

Modernizing Ontario's Mining Act



Ministry of Northern Development, Mines and Forestry

July 2009



Introduction

- The proposed legislation promotes balanced development that benefits all Ontarians.
- If passed, it would modernize the way companies stake and explore their claims to be more respectful of private land owners and Aboriginal communities.
- At the same time, it would support a vibrant minerals industry that would help many communities, including Aboriginal communities realize their economic and social aspirations.
- This overview includes:
 - A synopsis of the Mining Act Modernization consultation process;
 - Aboriginal community highlights of the proposed legislation;
 - Key policy discussion areas to help inform regulation development.



Economic Impact of Mining in Ontario

- In 2008, Ontario led the country in mineral production with an estimated \$9.6 billion in new wealth generation. Northern Ontario's 27 metal mines accounted for \$6.6 billion of this production.
- Ontario also continues to lead the country in attracting high risk investment capital with over \$667 million spent on exploration in 2008 with and is forecast to lead the country once more in 2009 increasing its Canadian market share from 24 per cent in 2008 to 28 per cent in 2009.



A Balanced Approach

Proposed changes to Ontario's *Mining Act* would:

- see significant strides in Aboriginal consultation;
- provide clearer rules for industry;
- reduce the impact of mineral exploration on the environment.

Much of the proposed Act enables processes that will be detailed in the regulations, which would be developed throughout 2009-2010, if the Bill is passed.

Progress To Date

- o Ministry work on reviewing the *Mining Act* arose from Ontario's Mineral Development Strategy released in **2006**.
- o Consultation on Consultation Process:
 - v In **February 2007** MNDMF launched a comprehensive engagement process aimed at developing more effective Aboriginal consultation approaches for mineral sector activities.
- o Premier's Commitments on **July 14th, 2008**:
 - v *"We will ensure that our mining industry remains strong — but we also need to modernize the way mining companies stake and explore their claims to be more respectful of private land owners and Aboriginal communities."*
 - v *"The Ontario government believes exploration and mine development should only take place following early consultation and accommodation of Aboriginal communities."*
 - v *"Ontario will protect at least 225,000 square kilometres of the Far North Boreal region under its Far North Planning initiative."*
 - v *"To ensure proper planning and community input, new forestry and the opening of new mines in the Far North would require community land use plans supported by local Aboriginal communities."*
 - v *"We will create a new system of Resource Benefits Sharing and we will consult with Aboriginal communities immediately on ways to provide greater economic benefit..."*



Public and Industry Consultations

- Mining Act Modernization process was launched in **August 2008**. The process included extensive consultations and opportunity for public, industry and Aboriginal community input.
- Public consultation sessions in Timmins, Sudbury, Thunder Bay, Kingston and Toronto. Over 700 participants in public and stakeholder sessions.
- Focused consultations with industry stakeholders: Minister's Mining Act Advisory Committee, OMICC, and 20 meetings with regional CIM and Prospector Associations



Consultation with Aboriginal Organizations and Communities

- Approximately 100 First Nations have participated in the Mining Act Modernization consultation process:
 - 15 workshops/regional sessions with communities, Treaty Organizations, Tribal Councils and the Métis Nation of Ontario;
 - 11 individual community meetings;
 - Supported an additional 12 First Nation-led sessions.
- PTOs and First Nations communities requested additional time to participate effectively in the review of the Mining Act. The Ministry responded to the request by extending the consultation twice from October 12 to January 15, 2009.
- Aboriginal organizations provided additional input to development of policy approaches and wording proposals.



Bill 173 - Modernization Highlights

- **Clarity and certainty for mining industry:**
 - Introduction of map-staking in Ontario
 - Graduated regulatory approach for exploration activity
- **Recognition of Aboriginal and treaty rights:**
 - Purpose statement
 - Aboriginal consultation enabled throughout the mining sequence
- **Dispute resolution process:**
- **Private rights and interests relating to mining development (mineral rights/surface rights Issues)**
 - New approach for mineral exploration on private surface rights
 - Provisions for withdrawal of Crown mineral rights where surface rights privately held
- **Land use planning in Ontario's Far North**
 - Prohibition on new mine openings in the Far North until there is a community-based land use plan in place.



Mineral Tenure and Security of Investment

- The mining industry asked for *certainty*. The Act sets out a clear framework for the responsible management and sustainable development of Ontario's mineral resources.
- The Act would provide *clarity* for the mineral industry regarding consultation and accommodation requirements (e.g. timelines).
- It maintains fair and competitive access to mineral tenure in Ontario, through the introduction of *map staking*.
- The *graduated regulatory approach* for exploration would require notification and consultation reflecting the impact of the activity. Exploration would require filing of exploration plans for lower impact activities and exploration permits would be required for activities with higher impacts.
- Regulations would provide details for *exploration plans and permits*, including timelines, requirements for environmental rehabilitation; Aboriginal consultation; withdrawal for sites of Aboriginal cultural significance and working on private surface rights.
- The modernized approach would adopt "*best practices*" already employed in the industry.

