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Report of the Commissioner of the Environment and Sustainable Development

CHAPTER 2

Financial Assurances for Environmental Risks



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Office of the Auditor General of Canada
Distribution Centre
240 Sparks Street
Ottawa, Ontario
K1A 0G6

Telephone: 613-952-0213, ext. 5000, or 1-888-761-5953
Fax: 613-943-5485
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Email: distribution@oag-bvg.gc.ca

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There are weaknesses in the Department's management of environmental financial assurances

2.23 Sound management of environmental financial assurances requires key information, such as the term of the operator's licence or permit, the required amount of financial security, the form of the security, and the security's expiry date. Such information is essential for monitoring the continuing adequacy of the environmental financial assurance in place. Without such information, the Department will not know if the financial securities held are sufficient to cover the full cost of decommissioning the facility and restoring the site.

2.24 We found that inventory records at AANDC did not include all information necessary for management to ensure that environmental financial assurances received for a project were sufficient for its level of risk. For example, inventory records showed financial securities by licence or permit number but not by project (such as a mine), making it difficult to ensure that the amount of a security was sufficient for activities throughout a project's duration. There was no indication of the reclamation costs that securities were supposed to cover, or whether a security that was expired had been returned or replaced. Such information is needed to monitor whether operators are adhering to terms and conditions of authorizations and whether the financial assurances the Department holds are still sufficient.

2.25 We also found that the Department does not compare, on a regular basis, whether the financial securities obtained during the life of the mine for each authorized licence are sufficient to meet the cost for reclamation of land and water. For example, 3 of the 11 mines in Nunavut had security shortfalls totalling almost \$11 million. A security shortfall is the difference between the reported value of the security held and total value of the security required for the proponent to continue to meet the terms and conditions of the licences for these mines. Regular assessments of securities are an important component of sound management, because they ensure that the securities held are sufficient to reclaim sites as the financial implications may vary over time.

2.26 Inspections are an important step in the process to ensure that financial assurances held are sufficient. Inspections are a condition for obtaining a licence or permit to ensure that their terms are being adhered to—for example, that fuel is being properly stored, tailings ponds are structurally sound, and hazardous wastes are being properly disposed of. We found that in 2011, over 70 percent of required site visits of all resource development projects (including mines) were

not conducted by the Department in the Northwest Territories. Departmental records indicate that members of the Department's staff raised concerns internally about the level of monitoring being done.

2.27 Legislation and regulations specify the type of security instruments that can be accepted. Departmental policies also require that the securities obtained must be cashable and maintain their value in the event of an operator's insolvency. In the case of one mine, the Department accepted \$17.6 million in promissory notes for reclamation costs. These promissory notes did not satisfy legislative and regulatory requirements, because they were not guaranteed by a bank in Canada. The Department was unable to provide us with evidence that the Minister considered these notes to be a satisfactory security. We have concerns about the continuing enforceability of this security.

2.28 The *Territorial Land Use Regulations* were developed in 1971 and limit securities in support of land-use permits to a maximum of \$100,000. This limit does not reflect current costs for reclaiming a site.

2.29 At the time we were completing our audit work, Aboriginal Affairs and Northern Development Canada was developing a policy to govern the manner in which it manages the securities it holds as environmental financial assurances.

2.30 We also examined whether there were provisions in place to minimize the financial impact on the government of unforeseen events (accidents) at mines north of the 60th parallel. We found that liability for the impact on human health and the environmental damage resulting from an accident is managed on the "polluter-pays principle"—the owner or operator is expected to cover the costs of all damages and reclaim the environment. While there is no requirement for the owner or operator to have insurance, legislation allows the Department to access securities it holds to address accidents. In such circumstances, an operator would be expected to fully replenish these funds. In the event that the funds on hand are not sufficient to restore a site on federal lands, there is a risk that the government would have to assume these financial implications.

2.31 Recommendation. Aboriginal Affairs and Northern Development Canada should carry out the required monitoring and inspection programs to ensure that proponents are adhering to the terms of their licences and permits and that the financial assurances obtained remain adequate. The Department should develop a comprehensive inventory system that provides consistent information

by project and by regulatory authority of all securities required and held to ensure that the securities continue to meet the expected reclamation costs.

Aboriginal Affairs and Northern Development Canada's response.

Agreed. The Department will implement a risk assessment framework and risk management strategy for inspections, to optimize resources available for inspections, adjust securities as required to reduce the liability of the Department, and ensure that appropriate securities are maintained at all times.

Fisheries and Oceans Canada has obtained environmental financial assurances

2.32 As part of our audit, we reviewed practices and procedures established by Fisheries and Oceans Canada (DFO). According to the Department's Policy on the Management of Fish Habitat (hereinafter referred to as the Fish Habitat Policy), the Department may require compensation from a project proponent to offset damage or destruction of fish habitat caused by the project.

2.33 Under the *Fisheries Act*, the Minister of Fisheries and Oceans may authorize the harmful alteration, disruption, or destruction of fish habitat that may result from works or activities taking place in and around fish-bearing waters. Financial assurances may be obtained to ensure that the proponents fulfill their legal obligations under terms of the authorizations. These obligations are set out in a site-specific fish habitat compensation plan.

2.34 Under the *Fisheries Act* and the Fish Habitat Policy, the Department is not obliged to obtain financial assurances from proponents who must create compensating fish habitat under their departmental authorizations. When DFO decides to obtain a financial assurance, it generally requires that proponents provide letters of credit as security, because these are issued by financial institutions and are readily cashable. While the Department has established national guidance for its staff on how to obtain and manage these financial assurances, we noted that each regional office has its own system and provided limited information to the national headquarters.

There are weaknesses in the Department's management of environmental financial assurances

2.35 We noted that in 2008 the Department implemented a system—the Program Activity Tracking for Habitat (PATH)—to capture information on securities held. However, key information is not being captured in this database, such as information on securities obtained