

VOLUNTARY REHABILITATION of MINE HAZARDS

The Ministry of Northern Development and Mines (MNDM) is committed to minimizing the impact of mineral exploration and development activities on public health and safety and the environment, as indicated in the purpose section of the *Mining Act*, R.S.O. 1990, c. M.14 (the Act).

The mineral industry has long signalled its interest in rehabilitating mine hazards on Crown lands to demonstrate its commitment to the environment and its sense of responsibility to the community. However, the industry was concerned about potential legal barriers to undertaking this activity, in particular, due to certain environmental legislation which could impose liability on a person who takes charge or control of a contaminated site.

In recognition of this concern, Ontario's Mineral Development Strategy committed to removing legal barriers to voluntary rehabilitation and the Act was amended to add sections 139.2 – 139.5. Those provisions paved the way for voluntary rehabilitation by removing certain environmental liabilities for persons who voluntarily rehabilitate mine hazards on Crown lands.

Purpose

The voluntary rehabilitation provisions of the Act and [Ontario Regulation 240/00](#) fulfill Ontario's commitment under its Mineral Development Strategy to remove legal barriers to voluntary rehabilitation of abandoned mine hazards. This benefits Ontario residents by reducing public health, safety and environmental risks and reducing the need for public spending.

This operational policy is intended to provide additional guidance on the voluntary rehabilitation process, which will assist potential volunteers to determine whether they wish to undertake such a project, including how MNDM will deal with applications, make decisions on approvals and determine conditions that may be imposed on approvals.

Note: Voluntary rehabilitation is about rehabilitation of mine hazards and the approval given is for the rehabilitation plan for specified mine hazards. It does not give any rights or interest in the property, nor any right to the minerals, including their extraction. It is not a means to avoid the closure plan requirements in Part VII of the Act. For example, if a person proposes to re-process tailings to extract minerals, this activity requires a

closure plan under Part VII and rights to the minerals through a mining lease or other appropriate mineral tenure.

Who can apply for voluntary rehabilitation approval?

Any person may apply to the Director of Mine Rehabilitation (Director) for approval to rehabilitate a mine hazard on Crown land or the lands prescribed under subsection 9.1(1) of [Ontario Regulation 240/00](#). Applicants must complete a [Voluntary Rehabilitation Application](#) and provide any required information and supporting documentation.

Voluntary rehabilitation approval will not be given to a person who created or materially disturbed or worsened the mine hazard, or permitted those things to happen.

Notification to surface rights owners, other holders of surface rights, and mining claim holders

Before submitting the application to the Director, the person applying for approval to rehabilitate a mine hazard on lands for which there is one or more surface rights owners/holders or mining claim holders must provide the owners or holders a copy of the application. The copy may be provided in person (if is possible) or by mail at their last known address.

Definition

For the purpose of the *Mining Act*, Surface Rights Owner (SRO) means in respect of an area of land, an owner in fee simple of the land, as shown in the appropriate land registry office, who does not own the mining rights for the land.

For the purpose of this policy,

1. the **last known address** for SRO should be the most current address that can be found on the following basis:
 - if the SRO is a corporation, the address for the corporation as indicated by a search of company information from ServiceOntario,
 - if the SRO is an individual, the address indicated on municipal property tax assessment rolls or on Provincial Land Tax rolls, if that information is available to the licensee and is feasible to obtain,
 - If neither of the above is applicable, then the address will be the address for the SRO on the transfer or other document by which the SRO obtained ownership or obtained their surface rights interest. If applicable the Land Transfer tax affidavit attached to a transfer should be checked, as it usually provides an address for the

owners and may provide an assessment roll number (which can then be searched for an address).

2. The **last known address** for a holder of a mining claim is the address on record at the [Provincial Recording Office](#).
3. **Surface Rights Holders (Holder):** For the purpose of this policy surface rights holders are defined as people with interests in or user of surface rights such as lessees or holders of License of Occupation or of Land Use Permit etc, who are not SRO as defined in the Act. Where the proposed rehabilitation is on land for which there is a Holder, MNDM will contact Ministry of Natural Resources to identify and provide notification to the holder on the applicant's behalf.

Aboriginal Consultation

After the Director receives a Voluntary Rehabilitation application, the Director will identify which Aboriginal communities, if any, should be consulted, and will direct the applicant as to the scope of consultation, if any, that is required. In determining the scope of consultation required, the Director takes into account all the circumstances, including the fact that the project is to rehabilitate a site with an existing mine hazard.

Applicants may wish to consult with Aboriginal communities before submitting an application for Voluntary Rehabilitation. Before doing so, the applicant must request that the Director identify the Aboriginal communities to be notified of the proposed project. Applicants, who have consulted with the identified Aboriginal communities before submitting their application, must complete and include with the application the [Aboriginal Consultation Report \(Form # 019-0313\)](#).

Note: The Director may require the applicant to submit a consultation report at any time before approving the application to rehabilitate a mine hazard.

