



April 14, 2023

Submitted online to the Environmental Registry of Ontario

RE: 1) Proposed *Building More Mines Act, 2023* (ERO 019-6715); 2) Proposed Amendments to the *Mining Act: Recovery of Minerals and Decision-making Authorities* (ERO 019-6717); 3) Proposed Amendments to the *Mining Act: Closure Plans* (ERO 019-6718); and 3) Proposed regulatory changes to closure plan rehabilitation requirements for advanced exploration and mine production and adding an additional class of facilities to the list of such classes that are excluded from the definition of “mine” (ERO 019-6750)

To Whom It May Concern:

Thank you for the opportunity to comment on a set of proposed changes to the *Mining Act* and its regulations in Ontario. These proposed changes are outlined in four separate postings on the Environmental Registry of Ontario.

We are submitting this feedback in our capacities as WCS Canada scientists conducting research on species and ecosystems to inform conservation decisions. WCS Canada ([wcscanada.org](http://wcscanada.org)) is a national non-government organization that has been engaged in Ontario since 2004, with research and conservation priorities largely focused on the far north region. As some of the few scientists with continuous presence in the region, we lead ongoing field-based research programs that are currently focused on large mammals and freshwater fish; we support and collaborate with First Nations on community-based research and monitoring projects; and we support and collaborate with academic, government researchers, and First Nations conducting ecological studies in the region. WCS Canada has a long-term and consistent engagement with project- and regional-level provincial and federal impact assessments, particularly for mining and infrastructure projects in northern Ontario.

Our overarching concern regarding these proposed changes to the *Mining Act* is that they weaken requirements for mining companies and reduce oversight, which effectively transfers the burden of the financial, environmental, and social risks of mining activities to local communities and the public at large. We contend that these changes will lead to erosion of public confidence in the mining process and increase public resistance to mining based on the

burden of risks. Consequently, these changes will ultimately fail in their stated purpose to build mines more efficiently and in a timely manner.

***We recommend, therefore, that all four proposed set of changes be withdrawn and reconsidered.***

Below, we focus on four issues and associated recommendations for any reconsidered changes to the *Mining Act*.

**1) The proposed changes fail to address the core issues with the *Mining Act* that cause inefficiencies, and may actually increase uncertainty for mining projects. We recommend that the proposed changes are withdrawn.**

The posting for the proposed *Building More Mines Act, 2023* (ERO 019-6715) states that the Ontario government is aiming, with these changes, to create the conditions for companies to build mines more efficiently and provide regulatory certainty to drive greater investment in Ontario's economy. However, based on our experience engaging with mineral exploration processes and mining projects in the far north region in Ontario for the past two decades, the primary cause of delays and uncertainty for mining projects stems in large part from the consistent failure to recognize Indigenous jurisdiction and self-determination throughout the various phases of the mining cycle, and the lack of an equitable process for planning with Indigenous communities. This failure to respect Indigenous jurisdiction and self-determination, and failure to develop and uphold an equitable process, leads to protests, legal action, and ultimately, withdrawal of industry from proposed projects. Examples include the Cliffs Chromite Project, where several First Nations launched a judicial challenge, and the Platinex vs. Kitchenuhmaykoosib Inninuwug legal case.

Indigenous communities in Canada are disproportionately affected by the environmental costs, health costs, and social costs of mining, and frequently do not receive stated economic benefits<sup>1</sup>. Ontario's mining regulations are already minimal, in that there is no requirement for private-sector projects such as mines to undergo environmental assessment, and there are few provisions for the protection of the rights of Indigenous Peoples within regulatory processes. In fact, Ontario's Environmental Assessment Act (EAA) does not mention Indigenous Peoples. Following the 2021 B.C. Supreme Court decision in *Yahey v. British Columbia*<sup>2</sup>, there has been a rise in cumulative effects treaty-infringement claims across Canada. This includes three northern Ontario First Nations in Treaty 9 area<sup>3</sup>. Management of cumulative effects is absent from Ontario policy, notably environmental assessment.

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<sup>1</sup> <https://policyoptions.irpp.org/magazines/february-2023/critical-minerals-indigenous-prosperity/>

<sup>2</sup> <https://www.bccourts.ca/jdb-txt/sc/21/12/2021BCSC1287.htm>

<sup>3</sup> <https://www.thestar.com/news/ontario/2022/10/04/three-first-nations-have-begun-legal-action-against-ontario-over-damage-to-boreal-forests.html>

Overcoming this legacy and restoring trust will require mining projects to: 1) Develop equitable processes with Indigenous Peoples that respect Indigenous jurisdiction and self-determination; and 2) Ensure that these processes contain adequate assessments of environmental, social, and health risks (including management of cumulative effects), and assurances that mining companies will be responsible for minimizing damage and any required clean-up. Local communities and the public need certainty that they will not be paying an unacceptably high price in terms of environmental damage and community health impacts.

The proposed changes do not address these root causes of delays and uncertainty. Instead, the changes will ultimately serve to increase financial liability for Ontario taxpayers, increase potential environmental and health risks, reduce oversight, and reduce standards for rehabilitation of some mine sites. We contend that these changes will therefore combine to erode trust and therefore support for mining activities, rather than increase certainty for mining companies as intended.

***Overall, we recommend that the proposed changes are withdrawn.***

**2) Taxpayers and affected communities need more assurance about closure plans, not less. We recommend that any future changes to the Ontario *Mining Act* include clear requirements for mining companies to be responsible for closure plans and the cost of clean-up.**

There are already more than 6,000<sup>4</sup> abandoned mine sites in Ontario, where taxpayers are on the hook for the cleanup. When mines are abandoned, local communities bear the health and safety risks, and the costs for the rehabilitation work falls to taxpayers. As an example, Ontario taxpayers have already spent more than \$75 million on a single mine site clean-up, at the Kam Kotia mine near Timmins<sup>5</sup>. In British Columbia, where lax requirements for closure plans is an identified concern, the current liabilities are estimated at \$1.2 billion to taxpayers<sup>6</sup>. This is not an acceptable or desirable situation for people living in Ontario.

