is complete, findings and other "appropriate" documentation will be made available to the public and media, he said.

The Sun obtained the dam inspection reports for 2007-2010 from the Cariboo Regional District Library in Williams Lake, where they have been routinely filed by Imperial Metals for some years as part of comprehensive annual environmental and reclamation reports.

Other concerns raised in the 2010 inspection report include:

- A buttress for the dam meant to be constructed along its entire length was only constructed on the west side.
- The company had continuing problems with creating tailings beaches in the storage facility, formed when tailings are deposited at the embankment. Knight Piesold noted the Ministry of Energy and Mines had identified this as a "deficiency" in a 2008 geotechnical inspection. The beach is considered an important buffer between the dam's embankment and water in the pond.
- A recommendation that the consequence of failure ranking for the dam be reviewed, specifically considering the potential damage to downstream fish and/or wildlife habitat based on a breach for the dam's final height. Because of the extended life of the mine, the height of the dam was expected to be higher than the original design.

Few issues were raised by Knight Piesold in its 2007-2009 inspections.

The 2010 inspection was the last that Knight Piesold conducted for Mount Polley.

Knight Piesold, the firm that designed the tailings dam, issued a public statement after the dam collapse saying it warned the company and provincial officials that the structure was “getting large” and care needed to be taken to avoid problems.

B.C. Mines Minister Bill Bennett has characterized the Knight Piesold letter to the province as routine.

Knight Piesold did not respond to a request for an interview.

AMEC, the firm that conducted tailings facility inspections after 2010, also declined to comment.

Appendix E – Media Stories Cited

‘Sense of coverup’ on Mount Polley safety reports, NDP leader charges

BY ROB SHAW, VANCOUVER SUN SEPTEMBER 26, 2014



NDP leader John Horgan said Energy and Mines Minister Bill Bennett has a public obligation to explain what, if anything, the government did to address a tension crack in the Mount Polley mine dam.

Photograph by: GLENN BAGLO , PNG

VICTORIA — The B.C. government’s refusal to release inspection reports for the Mount Polley mine dam is “nonsense” and smells like a coverup, according to the province’s Opposition leader.

NDP leader John Horgan said Energy and Mines Minister Bill Bennett has a public obligation to explain what, if anything, the government did to address a tension crack in the earthen dam that was highlighted in a 2010 safety inspection the province has tried to keep hidden.

“To have a four-year-old record showing a 10- to 15-metre tension crack at the mine site is something the government should have responded to,” said Horgan. “If Mr. Bennett has nothing to hide, he should demonstrate government took this information and acted upon it.”

The government again refused Friday to discuss the report or provide subsequent inspection reports from 2011-2013, citing that it can't share any information during its ongoing investigation into how the dam breached.

"Government must protect the integrity and independence of these investigations to ensure that we do not compromise the ability to prosecute under the Mines Act or other legislation, should the investigation determine that to be warranted," Environment Minister Mary Polak said in a statement.

"The suggestion that government should provide comments or information that could compromise these investigations is completely irresponsible."

The government won't release the full 2010 report either. But The Vancouver Sun located it in the Cariboo Regional District Library in Williams Lake, where mine owner Imperial Metals has filed previous annual environmental and reclamation reports.

"It strikes me that rather than full transparency we have a sense of coverup," said Horgan. "And I would expect Mr. Bennett would want to clear his good name and the name of the energy ministry by releasing every scrap of paper."

The government's insistence that it is somehow prohibited from releasing any previous inspection reports or other information during its investigation into the breach is ridiculous, said Horgan, because it was the province that set the investigation's terms of reference and appointed its investigators.

"It's nonsense," he said. "The inquiry in no way hampers their ability to release information they were responsible for."

Premier Christy Clark said the dam crack information obtained by The Sun is forming part of her government's inquiry. "We are in the midst of an incredibly important independent inquiry," she told radio station CKNW on Friday.

"We are going to get the answer about what happened. We are sparing no one in looking at that, in making sure the contents of the article today in The Sun are in the hands of the folks who have been investigating this for awhile. We have to figure out what happened."

Clark said getting answers is "urgent" because there are other mines similarly operating in the province. She brushed aside any suggestion that a private fundraiser from the controlling shareholder of Imperial Metals Corp. in 2012 — which raised \$1 million for her party's re-election bid — has in any way compromised her government's handling of the breach.

Appendix F – Media Stories Cited

Vaughn Palmer: No cracks in the B.C. Liberals’ stonewall on Mount Polley

Government, company hide behind investigations on tailings dam collapse

BY VAUGHN PALMER, VANCOUVER SUN COLUMNIST SEPTEMBER 29, 2014



An excavator atop the Mount Polley tailings dam is dwarfed by the massive structure in this aerial perspective. The B.C. government is refusing to release inspection reports into the Aug. 4 collapse, which drained 24 million cubic metres of tailings and water into nearby creeks and lakes.

Photograph by: JONATHAN HAYWARD , THE CANADIAN PRESS

VICTORIA — As reporter Gordon Hoekstra tells it, he was marking time for a flight out of Williams Lake earlier this month and he decided to see what the regional library had on file about the troubled Mount Polley mine.

Inspection reports, he knew, were often filed at local libraries. Routine disclosure, public scrutiny; that sort of thing.

Sure enough, on checking the stacks at the Cariboo Regional District Library, he found a trove of inspection reports on the Imperial Metals gold and copper mine northeast of Williams Lake.

However, there was a glitch. An appendix to the 2010 report, covering the inspection of the tailings dam — the one whose collapse on B.C. Day this year flushed 24 million cubic metres of water and tailings downstream — was contained on a CD-ROM.

Last year's technology and not something he could read on his up-to-date laptop. Could the library staff help? They could. An older laptop was exhumed from the back shop and Hoekstra was able to load the text onto a transportable memory stick for digesting in detail when he got home to Vancouver.

"Crack in Mount Polley mine's dam found in 2010 inspection," declared the headline atop the resulting news story on the front page of The Vancouver Sun Friday.

