

Mining and Natural Resources Law

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Qualified Person Sanctioned for Below Standard Conduct in Preparing Technical Reports

A professional geoscientist (the “**Professional**”) agreed to a consent order with the Association of Professional Engineers and Geoscientists of British Columbia (APEGBC) in connection with his unprofessional conduct, incompetence or negligence in preparing technical reports for two issuers. Under the consent order, the Professional agreed to pay a fine of \$15,000, plus \$20,000 towards legal costs. He is also subject to a number of conditions on his APEGBC membership. The sanction signals a willingness on the part of securities regulators and professional organizations to hold their members and licensees accountable for below standard conduct. It is also significant that both issuers announced updated resource estimates in respect of the projects and the filing of, or intention to file, technical reports documenting the new resource estimates, in accordance with National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (“**NI 43-101**”).

Particulars of the Allegation

The Professional was investigated for his role in preparing three technical reports for two issuers. In August 2012, he wrote a technical report about an issuer’s project in British Columbia (the “**B.C. Report**”). He wrote that report as the issuer’s designated “qualified person”, as defined in NI 43-101. The other two technical reports he authored in 2011 about another issuer’s Ontario project (the “**Ontario Reports**”).

The Professional admitted to all of the charges against him, namely that he demonstrated unprofessional conduct, incompetence or negligence and that the technical reports fell below the standard expected of a reasonably prudent qualified person and professional geoscientist in similar circumstances.

In particular, it was alleged that:

- the B.C. Report lacked information required or reasonably expected to be in a “technical report”, as such term is defined in NI 43-101, including, among other things:
 - (i) sufficient information regarding the geological characteristics of the site and their impact on the resource estimation; and
 - (ii) sufficient disclosure of data analysis;
- the B.C. Report provided a resource estimation that was not adequately modelled or constrained;
- the resource estimates in the Ontario Reports were calculated using an inappropriate polygonal method;
- one of the two Ontario Reports used both “inferred” and “geologically inferred” resource categories, which were misleading, not permitted by NI 43-101, and contrary to the industry standard; and
- the Professional contravened the APEGBC’s *Code of Ethics* by accepting responsibility for a professional assignment he was not qualified by training or experience to undertake, and by failing to keep himself informed to maintain his competence.

Implications of the Sanction

This sanction illustrates that securities regulators (note that the British Columbia Securities Commission was the complainant in the case against the Professional) and professional organizations are substantively

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reviewing a qualified person's work undertaken in connection with the preparation of an NI 43-101 technical report. They are ready and willing to investigate members and licensees for failing to meet their ethical obligations and professional standards and best practices. Resources issuers should carefully review a qualified person's expertise and credentials before retaining him or her to prepare a technical report. While the qualified person is responsible for preparing the technical report, the issuer must ensure that any technical report complies with all of the requirements of NI 43-101. Hiring a qualified person that is not sufficiently qualified to undertake the work performed could lead to significant disclosure issues, restatements and re-filings of technical reports and significant reputational damage to both the issuer and its management.

Please contact any member of our Mining and Natural Resources Group for further information.