Ontario has never required new mines, mills, smelters and refineries to undergo an assessment of their impacts on the environment, the economy or society. Considering that no provincial environmental assessments are required, and so few mines are subject to federal impact assessment, closure plans carry with them even more importance in Ontario. Absent a robust process, there will be little to help ensure that communities near mines and the public are not carrying excessive risks or liabilities. Communities affected by mining activities and taxpayers in Ontario need increased certainty that mining companies are technically able to clean up and rehabilitate mine sites, and financially capable of doing so.

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<sup>4</sup> <https://policyoptions.irpp.org/magazines/february-2023/critical-minerals-indigenous-prosperity/>

<sup>5</sup> <https://northernontario.ctvnews.ca/environmental-cleanup-continues-at-canada-s-worst-mining-disaster-in-timmins-1.3449983>

<sup>6</sup> <https://thenarwhal.ca/b-c-taxpayers-on-the-hook-for-1-2-billion-in-mine-cleanup-costs-chief-inspector-report/>

Further, it will be vital for all studies that establish the feasibility and cost of restoration and rehabilitation (including measures of uncertainty) to be completed before permits can be issued for mining activities. It is not acceptable for permits to be issued and for mining activities to take place in advance of studies that are needed to determine whether restoration and rehabilitation is even possible – and what the cost will be – since this information is crucial to decisions about whether or not to proceed with a project. The “qualified person” also needs to be a certified independent third party, not a person within the mining company, and there needs to be a system for accountability and transparency to ensure that mining companies adhere to standards that protect the public interest. The people in Ontario need assurances that regulatory standards are being met, and that companies are meeting their obligations in terms of having adequate closure plans, and that companies are being transparent with monitoring to ensure that standards and targets are being met.

Additional facilities to process mineral concentrates must also be regulated in a way that ensures that environmental damages and human health damages are minimized, whether this is through the *Mining Act*, or other regulations.

Finally, we oppose the weakening of rehabilitation requirements to allow alternate uses unless there is a demonstrable environmental and social benefit of the alternate use. Otherwise, allowing alternate uses opens the door to ongoing environmental degradation, and loss of ecological and social value of the area as a result of mining activities.

Reducing the requirements for companies to create closure plans, reducing the requirement for companies to demonstrate financial capacity to cover the costs of closure plans, reducing the requirements for rehabilitation, and reducing any oversight for closure plans, as outlined in these proposed changes, is heading in the wrong direction.

***We recommend that any reconsidered approaches to revising the Mining Act include: 1) Requirements for mining companies to have feasible closure plans that will minimize environmental, health, and social risks, and meet clear standards for rehabilitation; 2) Assurances that companies will be responsible for the cost of clean-up; and 3) Transparency and accountability in the process of setting and meeting these standards.***

**3) Any changes to the Ontario *Mining Act* to enable the recovery of minerals from tailings must also include adequate safeguards to ensure that environmental and social impacts are minimized during these processes.**

Ontario already does not require closure plans for recovery of minerals. Here, changes are proposed for further relaxing the standards for rehabilitation for recovery of minerals from tailings. However, there is no justification for this. While the recovery of minerals shows promise for reducing the need for new mines, there are still environmental and health risks associated with various processes used for recovering minerals from tailings. Therefore, there needs to be assurance for local communities and for the public that there will not be

unacceptable environmental and social risk for local communities, or unacceptable financial liability for the public associated with cleaning up any damages associated with recovering minerals from tailings.

We also find that the wording “comparable to or better than” to be unhelpfully vague; it opens the doors to more relaxed standards for rehabilitation, but without increasing clarity.

***We recommend that any future changes to the Ontario Mining Act provide clear evidence-based justification for changes. Failing evidence-based justification, recovery of minerals from tailings show be held to the same standards of having feasible closure plans that will minimize environmental, health, and social risks, and meet clear standards for rehabilitation; 2) Assurances that companies will be responsible for the cost of clean-up; and 3) Transparency and accountability in the process of setting and meeting these standards.***

**4) Ontario needs to modernize the *Environmental Assessment Act* (EAA) in a meaningful way that works in tandem with the Ontario *Mining Act*, particularly the Project List.**

Ontario is the major mining jurisdiction in Canada, and yet it consistently abdicates this responsibility in impact assessment. There are three key reasons why mines and smelters must be on the environmental assessment project list in Ontario: 1) Their enormous, risky and long-term impacts on the environment and human health; 2) The long-term liabilities their wastes represent for the provincial government, Indigenous Peoples and citizens in Ontario; and 3) Creating investor and stakeholder certainty about environmental, social, and governance implications of individual projects.

Despite the well-documented major environmental risks associated with mining activities, there is little or no relationship between the EAA and Ontario *Mining Act*, and mining activities have still not been added to a Project List for the EAA.

***We recommend that any reconsidered approaches to revising the Mining Act include explicit coordination with the Ontario EAA.***

In summary, we recommend that the proposed changes be withdrawn, and that the government of Ontario instead adopt an approach to mining regulation that: 1) Addresses and respects the jurisdiction and self-determination of Indigenous Peoples; and 2) Provides adequate safeguards for local communities and the public that environmental, social, and health risks will be identified and minimized, and that mining companies will assume responsibility for any necessary clean-up.

Thank you for your consideration of our recommendations and concerns. We welcome opportunities to engage in any discussion regarding our submission.

Sincerely,



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