The offending 10- to 15- metre tension crack was in the same earthen embankment whose fracture had led to the massive tailings spill this year. It had been discovered by a grader operator at the dam site in late summer 2010 but not reported to Knight Piesold, the mine's then-geotechnical engineering firm.

By the time the inspector got to looking it over two months later, the crack had been partly covered with dirt. "A tension crack does not necessarily indicate a plane of weakness in fill materials but it can't be ignored either," wrote Knight Piesold, atop a recommendation that a stability assessment of the tailings dam be carried out forthwith.

Nor was that the only cause for concern to emerge from the report. Forty per cent of the 92 instruments used to gauge the buildup of water pressure at the dam were broken and in need of replacement. Moreover, the replacement problem had first been identified in a safety report four years earlier.

The inspection also recorded the company's continuing problems with establishing tailings "beaches" in the storage facility behind the dam. These beaches are an essential buffer between the tailings deposited on the embankment and the water in the pond.

And so on through a finding that a buttress, meant to be constructed along the entire length of the dam, had only been completed on one side; plus a call for an updated review on the consequences for the downstream fishery if the dam were to fail, given that it was older and higher than anticipated in the initial plan.

On the latter point, Knight Piesold knew whereof it spoke, having designed the tailings dam in the first place. But the 2010 report was the last time the firm was retained to inspect the Mount Polley facility.

When the dam collapsed, the firm issued a public statement saying it warned the company and provincial officials that the structure was “getting large” and care needed to be taken to avoid problems.

All of which raised the question of whether the concerns identified in the report had been addressed, and if so, how and to what end.

How did they deal with the crack? Was there a full-blown assessment of the stability of the tailings dam, as recommended by the inspector? Did the company repair or replace the full stock of piezometers, the technical name for those instruments used to measure water pressure on the dam? Did they follow the advice calling for an update on the consequences of a failure of the tailings dam?

Seeking responses, Hoekstra didn’t get far. Imperial Metals declined to discuss the disposition of the findings in the 2010 report, saying it would be “foolhardy” to comment, pending the outcome of a trio of ongoing investigations into the breach of the tailings dam.

The provincial government took refuge there as well. “The suggestion that government should provide comments or information that could compromise these investigations is completely irresponsible,” said the statement attributed to environment minister Mary Polak.

“We are in the midst of an incredibly important independent inquiry,” Premier Christy Clark told host Michael Eckford on radio station CKNW Friday. “We are sparing no one in looking at that, in making sure we understand ... and the contents of that article today in The Sun have been in the hands of the folks that are investigating this for a while.”

As well as asking what was done with the 2010 recommendations, the reporter also pressed the government to release inspection reports on the tailings dam for the years 2011-2013 as those were not on file at the library in Williams Lake.

The Liberals nixed the request — never mind that those reports should be as much a part of the public record as the one from 2010.

Given all the doubts raised about the mining sector by the Mount Polley disaster, you’d think the Liberals would be scrambling to document their performance as independent regulator, rather than joining the company in hiding behind a stone wall of convenience.

Appendix G – Media Stories Cited

Stephen Hume: Independent review needed following Mount Polley collapse

Government and industry have failed to learn from 50 years of tailings dam disasters

BY STEPHEN HUME, VANCOUVER SUN COLUMNIST AUGUST 10, 2014



The Mount Polley accident occurred on a tributary which connects to a river basin that is home to 63 per cent of B.C.'s population. About 2.4 million people live along the Fraser River in 32 downstream communities and Metro Vancouver.

Photograph by: Ric Ernst , PROVINCE

So, we have the catastrophic failure of a tailings pond dam releasing almost 15 million cubic metres of toxic slurry into the most important river system in British Columbia and nobody knows why it happened. The company says it is mystified by the collapse. The provincial government says it had been regularly monitoring the dam to ensure compliance.

But we do know several things.

First, the Mount Polley accident on August 4 occurred on a tributary which connects to a river basin that is home to 63 per cent of B.C.'s population. About 2.4 million people live along the Fraser River in 32 downstream communities and the urban sprawl that is Metro Vancouver. That's where any toxins escaping from the spill are ultimately bound.

Second, the dam didn't fail because of an act of god or black magic by some anti-mining necromancer. The dam failed because of its design, or its construction methods and materials, or its flawed operational management. Logic dictates that there is no other explanation.

Third, while the mining company Imperial Metal is accountable for the design, construction and operational management of the dam it deploys to contain its hazardous mine waste, the provincial government is responsible for ensuring that the design is adequate, the construction methods are fully up to current safety code, and the dam is properly operated within rigorous safety margins that prevent downstream hazard to people or the environment.

Clearly, this did not happen. So the prescribed design, the construction methods and materials or the operational management standards and the government's approval, monitoring and enforcement protocols must be inadequate in some way.

There are about 20 other operating mines and a number of abandoned mines with similar tailing pond dams in B.C. If they were built to the same standards as Mount Polley's, and are monitored under the same protocols, every one of them must presumably be considered at risk of a sudden, unexplained collapse.

This basic analysis alone demands a complete review that is independent of the two parties to this accident — industry and government — in view of determining wider implications for the public interest.

Perhaps this is why mines minister Bill Bennett says he has been unable to sleep. It's because the loud thud of the buck called ministerial responsibility for Mount Polley landing on his desk is giving him nightmares. In fairness, it's not just the minister who is accountable, but he carries the can.

Now, if the Mount Polley tailings pond dam breach were a unique event, one might sympathize with industry and government for being confronted with something new and unusual for which adequate design, construction and operational protocols might have to be devised.

But breaches of mines tailings ponds like this are not new. Since 1960 there have been more than a hundred such major containment dam failures reported worldwide.

Thus, when Bennett says the Mount Polley accident "gives us about the best reason a person could have to really take a step back. Every Canadian has to be concerned about this. This will cause everyone in government across the country to re-examine policies," he invites the question, why has it taken so long to arrive at this self-evident conclusion?

Appendix H – Media Stories Cited

Science Matters: Mount Polley: A wake up call for Canada's mining industry

Canadian Press | August 27, 2014 |



Mount Polley tailings pond breach spilled millions of cubic metres of waste into salmon-bearing streams. Photo courtesy Cariboo Regional District Emergency Operations Centre.

