

Update on Consultations – October 2010

Ontario's Modernized Mining Act

Mineral Exploration and Development

Ontario's amended Mining Act will contribute to a stronger minerals industry that will help many northern, rural and Aboriginal communities realize their economic and social goals. At the same time, the legislation will make significant strides in Aboriginal consultation, provide clearer rules for industry and help reduce environmental impacts right from the earliest stages of exploration.

During the most recent phase of consultation, some common ground was reached. For example, a prospector awareness program for those obtaining or renewing their prospecting licence was seen to be a valuable educational component of the new Mining Act. In fact, it was recommended that the scope of this awareness program be expanded to benefit anyone directly or indirectly involved in the minerals development process – and that the name of the program should be changed to Mining Act Awareness to reflect this.

An online system was considered the most practical, transparent method to deliver the Mining Act awareness program, plans and permitting, and map staking. While it was recognized that change would be difficult for some, a phasing in of map staking was seen to level the playing field. Access to the information at MNDMF offices was also suggested for those people with limited computer or broadband access.

With respect to assessment work, most people felt that a broad range of activities should be eligible for assessment credit, including all costs related to engaging Aboriginal communities regarding exploration projects. Limits on the application of a payment-in-lieu policy were recommended, ranging from time restrictions to a once-per-claim frequency.

The exploration plans and permits system overall was seen to need more descriptive, definitive criteria in order to reflect clarity and certainty. This included plans and permits with specified start and end dates, spelling out the requirements for major and minor adjustments to a plan or permit, as well as addressing the need for specific rules, terms and conditions relating to environmental values and culturally significant sites.

They also identified areas needing further attention. For example, should the Ministry or an independent party (e.g. local college or university) deliver the awareness program? With respect to the introduction of on-line staking, more discussion was seen to be needed regarding imposing limits based on the number of claims and the size of claims staked.

It was felt that the exploration plans and permits system requires more descriptive, definitive criteria to reflect clarity and certainty. While some commented that a plan or permit should be valid between one to two years, others said that one year would not provide enough time to properly consult with Aboriginal communities. The broad range of activities that a proponent could possibly undertake in a project may result in a variety of impacts on Aboriginal and treaty rights for communities in the area. The exploration plans and permitting regime should be designed to address and mitigate those impacts on Aboriginal communities.

Aboriginal Consultation

Changes to the Mining Act will help ensure First Nations and Métis communities are treated respectfully by expressly recognizing Aboriginal and treaty rights. This is embedded in the Act's purpose clause, and Aboriginal consultation requirements will appear throughout the legislation and within regulations.

During the most recent phase of Aboriginal engagement, many reiterated the importance of the land and water to Aboriginal way of life and the need to protect sites of Aboriginal cultural significance. They also emphasized the key

In December 2009, MNDMF released the Consultation Workbook on Regulatory Development and posted the materials on Ontario's Environmental Registry (EBR) for 130 days. We received 30 written submissions. In addition, we received valuable feedback from over 500 participants at 20 orientation sessions and 12 workshops with industry, First Nations and Métis, environmental organizations, municipal representatives and private land owners. In this newsletter, we outline a synopsis of this feedback.

role that First Nations and Métis communities play in determining the criteria to do so. Early engagement between industry and Aboriginal communities and the need for appropriate consultation that reflects the impact of activities on the land was another common theme.

Several people believed that Aboriginal communities should be more involved in identifying the boundaries of traditional areas, and that they be contacted early on in the consultation process. They also said the Crown should work closely with Aboriginal communities to determine appropriate levels of engagement, and to help support First Nations Peoples participate effectively with particular emphasis on capacity building.

In terms of determining sites of Aboriginal cultural significance, while some supported clearly defined, specific criteria and more government controls, others preferred an open policy framework, broad definitions and community-driven processes. It was generally agreed that mutual support and cooperation between industry and Aboriginal communities, along with a certain degree of impartiality, are all equally important to successful dispute resolution.

People also pointed out areas for more discussion. For example, some comments were in support of clear, specified timeframes for dispute resolution, and they supported more government controls regarding penalty enforcement. Other perspectives recommended an open policy framework with broad definitions and non-specific timeframes as a means to avoid conflict. Different opinions were shared about who should cover the costs of dispute resolution – the government or the proponent.

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Mineral Tenure and Private Property Rights

One objective in modernizing the Mining Act is to mitigate the conflicts that have arisen between the mineral industry and private landowners who do not hold the mineral rights on their properties. Mining Act Modernization promotes balanced development that benefits all Ontarians, while modernizing the way companies stake and explore their claims to be more respectful of the rights of private landowners and Aboriginal communities.

Most feedback supported initiatives that would build awareness about the obligations of prospectors and explorationists with respect to private land owners. People identified areas deserving further discussion. For example, some favoured clear guidance for landowners and prospectors on the re-opening of previously withdrawn mineral rights at the request of surface rights holders, while others preferred full public consultation regarding the re-opening of withdrawn mineral rights on private land.

Ontario's New Mining Act Will Be Phased In

In effect now

- *A revised purpose clause that encourages prospecting, staking and exploration for the development of mineral resources in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult, and to minimize the impact of these activities on public health and safety and the environment.*
- *Automatic withdrawal of Crown Mineral Rights under privately held surface rights in southern Ontario.*
- *Updated provisions for offences under the Mining Act*
- *Updated provisions for administering diamond royalties.*

Within 1 Year

- *Introduction of paper staking in southern Ontario.*
- *Criteria for application to withdraw Crown mineral rights under privately held surface rights in Northern Ontario.*
- *A revised list of lands not open to claim staking and exploration.*
- *A Mining Land tax exemption for lands originally patented for the purposes of mining but are not being used for mining.*
- *Updated provisions to allow Crown-owned surface rights on claims to be used for other purposes and protecting sites of Aboriginal cultural significance.*

Within 2 to 3 Years

- *Exploration plans and permits that regulate earlier stages of exploration to ensure that exploration activities will be carried out with the appropriate considerations for Aboriginal consultation, private landowners' interests and remediation of disturbances to the land.*
- *An awareness program for holders of prospecting licences, to inform prospectors of their obligations and best practices under the new Mining Act; this will include information on requirements regarding aboriginal engagement and consultation, reclamation of exploration sites, and rules for staking claims and exploring for minerals on private lands.*

Within 3 to 5 Years

- *An online map staking regime that maintains a competitive system for acquiring mining claims in Ontario.*