

December 7, 2014

Mount Polley Independent Expert Engineering Investigation and Review Panel
5B – 940 Blanshard Street
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By Email: Secretariat to the Review Panel:Kevin Richter:Kevin.richter@gov.bc.ca

Dear Panel Members:

There are at least two simple and effective solutions to issues concerning tailings dam safety. Both relate to use of information from annual dam safety reviews and information from Panels such the Mount Polley Panel.

- One, for regulatory purposes, classify the independent expert conducting dam safety reviews as a “gatekeeper” ,and
- Two, make sure regulators publish on an annual basis the results of dam safety reviews .

The key issue in the public interest is regulatory transparency, rather than bigger, better guidelines. We do not need fatter, more complex and costly regulation. We need more transparency with existing regulations. It is the regulatory architecture rather than the thickness of the rule book that is critical.

In due course, we will learn what were contributing factors to the Mount Polley TSF failure.

One particular concern from such failures is the use made of information. There is a tendency for regulators to intone “never again”,” “we will address the issues”, then nearly everyone goes on as before with existing corporate and regulatory governance.

Guidelines for dam site safety reviews are nothing if not comprehensive¹. Yet in that most recent APEGBC publication, there is not a single reference to the word “gatekeeper”.

A gatekeeper^{2, 3} is defined as a reputational intermediary between the shareholders/stakeholders and the company to protect the interests of stakeholders through monitoring activity within the organization

¹ APEGBC: <https://www.apeg.bc.ca/getmedia/a373a764-1869-41b5-b07d-81d36a0698c3/APEGBC-Legislative-Dam-Safety-Reviews.pdf.aspx>

² Gatekeepers: The Professions and Corporate Governance: John C. Coffee, Oxford University Press, 2006, pp389

³ The Role of Gatekeepers; Jennifer Payne: LEGAL RESEARCH PAPER SERIES; Paper No 22/2014 April 2014: Oxford'Handbook of Financial Regulation :OUP2014: <http://ssrn.com/abstract= 2428121>

and by providing a technical presentation that is unbiased and accurate. The perspective of the qualified professional (QP) as a gatekeeper is consistent with a public watchdog function. If the QP is viewed by the public as an advocate for the corporation, the value of the safety review might be lost. And further, if the gatekeeper reports are not public, their deterrent value is diminished. While the term gatekeeper is most often associated with the financial industry, the term is a regulatory term more than a purely financial term.

The APEGBC document emphasises duties to clients more than the gatekeeper duty to stakeholders, although that duty is implied by the existing APEGBC Code of Ethics.

The value of the gatekeeper function is that it removes corporate incentives to downplay, or defer risk management measures. But unless the gatekeeper reports are in the public domain, there is little corporate or regulatory incentive to promptly address issues identified by gatekeepers.

Open, proportionate, transparent and accountable regulation is required. And a transparent regulatory architecture is also required.

Unless technical reports set out corporate commitments for tailings dam monitoring and assessment in the form of enforceable undertakings by the corporation, the regulatory system may be ineffective.

Simplicity may lead to a better outcome in the public interest.

For the record, I have no connection with any active mining company or technical service provider.

Yours sincerely