When a tailings pond broke at the Mount Polley gold and copper mine in south-central B.C., spilling millions of cubic metres of waste into a salmon-bearing stream, B.C. Energy and Mines Minister Bill Bennett called it an “extremely rare” occurrence, the first in 40 years for mines operating here.

He failed to mention the 46 “dangerous or unusual occurrences” that B.C.’s chief inspector of mines reported at tailings ponds in the province between 2000 and 2012, as well as breaches at non-operating mine sites.

This spill was predictable. Concerns were raised about Mount Polley before the breach. CBC reported that B.C.’s Environment Ministry issued several warnings about the amount of water in the pond to mine owner Imperial Metals.

With 50 mines operating in B.C. – and many others across Canada – we can expect more incidents, unless we reconsider how we’re extracting resources.

Sudden and severe failure is a risk for all large tailings dams – Mount Polley’s waste pond covered about four square kilometres, roughly the size of Vancouver’s Stanley Park. As higher-grade deposits become increasingly scarce, mining companies are opting for lower-grade alternatives that create more tailings. As tailings ponds grow bigger and contain more water and waste than ever before, they also become riskier. The average height of a Canadian tailings dam doubled from 120 metres in the 1960s to 240 metres today. Alberta writer Andrew Nikiforuk likens increasing mining industry risks to those of the oil sands.

Open ponds of toxic slurry aren't the best way to manage mining waste. Although there's no silver-bullet solution, and more research funding on alternative technologies is needed, smaller underground mines are finding safer ways to deal with waste by backfilling tailings. Drying tailings or turning them to a paste before containment are two other options. Safer solutions cost more, making them less popular with profit-focused corporations. But surely B.C.'s \$8-billion mining industry can afford to pay more for public and environmental safety.

The government allows the mining industry to choose the cheapest way to deal with waste, and companies often lack adequate insurance to cover cleanup costs when accidents happen. Imperial Metals admits its insurance will likely fall far short of what's required to repair the damage at Mount Polley.

The mining industry and provincial and federal governments must do a better job of managing risks. But how can this happen when we're facing unprecedented dismantling of Canada's environmental regulations and decreased funding for monitoring and enforcement?

Although the B.C. government rightly appointed an independent panel of three top mining engineers to review the cause of the Mount Polley breach and report back with recommendations, the lack of an environmental or cultural perspective on the panel makes it unlikely we'll see meaningful industry reform. And even the most thorough reviews remain ineffective without implementation commitments – a point made clear by the federal government's failure to act on the Cohen Commission's 75 recommendations on the decline of Fraser River sockeye.

Canada's mining industry must also work more closely with First Nations, some of which are challenging industrial activity in their territories. The Tahltan blockaded Imperial Metals' nearly completed mine in the Sacred Headwaters, and the Neskonlith Indian Band issued an eviction notice to an Imperial subsidiary, which proposed an underground lead-and-zinc mine in Secwepemc Territory in the B.C. Interior. With the Supreme Court's Tsilhqot'in decision affirming First Nations' rights to land and resources within their traditional territories, we're likely to see more defending their lands against mining and other resource extractions.

The Mount Polley tailings spill threatens two of B.C.'s most valued resources: salmon and water. As one of the largest sockeye runs enters the waterways to spawn, we must wait to find out the long-term repercussions for Polley Lake, Quesnel Lake and aquatic life further downstream.

This disaster has eroded public trust in the mining industry and regulations governing it. If risks are too high and long-term solutions unavailable or too expensive, the only way to ensure that toxic tailings are kept out of our precious waterways and pristine landscapes may be to avoid mining in some areas altogether.

As the government rallying cry of "world-class safety standards" echoes in our ears, it's time we lived up to our self-proclaimed reputation.

Dr. David Suzuki is a scientist, broadcaster, author and co-founder of the David Suzuki Foundation. Written with contributions from David Suzuki Foundation Communications Specialist Jodi Stark.

Appendix I – Media Stories Cited

Water meets drinking criteria, but long-term effects unknown

ANDREA WOO

VANCOUVER — The Globe and Mail

Published Thursday, Aug. 07 2014, 1:51 PM EDT

Last updated Friday, Aug. 08 2014, 7:47 AM EDT

The water quality near the site of the massive tailings-pond breach this week meets drinking-water standards, according to preliminary test results, but the long-term impact on fish habitats and other

Jennifer McGuire, executive director of regional operations at the B.C. Ministry of Environment, delivered the news Thursday afternoon at a public meeting in the rural community of Likely. With her were Premier Christy Clark, Energy and Mines Minister Bill Bennett and Interior Health medical health officer Trevor Corneil.

Medical health officers and water specialists collected samples from three sites at Quesnel Lake and looked at pH levels, turbidity, suspended and dissolved solids, E.coli, dissolved metals and more, Ms. McGuire said.

“All results came back meeting the requirements for Canadian and B.C. drinking-water standards,” she said to applause from residents. “This is very good news.”

But she likened the preliminary assessments to a blood glucose test for diabetics: “You can stick [a needle] in and get a number back ... but if you want a real workup on your hemoglobin and blood count, it’s got to go to a lab. Our samples have to go to a lab where they are run through special equipment.”

With transportation factored in, some of those tests – which will ideally shed some light on the long-term impacts of the disaster – can be expected in three days. Other testing will continue for some time, she said.

The tailings-pond dam at Imperial Metals’ Mount Polley mine burst early Monday morning, spewing millions of cubic metres of mining waste into the Cariboo district’s waterways and triggering a local state of emergency. A water-usage ban has left up to 300 residents dependent on bottled water and refilling jugs from communal tanks. Residents are also advised not to swim or bathe in the water, or feed it to pets or livestock.

Dr. Corneil said the ban will remain in place until Polley Lake – which drains into Quesnel Lake – can be tested as well.

The area around Polley Lake has been unstable, which has hampered water-testing efforts to date. Mr. Bennett said Imperial Metals has a ministry-approved plan to pump some water out of Polley Lake into neighbouring pits to mitigate the risk of tailings coming loose and rushing into Hazeltine Creek.