Aboriginal Rights and Interests

For the First Time in Canada:

- Aboriginal and treaty rights would be recognized in the purpose statement of Act.
- Ontario would be the first Canadian jurisdiction to build a dispute resolution mechanism for Aboriginal-related mining issues into its mining legislation.
- Prospectors would be required to complete an awareness program to obtain a prospectors license to ensure they are aware of:
 - Aboriginal engagement practices and consultation requirements;
 - Conditions for exploring on private lands; and,
 - Requirements for rehabilitation of exploration sites.

New to Ontario:

- Notification and/or consultation with Aboriginal communities is required throughout the mining sequence, based on a graduated regulatory system for exploration with a requirement for filing exploration plans for lower impact activities and exploration permit requirements for activities with higher impacts.
- Provisions for withdrawing Aboriginal cultural sites from mineral claim staking.
- No new mines can open in the Far North without a community land use plan in place.

Approach to Consultation

- Early identification and protection of cultural values;
- Notification after claim recording;
- Identify who should be consulted with;
- Establish regulatory framework for all minerals related activity;
- Enable requirement for consultation in legislation;
- Provide details of how and when in regulations and policy directives (spectrum approach);
- Provide accommodation tools, such as site restrictions for cultural values;
- Encourage agreements/partnerships (industry/community);
- Enable dispute resolution.



Dispute Resolution Process

- Ontario would be the first Canadian jurisdiction to build a specific dispute resolution process for Aboriginal-related mining issues into its mining legislation.
- Dispute resolution would be available for disputes related to exploration permits, the filing of closure plans or any other considerations as may be prescribed in the regulations.
- Dispute resolution would be enabled in legislation and details would be set out in regulation.



Land Use Planning in Ontario's Far North

- The proposed Mining Act amendments reflect the government's commitment to protect at least 50% of the Far North from development, while still allowing supportive communities to continue their pursuit of mineral development opportunities.
- Mining claims currently cover about 3% of the land mass of the Far North.
- The proposed Act provides for implementation of the Premier's commitment that there will be no new mine openings in the Far North until there is an approved community-based land use plan.
- A proposed provision clarifies that mineral claim staking, exploration and development in the Far North can continue while the land use planning process is ongoing.
- Despite prohibition on new mines, Section 204 (3) provides that the Lieutenant Governor in Council may, taking into account any prescribed land use planning objectives, permit a new mine opening.

Surface Rights and Mining Rights

- The Act would address conflicts where private surface rights owners do not hold mineral rights on their lands:
 - **In Southern Ontario**, these mining rights would be withdrawn from mineral staking automatically.
 - **In Northern Ontario**, owners would be able to apply to the Minister for an order to withdraw the mining rights from staking.
- Existing tenure will be respected.
- In Southern Ontario, when claims lapse, mineral rights would be withdrawn where surface rights are privately held.
- Where mining activity is allowed to continue on privately owned surface rights, the graduated regulatory approach would be followed, including enhanced notification and environmental rehabilitation requirements.
- The Act would allow certain private property owners to apply for an exemption from mining land tax, where the property was originally patented by the Crown for mining purposes, but the property is not being used for mining purposes, putting an end to a tax that has been viewed by some as unfair.

Environmental Considerations

- Exploration activities would be subject to stronger environmental rehabilitation requirements.
- The Act would embed in legislation that no new mine opening can occur in the Far North unless there is an approved community-based land use plan.
- The phased implementation of map staking – starting with a paper-based system in Southern Ontario, then moving to include Northern Ontario in an online electronic system – would reduce the already low impact of staking.
- The legislation would provide flexibility to facilitate the development of green energy projects.
- Fines and penalties would be increased for non-compliance with rehabilitation requirements.

Moving Forward

Key Policy Discussion Areas to Help Inform Regulation Development

1. Criteria that defines “a site of aboriginal cultural significance”
2. Activities subject to exploration plans and permits
 - What activities would require the filing of an exploration plan versus an application for an exploration permit?
 - Should there be any standard terms and conditions required in an exploration plan or permit?
3. Consultation in a graduated scheme
 - What consultations process should look like, e.g. scope- noting distinctions between an exploration plan versus a permit; roles; process timing issues; how process is supported (capacity issues/funding/etc)
4. Dispute resolution process
 - Preferred models
5. Prospectors awareness program
6. Online map staking system; application process for withdrawals and re-instatements

Summary

- Proposals for modernization of the Mining Act would *strengthen the Ontario mining industry* by establishing a framework for improved social responsibility and increased certainty of rules and clarity of process in making investment decisions.
- It is this *certainty* of rules and *clarity and timeliness* of process that the industry needs to make investment decisions.
- The proposed amendments offer a *balanced approach* to mineral development that considers a range of interests while supporting a competitive economic climate for the minerals sector.
- The Act would set a framework that supports *significant strides in Aboriginal consultation* throughout the mining sequence, requires prospector awareness training before licensing and enables dispute resolution.
- It modernizes the way mining companies stake and explore their claims to be *more respectful of private landowners and Aboriginal communities*; recognizes Aboriginal and treaty rights; and, addresses the issue of surface and mineral rights.

Next Steps

- ⊖ Legislative Committee review and amendments Aug 6, 10-13;
- ⊖ Royal Assent – (TBD);
- ⊖ **If the bill is passed**, development of regulations, with industry and Aboriginal input throughout 2009-10;
- ⊖ Development of program delivery infrastructure 2009 & 2010;
- ⊖ Implementation phased in throughout 2010 & 2011.