
MEDIA RELEASE

For Immediate Release

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Lawsuit exposes Canada's toxic tailings secret *Groups say feds flouting law, hiding mining pollution from public*

TORONTO - Litigation was launched today against Canada's Minister of Environment to ensure that the hundreds of millions of kilograms of toxic mining waste being kept secret from the Canadian public are reported.

Ecojustice filed the lawsuit, an Application for Judicial Review, in Federal Court today on behalf of MiningWatch Canada and Great Lakes United. It alleges that the Minister broke the law when he directed mining companies to ignore their legal responsibility to report millions of kilograms of pollution from their operations under the National Pollutant Release Inventory (NPRI).

"The law is clear: Mining companies in Canada are legally required to report the amount of chemicals they are releasing into the environment," said Justin Duncan, Staff Lawyer with Ecojustice. "Instead, at the direction of the Minister of Environment, these companies continue to flout the law by not reporting massive amounts of toxic tailings they dump into our environment each year."

In stark contrast, the U.S. government has required mining companies to report the amounts of pollutants generated by their operations under the U.S. Toxics Release Inventory (TRI) since 1998. Despite the fact that the US mining industry composes only 72 of the 23,566 total TRI-reporting industrial facilities, in 2005 the mines released more than 530 million kilograms of pollutants - accounting for 27% of all pollutants reported across the U.S. Mine tailings and waste rock - the data being withheld from the Canadian public - accounted for more than 97% of the total pollutants reported by the mining industry.

"Given the enormous amounts of carcinogens and heavy metals like lead and mercury in U.S. mine tailings, it is absurd that Canadian mines are being let off the hook," said Joan Kuyek from MiningWatch Canada. "From Smithers to Voisey's Bay, Canadians have a right to know what - and how much - pollution the mining industry is releasing into our air, water, and soil."

The 80 metal mining facilities that reported to the NPRI in 2006 were from: Ontario(33), Quebec(19), BC(9), Manitoba(6), Saskatchewan(6), Newfoundland(3), New Brunswick(2), Nunavut(2).

"Two weeks ago the Minister of the Environment stood on the shore of Lake Superior with the Prime Minister as they announced the creation of the world's largest freshwater marine park," said John Jackson of Great Lakes United. "At the same time he protects the mining industry by hiding the toxic pollution that could spoil this ecosystem for generations."

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MEDIA BACKGROUNDER

Mining NPRI Lawsuit

November 2007

Pollution reporting in the US Metal Mining Sector

- The US Toxics Release Inventory (TRI) is a publicly available database that contains information on toxic chemical releases self-reported to government each year by industrial facilities
- Metal mining was added as a sector to TRI for the 1998 reporting year and was to include all pollutant releases, including reporting of waste rock and mine tailings
- An industry lead lawsuit (Barrick Goldstrike Mines Inc. vs. Whitman) challenged the TRI mining reporting and delayed the sector from reporting full releases until the 2001 reporting year

TRI reporting from Metal Mining Sector in 2005

- In 2005, the US metal mining sector reported the release of 530,418,243 kilograms of pollutants, accounting for 27.1% of all pollutants reported to the TRI
- The metal mining sector ranked #1 amongst TRI sectors for total releases in 2005 and included the top 7 TRI facilities
- In 2005, 72 mining facilities reported to the TRI, less than 0.3% of the 23,566 facilities reporting to TRI from all sectors in 2005
- The amount of chemicals reported in waste rock and tailings from TRI metal mines is estimated to be 516,446,723 kg, including various toxic chemicals considered to be carcinogens and reproductive or developmental toxins
- The reported chemicals released in tailings and waste rock included:
 - 174,065,827 kg of lead and its compounds
 - 77,503,483 kg of arsenic and its compounds
 - 49,114,283 kg of copper and its compounds
 - 2,136,300 kg of nickel and its compounds
 - 1,664,647 kg of mercury and its compounds
 - 839,921 kg of cyanide compounds
 - 232,204 kg of cadmium and its compounds
 - 270 kg of polycyclic aromatic hydrocarbons

Canada's Mining Sector and the NPRI

- The National Pollutant Release Inventory (NPRI) is a publicly accessible inventory of pollutants released, disposed of and recycled by facilities in Canada
- Certain industrial facilities are required to report to the NPRI under the Canadian Environmental Protection Act, 1999 (CEPA 1999)
- Until 2006 there was an exemption from reporting for mining facilities which provided that pollutant releases and transfers from extraction or primary crushing did not need to be reported

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- In 2006, the Minister exercised discretion under section 46 of CEPA to remove the exemption from reporting pollutant releases and transfers from extraction or primary crushing previously enjoyed by mining facilities
 - Despite the exemption removal, subsequent actions by the Minister and his delegates have conflicted with the requirements relating to the reporting of releases and transfers to waste rock dumps and tailing impoundment areas from mining
 - In particular, after the Minister exercised jurisdiction to remove the exemption for mining facilities, Environment Canada officials made numerous representations and communications to mining facilities advising that mining facilities would not be required to report releases or transfers of substances of concern to tailings areas and waste rock areas for 2006
 - Analysis of NPRI data indicates that mining facilities have so far failed to report releases and transfers of substances of concern to tailings areas and waste rock areas for 2006 as they are legally required to do

The lawsuit

- The lawsuit is an Application for Judicial Review filed in Federal Court by Ecojustice (formerly Sierra Legal) on behalf of MiningWatch Canada and Great Lakes United
- The application alleges that the Minister of the Environment has been making representations to and communicating with mining facilities in relation to the reporting of releases or transfers of pollutants to tailings impoundment and waste rock disposal areas in a manner that conflicts with the Minister's exercise of discretion under sections 46 and 47 of the Canadian Environmental Protection Act, 1999, R.S.C. 1999, c. C-33 (CEPA)
- The application alleges that the Minister of the Environment has been acting, and continues to act, without jurisdiction or beyond his jurisdiction; has erred in law; and is acting contrary to law within the meaning of section 18.1 of the Federal Courts Act
- The lawsuit seeks a declaration from the court that the Minister has abused his discretion by communicating to mining facilities in a manner that permits them to violate CEPA, and a mandamus order directing the Minister to publish the NPRI data for mining facilities for the 2006 reporting year

The groups

- **Ecojustice** (formerly Sierra Legal Defence Fund) is Canada's largest non-profit environmental law organization, dedicated to defending the right of Canadians to a healthy environment (www.ecojustice.ca)
- **Great Lakes United** is a twenty-five year old bi-national environmental group dedicated to leading efforts to protect and restore the Great Lakes and St. Lawrence River (www.glu.org)
- **MiningWatch Canada** is a national non-profit coalition of organizations from across Canada with a mandate to support communities affected by mining (www.miningwatch.ca)