Since 2012, the Ministry of Environment has conducted 14 inspections on the Mount Polley mine site, issuing five warnings. On Wednesday, Mr. Bennett had refuted reports that there had been red flags at the mine over the years, noting only one of the five warnings related to water levels.

"I've been told on numerous occasions that this company was 'repeatedly warned about the water levels in their tailings pond,' " he said. "That is not true; that is not the case. ... This company has been warned once about water levels in its tailings impoundment. This company has had five directives from government about issues around the mine site, one of which dealt with the water levels in the tailings pond."

According to records obtained from the Ministry of Environment, the four other warnings were for "bypassing treatment works" in April, when spring melt blocked a pump system and resulted in effluent overflow; failing to submit data for groundwater monitoring wells in both January and April of 2012; and failing to report excess effluent height for the perimeter pond in August, 2012. In the August incident, the perimeter pond overflowed, releasing about 150 cubic metres of waste water.

Mr. Bennett also rejected the claim that cuts to environmental staff at the B.C. government may have contributed to the disaster. A 2011 report by the Environmental Law Centre at the University of Victoria on environmental enforcement and securities at B.C. mines found "successive staff and budget cuts have had significant impacts on their enforcement capabilities."

According to the 2012 annual report of the chief inspector of mines, inspections plummeted from 2,021 in 2001 to 449 in 2003, climbing slowly over the years to reach 1,163 in 2012. In 2011, just 628 mine inspections were carried out.

"I know that the inspections of tailings ponds are as frequent today as they were five years ago," Mr. Bennett had said Wednesday. "This is not an issue of not having enough inspectors on the ground."

Imperial Metals has not made president Brian Kynoch available for an interview with The Globe and Mail.

Appendix J – Media Stories Cited

Mount Polley dam breach not an environmental disaster: Mines Minister Bill Bennett

But First Nations, residents and environmentalists have ongoing concerns

BY GORDON HOEKSTRA, VANCOUVER SUN AUGUST 12, 2014



Members of the Xatsull and Esketmc First Nations hold a healing ceremony on the banks of the Quesnel River in Likely on Aug. 7 after 10 million cubic metres of mining effluent was spilled following a tailings dam break at Mount Polley mine. Premier Christy Clark and Mines Minister Bill Bennett are visible in the middle of the photo.

B.C. Mines Minister Bill Bennett says the Mount Polley tailings dam collapse is not an environmental disaster, equating it to the “thousands” of avalanches that happen annually in B.C.

Bennett, pointing to initial positive water readings, asserted his contention will be proven in the next several weeks.

Central B.C. First Nations, some area residents and Williams Lake mayor Kerry Cook have described the collapse of the dam as an “environmental disaster.”

The Aug. 4 collapse of a 300-metre section of the gravel and earth dam spewed 10 million cubic metres of water and 4.5 million cubic metres of finely ground up rock containing potentially toxic metals into Hazeltine Creek, Polley Lake and Quesnel Lake.

While the water readings in Quesnel Lake and Quesnel River have been positive, some residents, First Nations and environmentalists have raised concerns over the long-term effects of the sludge that poured into Hazeltine Creek and Quesnel Lake. It will also take longer to determine the environmental effects of the spill, including on salmon, they say.

Bennett acknowledged the dam collapse may be a mining industry, a geotechnical and a political disaster.

But he said that has to be separated from the environmental effects.

“Get up in a helicopter and go and look at the avalanches that happen in this province — there are probably 10,000 or 15,000 avalanches that happen every single year. Get up in a helicopter and go and look at what happened last spring with the events in the Rockies with water coming down and doing exactly what happened in Hazeltine Creek. The difference is that snow melts, (but) you are left with exactly the same (result) — it looks exactly the same as what happened in Hazeltine Creek,” said Bennett.

“It’s a mess. It’s a total mess, there’s no question about that ... What’s going to happen here, is we are going to be left with this opportunity to learn from this huge, profound mistake that’s been made here,” he said.

Bennett made his comments to The Vancouver Sun following the release of water-test results Saturday.

It was the third set of results that showed water met B.C. and Canadian water guidelines for metals such as arsenic, copper, mercury and selenium.

An E. coli test result (that passed guidelines) was also released Saturday for the mouth of Hazeltine Creek, the sample closest to where the water and tailings spilled into Quesnel Lake. The results for metals testing on the Hazeltine Creek water sample were not available by Monday.

Jay Ritchlin, the western region director general for the David Suzuki Foundation, said while there’s little doubt the dam collapse was “bad” and that it will require longer-term monitoring to determine its effects, he saw little use in arguing whether it was an environmental disaster.

Instead, said Ritchlin, the province should use the incident as a learning lesson.

He said the industry has to raise its environmental standards.

“It’s not a question of the sky is falling or the mining industry should be shut down, but we know that tailings management has advanced to the point that most really sophisticated mines dry and stack their tailings,” Ritchlin said. “They just don’t build the mud walls and put a bunch of wet, toxic soup behind it anymore.”

John Werring, senior science adviser with the David Suzuki Foundation, said he believed the dam collapse was an “environmental disaster” for the Hazeltine creek area, as the entire rich vegetation zone along its banks had been wiped out and along with it, the mammals, birds, amphibians and fish.

He argued for long-term monitoring, as well as for additional monitoring of chemicals toxic to fish called xanthates that are used in the mine milling process. (The Ministry of Environment did not immediately have an answer Monday on whether they were testing for xanthates).

Werring said he was also concerned about the effect on spawning sockeye salmon that will pass the area adjacent to Hazeltine Creek where tailings sediments poured into Quesnel Lake.

It could affect their physiology and their ability to find their spawning streams, he said.

Carl Walters, a professor emeritus at the University of B.C.’s Fisheries Centre, said he doesn’t believe the effects on spawning sockeye are likely to be great.

He noted that the main sockeye spawning tributaries enter Quesnel Lake well upstream of where the spill entered the lake. “The water sampling support my estimation that the nasty chemicals and slit were seriously diluted upon entry to Quesnel Lake,” he said.

