



Ministry of
Energy and Mines

Administrative Monetary Penalties *(Mines Act)*

Discussion Paper
September 2016

A. Introduction:

British Columbia's Ministry of Energy and Mines (Ministry) intends to implement an administrative monetary penalty (AMP) program as authorized under sections 36.1-36.7, and 38(2)(m - q) of the *Mines Act*. In the spring legislative session, these sections were added to the *Mines Act* under Bill 8, *Mines Amendment Act* and will come into force by regulation. The text of Bill 8 can be found here:

<http://www.bclaws.ca/civix/document/id/lc/billscurrent/5th40th:gov08-3>.

The *Mines Amendment Act* enables government to enact a regulation establishing key operational elements of the AMP program including:

- The regulatory provisions that can be subject to an AMP,
- The maximum AMP that can be imposed in relation to specified non-compliance,
- The matters that must be considered before an AMP is imposed, and
- The identification of the appeal tribunal that will hear AMP appeals

The *Mines Amendment Act* also increased penalties available through court prosecution. Fines were raised from \$100,000 to \$1 million, and the maximum term of imprisonment was raised from one year to three years.

This discussion paper describes the key elements of the proposed AMP program that will operate in addition to the penalties available through court prosecution.

B. What is an AMP?

An AMP is a financial penalty that can be imposed on individuals or companies who fail to comply with a particular provision of a statute, regulation, an order or a requirement, or the terms and conditions of a permit. As an administrative (or civil) rather than criminal type of sanction, AMPs are calculated and imposed by designated ministry officials instead of a court of law.

C. Why an AMP program?

Non-compliance occurs whenever regulatory requirements are not met. However, not all non-compliance is the same and the gravity and circumstances under which non-compliance occurs vary widely. Accordingly, it is important that government have a range of enforcement options.

The Ministry's existing enforcement tools are essentially limited to ordering mine shut downs or pursuing court prosecutions. While these existing enforcement tools are important, they may not be the most appropriate enforcement tool in all cases, particularly cases where pursuing a court prosecution or shutting down a mine would be disproportionate to the non-compliance. AMPs provide an effective enforcement mechanism for a wide range of contraventions.

Although new to the Ministry, AMPs have been adopted widely by regulatory agencies across North America. The success of existing AMP schemes is well documented and will inform a structure for the Ministry that can be applied in a principled, timely and cost-effective manner.

D. The AMP program

Contraventions

The flexible nature of AMPs would allow the Ministry to apply the penalties to a broad range of non-compliance, scaling the penalties to reflect the seriousness of the contraventions. The specific legal requirements that would be subject to administrative penalties in the event of non-compliance would be listed in the regulation. These would include:

- Provisions of the *Mines Act*, the regulations and the Health, Safety and Reclamation Code for Mines in BC (Code),
- Requirements in orders, and
- Terms and conditions of permits.

Findings

Mines inspectors would remain responsible for identifying non-compliance (e.g., contraventions of the *Mines Act*, regulations, Code, permits or orders) that may result in a person being subject to an AMP. Once informed of the circumstances, the Chief Inspector or a person designated by the Chief Inspector (Decision Maker) will provide the person with an opportunity to be heard. The opportunity to be heard is essentially a chance for the person to "tell his or her side of the story" including any extenuating circumstances or mitigating factors that the Decision Maker should be aware of. The form of the opportunity to be heard (e.g., written or oral) would be determined by the Decision Maker taking into consideration the complexity of the issues involved.

After hearing from the person, the Decision Maker would, on a balance of probabilities, make a finding as to whether the person has contravened or failed to comply as required.

AMP amounts

Upon making a finding of contravention or non-compliance, the Decision Maker may, after considering the prescribed matters, impose an AMP in an amount that does not exceed the limit set out in the regulation.

The prescribed matters that the Decision Maker would be required to consider before imposing an AMP are expected to be consistent with the matters that must be considered in other AMP programs in the natural resource sector and include:

- Whether the person is a repeat offender,
- Whether the contravention was deliberate,
- The magnitude or severity of the contravention, and
- The extent of the harm or potential harm resulting from the contravention.

The regulation would establish maximum AMP amounts that can be imposed for failure to comply with requirements in the *Mines Act*, the regulations and the Code as well as requirements in orders, and terms and conditions of permits. The maximum AMP amounts under the *Oil and Gas Activities Act* and the *Forest and Range Practices Act*, are \$500,000, with lower maximum AMPs for less serious non-compliance (lowest AMP maximum is set at up to \$2,000). Under *Environmental Management Act*, maximum AMPs range from \$2,000 to \$75,000 with the ability to impose daily AMPs for continuing contraventions.

Appeals

Within 30 days of receiving notice that an AMP has been imposed, a person would have the right to appeal the AMP decision to the appeal tribunal to be specified in the regulation. Identifying an existing appeal tribunal (e.g., Oil and Gas Appeal Tribunal, Environmental Appeal Board) for the purpose of hearing *Mines Act* AMP appeals would enhance efficiency by taking advantage of existing capabilities in the natural resource sector. After hearing the appeal, the tribunal could confirm, vary or rescind the AMP decision.

Payment of AMPs

A person on whom an AMP is imposed must pay the amount:

- If no appeal is commenced, within 40 days of receiving the notice from the Decision Maker that an AMP has been imposed, or
- If an appeal is commenced, within 40 days of receiving notice of the appeal decision from the appeal tribunal.

If an AMP is not paid as required, government can file a copy of the notice with the court and collect the debt as if the notice were a judgment of the court.

Public reporting

As part of its commitment to enhancing transparency, the Ministry intends to publish the names of persons subject to AMPs and the particulars of all contraventions for which AMPs are imposed.

E. Discussion Questions:

1. Is a \$500,000 maximum AMP an appropriate amount? If not, should it be higher or lower?
2. What kinds of non-compliance should attract AMPs at the high end of the spectrum and what kinds of non-compliance should attract AMPs at the low end of the spectrum (e.g., environmental damage/risk, health and safety)?
3. What existing appeal tribunal would be the most appropriate for AMP appeals under the *Mines Act* (e.g., Environmental Appeal Board, Oil and Gas Appeal Tribunal, Forest Appeals Commission)?
4. What factors should be considered when determining the appropriate AMP amount in a specific case (e.g., compliance history, potential harm, intentional non-compliance)?

F. Questions or comments

Questions or comments on the proposed AMP regulation can be directed to:

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Comments must be received before October 11, 2016 to ensure that they are considered.