Approving or Refusing Applications

The Director evaluates each application on its own merit and makes a determination on a case by case basis. In deciding whether to grant approval for the rehabilitation of the mine hazard or to reject the application, the Director takes into consideration any factor he or she deems appropriate under a situation specific to the application. These considerations include:

- Whether the information and documentation provided (Rehabilitation Plan, Certificate of Insurance, Aboriginal Consultation Report etc.) is acceptable to the Director and meet the legislative requirements;

- Whether the rehabilitation plan included with the application meets applicable rehabilitation standards;
- Whether the applicant has demonstrated capacity to successfully deliver the proposed rehabilitation project within a reasonable period of time;
- Whether the applicant has obtained or is able to obtain insurance coverage for persons working on or involved in the project;
- Whether Aboriginal consultation has occurred in accordance with the requirements in O. Reg. 240/00, including any direction provided by the Director;
- Comments received from surface rights owners/holders, mining claim holders other government ministries or agencies, the general public (based on Environmental Registry posting); and
- The type and scope of the proposed project.

Types of Proposed Projects

Certain types of projects are better suited to voluntary rehabilitation than others. For the most part, volunteers are better suited to deal with simple rehabilitation projects, where the hazard can be easily dealt with – for example, an open mine shaft that can be rehabilitated by installing a cap. Rehabilitation projects that are very large or complex require much more involved rehabilitation (technical studies, consultants' reports) or that will result in long-term testing or monitoring requirements may not be well suited to volunteer efforts.

Although the Director will determine applications on a case by case basis, the following types of projects are unlikely to be approved:

- The site is not on Crown land or lands described in s. 9.1 of O. Reg. 240/00
- Active mineral exploration is ongoing on the site;
- A surface rights owners, surface rights holders or holders of mining claims notified of the application objects to the project;
- Existing rehabilitation works on the site may be damaged
- Rehabilitation would result in the need for long-term monitoring or testing obligations;
- Site is subject to ongoing litigation or government enforcement activity
- Complexity of the mine hazards does not allow for piecemeal or stage-by-stage rehabilitation ;
- The project falls under the definition of mining, requiring a Closure Plan and appropriate mineral tenure;

- Rehabilitation of the hazard may adversely affect the environment;
- The rehabilitation measure is inconsistent with a land use control set out in a municipal by-law or an order of the Minister of Municipal Affairs and Housing made pursuant to the *Planning Act*.

Approval to rehabilitate

If the application is approved, the Director will provide approval in writing including conditions. Some conditions will be standard and the Director may include conditions that are specific to the particular project. Examples of standard conditions include:

- The applicant must comply with all applicable legislation, including obtaining any additional approvals or permits that may be necessary for the rehabilitation plan;
- The applicant must provide a written rehabilitation report on completion of the project, including such information as the Director may require;
- Notify the Director 14 days before the work on the project begins;
- The applicant must sign an agreement indemnifying the Crown from harm
- Expiry date for the rehabilitation plan;
- Specify the applicable sections of the Mine Rehabilitation Code of Ontario.

MNMD will post a proposal for approval of the application on the Environmental Registry for public review and comment.

Applications not approved

If the application is not approved, the Director will notify the applicant in writing, with reasons.

Environmental Liability

Pursuant to subsection 139.2(7) of the Act, a person who undertakes rehabilitation of a mine hazard subject to an approval issued by the Director will not be subject to a Ministry of the Environment (MOE) order or direction issued under specific provisions of the *Environmental Protection Act* and the *Ontario Water Resources Act* as of the day that the rehabilitation work commences. Those orders and directions refer to;

- (a) Section 7, 8, 18, 43, 157.1, of the *Environmental Protection Act*;
- (b) Section 97 of the *Environmental Protection Act*; in respect of a spill, unless the person conducting the rehabilitation caused or permitted the spill;
- (c) Section 16.1, 16.2, 31, 32 or 61 of *Ontario Water Resources Act*.

However, any such order or direction issued before the volunteer begins the approved rehabilitation work would not be affected by this protection. The Act also provides that such an order or direction may be issued against the volunteer undertaking approved

rehabilitation if it is issued with respect to an activity that is not related to the rehabilitation. An MOE order may be issued under the *Environmental Protection Act* in respect of spills of pollutants if the volunteer caused or permitted the spill.

Compliance with Voluntary Rehabilitation Plan

The applicant is expected to comply with the approved rehabilitation plan and conditions specified in the written approval. Pursuant to *Part X of the Mining Act*, the Director may direct inspection of the project for consistency with the approved rehabilitation plan and any provisions of the *Mining Act*.

Upon completion of the rehabilitation project, the approved person must provide the Director a rehabilitation report describing the completed rehabilitation work. The report must include photographs description, GPS location of the rehabilitated mine feature; and any other information required by the Director.

Note: Any decision made by the Director under section 139.2 (including approval or non-approval of an application, or the imposition of conditions) or under section 139.3 (including determination that rehabilitation is not being done according to the approved rehabilitation plan, or ordering rehabilitation to be done in accordance with an approved plan) is final and is not subject to appeal.