Fisheries biologist Richard Holmes, who lives in the community of Likely located next to the Quesnel River near Mount Polley mine, noted there are reports that some of the outflow from the spill has been pushed up the lake. Holmes said while he believes the large amount of water in Quesnel Lake will minimize the damage, more monitoring is needed to determine effects on fish.

First Nations in the area, who state they don’t believe the government’s water tests, say they are going to begin testing salmon in the Mount Polley mine area to see if they are safe to eat.

“I challenge anyone to come up to our territory and look at this disaster and say everything is fine,” said Williams Lake Indian Band chief Ann Louie.

Appendix K – Media Stories Cited

Mine workers said to have reported safety worries in months before spill

SUNNY DHILLON

VANCOUVER — The Globe and Mail

Published Friday, Aug. 08 2014, 9:33 PM EDT

Last updated Friday, Aug. 08 2014, 9:37 PM EDT

Workers at a B.C. mine that spilled millions of cubic metres of waste into nearby waterways had reported concerns about the facility's tailings pond in the past, the union that represents them says.

Dean Colville, first vice-president of United Steelworkers Local 1-425, said on Friday that workers had shared their concern with the company in the months before the spill at the Mount Polley gold and copper mine.

"Having 300 workers there, you hear concerns from workers, saying, 'The water's too high, it might breach,'" Mr. Colville said in an interview. "Not everybody's saying it, but you get guys coming in who are saying, 'It's looking dangerous.'"

Mr. Colville said he did not know whether the complaints stopped with supervisors or went further. He said workers had advised the union they expressed their worries to the company.

"I do know, the last few months, people have been saying there's an issue," he said, although he added no concerns were raised immediately before the breach.

A spokeswoman for Imperial Metals Corp., which owns the Mount Polley mine, said the management team was busy with technical and stakeholder calls on Friday. The company did not immediately respond to a request for comment.

Environment Minister Mary Polak said in a conference call she was not aware of workers formally raising concerns about the tailings pond before it breached. However, she advised anyone with information about the spill to speak with the Conservation Officer Service, which is doing the investigation.

"We are very concerned with what we're hearing anecdotally from the community, those who have been employees, former employees, First Nations. We're asking them please, to come forward, to talk to our inspectors," she said.

The province on Friday announced that water samples from five locations in the Quesnel River met provincial and federal drinking water guidelines for a second straight day. As a result, all do-not-use water restrictions were lifted on part of the Quesnel River, including for the town of Likely.

A do-not-use order remained in effect for areas including Polley Lake, Hazeltine Creek, Cariboo Creek and all parts of Quesnel Lake.

The province said the flow out of the breach has decreased, but not stopped. Imperial Metals is constructing a berm to stop the flow, but it will take about three weeks.

The province has been accused of a lack of oversight at the mine, but it said the mine has had nine geotechnical inspections since it reopened in March, 2005.

The company had sought a permit amendment to increase the amount of treated effluent discharged from the tailings pond on July 11, which the province was considering at the time of the spill. When asked if the province needed to respond to such requests more quickly, Ms. Polak said it would not have prevented what occurred.

Standard and Poor's financial services company announced on Friday that it had lowered its ratings on Imperial Metals and that the company's outlook was negative. It said the Mount Polley mine accounts for most of the company's production and cash flow generation, and that based on the scope of the breach, it believes that cash flow will be materially affected.

Imperial Metals shares fell sharply more than 40 per cent the day after the spill.

The B.C. Mining Association earlier this week told The Globe and Mail the spill could lead to changes for the entire industry. The Mining Association of Canada reiterated that message on Friday, writing in a statement that it would review the incident to assess what could be learned and implemented to prevent recurrences.

Mr. Colville said most employees are working on cleanup and mitigation, but about 30 have been told to seek employment insurance.

He said much about the spill is unknown, including when the mine might reopen. He said some workers are concerned it will close for good.

Members of the Tahltan Nation on Friday said they plan to blockade Imperial Metals' Red Chris mine in response to the Mount Polley spill.

Appendix L – Media Stories Cited

Mine Disaster: Gov't Shirked Legal Duty to Warn Public, Says Advocate
Ministry knew Mount Polley dam posed threat, was legally bound to share info: transparency group.

By Bob Mackin, 11 Aug 2014, TheTyee.ca



Mary Polak on the day she was sworn in as environment minister, with Premier Christy Clark. Transparency advocates FIPA claims Polak's ministry was required by law to inform public it knew of environmental and public health threat at Mount Polley mine.

An advocate for government openness says the B.C. government failed to perform its statutory duty to warn citizens about the state of the Mount Polley mining waste dam before the Aug. 4 disaster.

The B.C. Freedom of Information and Privacy Association formally complained Aug. 8 to Information and Privacy Commissioner Elizabeth Denham based on the section of the Freedom of Information and Protection of Privacy Act that requires public bodies proactively disclose information regarding a risk of harm to the environment or public health.

"Regrettably, there is considerable similarity between the collapse of the Mount Polley tailings pond and the collapse of the Testalinden Dam, where you found the B.C. government had failed to carry out its duty to release information to the public about the danger," wrote Vincent Gogolek in his Aug. 11-released letter to Denham. "Given the circumstances in this case, we believe it is important to determine not just whether the B.C. government breached its duty to release information related to this situation, but also to determine whether the B.C. government has done anything to implement the recommendations in your Investigation Report of last December."

Public needs info to pressure gov't: ruling

Section 25, as it is formally known, trumps every other section of the Act, but it is open to "broad and inconsistent interpretation" by public bodies, Denham wrote in her Dec. 2, 2013 report.

Denham found the Ministry of Forests, Lands and Natural Resource Operations failed to meet its section 25 obligations since the law came into force in 1993. The Ministry withheld from the public the inspection reports that showed the 80-year-old Testalinden Dam near Oliver was near the end of its life and was a hazard to people and property downstream.

"The information about the risk of failure of the dam was information that the public did not know and that would have likely resulted in the local citizenry, at the very least, pressuring government to take remedial action," Denham wrote.

Denham recommended the law be softened, so that information could be released without "there being temporal urgency."

Enviro ministry warned mine operator, not public

The Ministry of Environment claimed it warned Mount Polley, operated by Imperial Metals Corp., five times. The most recent warning was in May, when the amount of wastewater in storage exceeded allowable levels.

B.C.'s Chief Inspector of Mines, Al Hoffman, was on the recipients list for a Feb. 10, 2011 letter to Imperial from consultant Knight Piesold. Knight Piesold's letter informed Imperial that it would not continue as engineer of record for the mine. It warned that embankments and the tailings pond were "getting large and it is extremely important that they be monitored, constructed and operated properly to prevent problems in the future."

The next month, AMEC Earth and Environmental took over as Mount Polley's engineer of record.

Appendix M – Media Stories Cited

B. C. TAP WATER ALLIANCE

Caring for, Monitoring, and Protecting
British Columbia's Community Water
Supply Sources

Email – info@bctwa.org

Website – www.bctwa.org



September 26, 2014

Media Release

POLLEYGATE: WHAT DID THEY KNOW, AND WHEN DID THEY KNOW IT?

Vancouver: This morning, [the Vancouver Sun reported critical information](#) from a 2010 inspection report about a “tension crack” in the Mount Polley mine’s Tailings dam, which was identified to be near to the source of the breach of the August 4, 2014 disaster.

Eager to know more about a pressing matter that has drawn international attention and triggered widespread interest and concern about the deregulated mining industry and its practices, the government refused to release subsequent annual inspection reports from 2011 to 2013 about the Mount Polley Tailings Storage Facility (TSF) to the Vancouver Sun, information which was to have been submitted by Imperial Metals mining company to the Williams Lake public library and other stakeholders. And, according to New Democratic Party Environment critic Spenser Herbert, the government has also refused to release public documents to the Opposition Party about the Mount Polley disaster, meant to stall any public issuance until January 2014.

The Vancouver Sun obtained the information about the “tension crack” at the Williams Lake public library, found in an Appendix section of the 2010 *Annual Environmental and Reclamation Report* published by Imperial Metals, an annual requirement specified in the Ministry of Mines Permit (M-200) for the copper mine since its operations began in 1997. Curiously, in the subsequent three Annual Reports filed by Imperial Metals, 2011-2013, the specific Appendixes dealing with the TSF, and any further discussions and reviews about the structural integrity of the tailings dam, are all conveniently ‘missing:’ “Appendix M - 2011 Annual Tailings Storage Facility Inspection (to be distributed in May 2012);” “The TSF and associated works were inspected in 2012 by AMEC Engineering. AMEC will complete the Annual Review in May 2013 and it will be available as Appendix L;” and “The TSF and associated works were inspected in 2013 by AMEC ... The completed “2013 As-Built and Annual Review Report” will be provided to MEM under separate cover from this report.”

“The Vancouver Sun has possibly unearthed a key clue about the Mount Polley tailings disaster, while also exposing the extreme unwillingness of the government to release previously published public documents. Why the Tailings Storage Facility documents are missing in Imperial Metals’ annual reports from 2011-2013 are a complete and utter mystery,” said Will Koop, BC Tap Water Alliance Coordinator. “While the government’s review of the Mount Polley mine disaster continues, it must immediately release these and all other reports to the public, to be posted on a website, so that we can investigate and decide for ourselves, thereby making the same critical conclusions as the appointed panel may ultimately deliver.”

Appendix N – Media Stories Cited

Editorial: Tailings pond breach (Sic.) warrants scrutiny

BY VANCOUVER SUN, VANCOUVER SUN AUGUST 7, 2014



An aerial view shows the damage caused by a tailings pond breach near the town of Likely. The pond, which stores toxic waste from the Mount Polley Mine, had its dam break on Monday, spilling its contents into the Hazelton Creek and causing a wide water-use ban in the area.

Photograph by: JONATHAN HAYWARD , THE CANADIAN PRESS

In any disaster of the magnitude of what occurred this week at Likely, where the failure of an earth containment dam released an estimated 10 million cubic metres of contaminated effluent and sediments from a mine tailings pond, there's a combined temptation for the public to rush to judgment and for authorities to rush to cover backsides with platitudes.

The fact the accident occurred on the eve of what promises to be a strong run of returning sockeye salmon to the productive Cariboo watersheds amplifies emotional responses but calm and reason are needed now, not finger-pointing, blame-casting or scapegoating; there will be time enough for considering accountability and liability later.

At this point, we should be governed by what we know and not what we assume.

We do know, for example, the effluent contained within the tailings pond had failed guidelines for human and aquatic health which is why, when the spill occurred, regional health authorities prudently and with an appropriate abundance of caution immediately issued a water-use ban for residential and agricultural purposes. But we still aren't certain how lethal the effluent plume will be as it dilutes in other water bodies. That's something we need to find out — and quickly — as we consider downstream implications and possible mitigation options and issues.

We know the dam failed. We don't yet know why. This is something we need to know quickly, too, because if a catastrophic collapse can affect one tailings pond containment dam without warning, it can affect others in the province. If we have a historic pattern of such breaches — as some scientific research suggests — we need to address the engineering issue promptly and vigorously before there's another serious incident like this one.

We know the regulatory regime imposed by government failed. We know it failed because regulations are supposedly in place to prevent precisely this kind of accident. If reports that prior concerns about the structural integrity of the tailings pond were raised by a First Nations band but went unheeded by the mining company and were not acted on by federal or provincial governments, then the failure is significant indeed. This, too, needs to be addressed promptly and aggressively.

Mines and mining are a provincial responsibility; fish-bearing waters that provide habitat to anadromous species such as sockeye salmon are a federal responsibility. In deregulation to create a more attractive investment climate for resource industries, have these authorities gone too far, abdicating their higher fiduciary duties to public stewardship? Certainly there have been concerns expressed about diminished federal emphasis on habitat protection and enforcement within the department of fisheries and oceans. Similar concerns have been raised regarding the effectiveness of provincial monitoring and enthusiasm for the enforcement of regulations. So this deserves scrutiny.

Finally, there's the issue of public trust. Like it or not — and too many industry leaders are in denial about it — the reach of social media and public engagement with that media means we have entered a new era when it comes to the social contract under which corporations have permission to conduct business. It's no longer sufficient simply to meet the letter of the law in meeting regulations. First Nations, community and other sectoral interests all need to be addressed, even if not entirely accommodated. In that context, this event has major implications for the future of mining and other primary resource development in the province so the prospect of industry investigating itself in the case of this accident while government pumps out talking points from crisis management consultants will be a non-starter.

Instead, we need an objective evaluation of what happened and the likeliest consequences, evidence-based assessments of whom to hold accountable, and a serious re-examination of the regulatory framework as the University of Victoria's Environmental Law Centre strongly urged several years ago.

The provincial opposition has called for the government to release all its records and reports on the development, monitoring and enforcement regarding the failed tailings pond dam. Starting the inevitable investigation by opening this process to public scrutiny sounds like a very good idea and it should be extended to federal records, too.

Appendix O – Media Stories Cited

TIMES COLONIST EDITORIAL OPINION

TIMES COLONIST
AUGUST 8, 2014 03:43 PM

The massive tailings-pond spill at the Mount Polley Mine is as much a failure of B.C.'s mining and environmental regulations as it is an engineering failure.

The tailings pond at Imperial Metals' copper and gold mine in B.C.'s Cariboo region broke open Monday, allowing 10 million cubic metres of water and 4.5 million cubic metres of toxic waste to spill into Hazeltine Creek and Quesnel Lake, part of the Fraser River watershed.

"Pond" might be a misleading term — this pond is a four-kilometre-long lake contained by a high earthen wall. It was the breach of that wall that released the flood — enough to fill 2,000 Olympic-sized swimming pools — that some are calling B.C.'s worst environmental disaster. They predict it will devastate much of the region's ecosystem, as well as causing severe damage to salmon stocks.

That might be premature. The level of toxins in released water and semi-fluid solids has not been measured. It might not be as bad as some are saying. We hope that is the case.

There's no question it is bad. Aerial photos of the area around and downstream from the breached pond look eerily like the devastation left by the 1980 eruption of Mount St. Helens. People are without water for drinking and hygiene until the level of toxicity is determined. First Nations and others are concerned about the long-term impact on the environment, particularly the fishery.

Those who are frightened have every reason to be.

Those fears are not allayed by the lukewarm response from the provincial government, which has ordered Imperial Metals to conduct an environmental-impact assessment and submit a cleanup plan.

That's closing the barn door after the horse has escaped. Cleaning up the mess will be impossible. How do you remove toxins from water that has flowed many kilometres downstream? How do you remove the toxic sludge that settles to the bottom of streams and lakes, solids that contain arsenic, mercury, sulphur and cyanide to poison the environment for decades.

This is what happens when a province guts its environmental laws and lays off staff dedicated to environmental protection, says Calvin Sandborn, legal director of the Environmental Law Centre at the University of Victoria. This is what happens, he says, when the province is consistently lenient with mining companies when they transgress the meagre regulations that remain.

Energy and Mines Minister Bill Bennett has leaped to the defence — of the government and the company, not the people and the environment. He has dismissed claims of concerns and warnings about the safety of the tailings pond, yet the proof is in the pudding, and that pudding is laced with poisons.

Sandborn and his associates have long warned about the consequences of B.C.'s weak environmental laws and lack of enforcement. He says the province needs to toughen standards for mining development and

require resource companies to contribute to a fund that can pay for cleanup and compensate victims, rather than leaving taxpayers with the bill and victims twisting in the wind.

“You save a few bucks by firing people, but how much is this going to cost the province?” Sandborn said.

“Our economy swims by in the river,” said Bev Sellars, chief of the Xatsull First Nation, as she worried about the effects the spill would have on the salmon vital to her people’s well-being.

Our economy swims by in the river, drifts with ocean and air currents and resides in the soil. Mining, done properly, can be of economic benefit, but it’s a false economy if it comes at the expense of people and the environment.

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Appendix P – Media Stories Cited

Anger and confusion after worst disaster in Canadian mining history darkens B.C. town



Brian Hutchinson | September 12, 2014 7:42 PM ET



Jonathan Hayward/The Canadian Press: Early last August, a section of the tailings pond dam at the Mount Polley mine crumbled, releasing 10 million cubic metres of sludge and tailings into Quesnel Lake, near Likely, B.C.

“Check your knives at the bar,” reads a sign inside this village’s only watering hole. In hard times, before the Mount Polley mine opened 17 years ago, there wasn’t much work to be found, and folks sometimes turned as sour as the cheap beer and boxed wine. Things could get rough inside the Likely saloon.

Likely has enjoyed much better days lately, thanks to the mine and the wealth it was generating. But one morning in early August, a section of the tailings pond dam up at the Mount Polley mine crumbled, releasing 10 million cubic metres of dirty mine water and almost five million cubic metres of finely crushed rock, known as tailings.

The water and tailings formed a thick slurry that roared down Hazeltine Creek, knocking down trees and anything else in its way. It poured into Quesnel Lake, one of the largest — and the deepest — fresh water lakes in B.C.

Since that cataclysmic event, the worst of its kind in Canadian mining history, a cloud has hung over little Likely, a village of perhaps 350 huddled at the top of Quesnel Lake, 600 kilometres north of Vancouver. There is anger here, and resentment. Divisions have formed and blame is assigned. But confusion reigns.

Some local residents and First Nations members claim their lake is now fatally toxic, that the water is peeling skin from fish and is even burning human flesh. Others say that's just wild fear-mongering. The fact is, no one knows what the accident really means for their lake and their town, even four weeks later.

But everyone agrees that Quesnel Lake has just turned a weird shade of green.

Quesnel Lake is everything to the folks in Likely. Many drink from it. They bathe in lake water, and use it for cooking. They pull fish from it, and have for decades. Tourists come to enjoy it, or they did.

Few can accept that the water is now safe to drink and the fish are safe to consume, despite assurances from B.C.'s Ministry of Health, which is testing frequently. A plume of mine tailings continues to move around the lake. It's not clear where, or when, it will settle.

And no one knows what will become of the once-lucrative mine that's now bleeding cash. Its owner, Vancouver-based Imperial Metals Corp., is spending millions of dollars and raising additional funds to cover mounting clean-up costs, and there's no end in sight. Production is idle while the dam is repaired. Up at the top of Mount Polley, inside the operation's administrative offices, there aren't many answers.

Imperial executives don't want to discuss what might have caused the tailings pond dam to burst. "We want to keep our messaging on remediation," says the company's vice-president of corporate affairs, Steve Robertson. Instead, he talks about the substantial efforts being made to plug the large gap in his company's dam, and what's required to clean up the eight-kilometre long swath of destruction from the mine down to the lake below.



Jonathan Hayward/The Canadian Press A jar containing water from Quesnel Lake displayed during a news conference in Vancouver on Sept. 8, 2014. Its cloudiness was caused by the Mount Polley mine tailing pond breach.

Turns out that fixing the hole is the easiest job. The rest is filled with uncertainty. “We’re still trying to figure out what to do with Hazeltine Creek, and what to do with the tailings in Quesnel Lake,” says Mr. Robertson. Imperial has hired experts from other companies, including engineering giant SNC-Lavalin Group Inc., to help out.

Recycled mine water and dirty tailings are still trickling down the creek and into the lake. The tailings are relatively benign and free from heavy concentrations of chemicals such as mercury and arsenic, common to mining operations. “There’s more mercury in the tuna at your local sushi store than there is in our tailings,” says Mr. Robertson. But there’s still a concern about tailings settling on the lake bed, because they could release metals over time, and enter the food chain.

On Tuesday, B.C.’s Ministry of Environment sent a “non-compliance advisory letter” to Imperial’s Mount Polley subsidiary, noting that the mine was, in the week prior, still “discharging effluent from the tailings storage facility into Hazeltine Creek.” The ministry said it is “concerned that more action could be taken to provide a greater degree of environmental protection in a more timely manner.”

It seems a rather mild admonishment, perhaps. But Imperial wasn't expecting it. "We were stunned," Mr. Robertson said in an interview. Dealing with the province since the accident has been "frustrating" at times, he added.

On Thursday, Imperial sent a formal, six-page letter to the Ministry of Environment, in responded to its "alleged non-compliance." Although a system was put in place last month to "intercept" the tailings pond discharge, there were "technical difficulties," the company explained. The system has been updated, and since then, "interception of the discharge has been consistent."

Meanwhile, the mine's 350 workers want to return to their regular duties. For most of the last 17 years, they were pulling copper, gold and silver from the ground, and running operations in a safe and efficient manner as best they could. With production on hold as the tailings pond dam is repaired, pit workers have nothing to do. Mechanics and maintenance crews are kept busy repairing equipment and tidying things, and assisting with the dam repair. But there's an eerie feeling about the place. The workers' locker rooms are deserted; dusty boots are piled on shelves.

Some Mount Polley miners have left the area. Others gather inside the Likely saloon, grouching about environmentalists who are holding press conferences in Vancouver, claiming the mine has poisoned the lake forever, and that mining is killing the province.

"Who do they think pays all the taxes around here," snapped one Mount Polley miner. "No one gives a damn about the working man."

When a reporter inquires about what went wrong, why the dam failed, they tell him to speak to Gerald MacBurney: "He knows."

Mr. MacBurney has lived in and around Likely for most of his 55 years. And he worked at Mount Polley for the last seven. In the pit, then running bulldozers and building roads. Two years ago, he was moved to the tailings pond, where he was put in charge of the dam.

When it first opened in 1997, Mount Polley was a relatively small operation, Mr. MacBurney explains. When prices for copper and gold dropped a few years later, the mine closed temporarily. Operations resumed in 2005, as metals prices climbed.

The mine has expanded since then; new pits have been developed, and an underground mine has opened, to exploit new discoveries of higher grade ore.



Brian Hutchinson/National Post: Gerald MacBurney says he warned Mount Polley mine managers that the tailings pond dam would not hold.

The tailings pond has also grown, to accommodate additional waste material produced at the mine. Water is used in the process to separate metals from the ore, which, when crushed, produces tailings, which is like a fine sand.

Despite its importance to the entire operation, the tailings pond hasn't always seemed a top priority, Mr. MacBurney recalls. "We would ask for new equipment, but anything new always seemed to go to the guys in the pits, the guys who were producing the [metals]," says Mr. MacBurney, sitting at a table in his cluttered trailer home, above Quesnel Lake. "The pit guys got everything. They'd even come and take our equipment."

As more water and tailings entered the pond over time, there was need to increase the dam's capacity. Adding height to the dam's walls wasn't enough, says Mr. MacBurney. The width and breadth of the pond had to be expanded, he says. "Basically the walls had to be pushed out on all sides," he says.

That was the plan, but it wasn't fully executed, he insists, and for reasons he still doesn't understand.

The ground outside the existing dam was cleared and prepared. When it came time to buttress the new walls, things stalled, recalls Mr. MacBurney. "They didn't give us the rock we needed to buttress the walls," he says. "They wouldn't send us the rock. That

buttressing wasn't getting done. I kept saying that we needed more rock in there, and it wasn't getting done."

Mr. MacBurney claims that an existing wall was breached in May, perhaps thanks to spring run-off. "Water came up over the dam at one corner," he says. "I call that a breach."

Imperial has denied there was a breach in May. Mr. Robertson says the company is confident that with five investigations currently underway, reasons for the dam failure in August will be determined.

Mr. MacBurney was stressed out and was thinking of finding a new job. Then one day in June, while playing an online slot machine game at home, he hit a jackpot worth more than \$4-million. He had just become Likely's luckiest man. He left his job at the mine. Two months later, the dam failed.

Mr. MacBurney hasn't left town. Like everyone else, he has a theory of what happened. And he worries for his community, and the lake. He wonders whether there's any future there at all, whether hard times have returned for good. He could go anywhere now, but he doesn't want to leave.