



10 October 2023

Mines and Minerals Division
933 Ramsey Lake Road
Willet Green Miller Ctr. 2nd Floor
Sudbury, ON
P3E 6B5

By email: MiningActAmendments@ontario.ca

Re: ERO-019-7598 - Proposed regulatory amendments required to implement legislative amendments made through the Build More Mines Act, 2023

Dear Sirs:

The Ontario Rivers Alliance (ORA) is a not-for-profit grassroots organization with a mission to protect, conserve and restore Ontario riverine ecosystems. The ORA advocates for effective policy and legislation to ensure that development affecting Ontario rivers is environmentally and socially sustainable.

Further to [ORA's 17 April 2023 submission regarding Bill 71, ERO-019-6715, ERO 019-6749 and ERO-019-6750](#), we are now writing to provide feedback on your refined proposals for the regulatory amendments in support of its goals.

The ORA did not support Bill 71 or the Build More Mines Act, 2023, which amended the Mining Act, or the proposed regulatory amendments to closure plans and rehabilitation requirements for advanced exploration and mine production. ORA also strongly rejects the regulatory amendments contained in this posting.

Let's be very clear, whenever streamlining occurs within the approval process, it will result in negative consequences to the environment and stakeholder safety. Therefore, the proposed amendments to the Regulation, as well as any consequential amendments, will all carry an environmental and safety risk. This narrow-minded approach to speed up development will impact entire communities and make our children and grandchildren's survival on this already compromised planet even more challenging.

It is a relief to hear that the proposal to delay the delivery of baseline studies will not proceed; however, these proposed amendments designed to provide flexibility and remove long-term commitments for project proponents will be at the expense of the environment and communities.

Please consider ORA's recommendations on the proposed amendment details:

1. Changes to Certifications:

1.1 New up-front Technical Certifications of Closure Plans:

ORA strongly rejects the proposal to replace the technical review of draft closure plans by Ministry staff with certification by '**properly qualified persons**' chosen by the proponent. In



our experience, Ministry staff are independent agents of the Ministry and not inclined to please the proponent with the hope of more work in the future. This is purely an attempt to cut Ministry staff out of the process and would most definitely result in increased environmental impacts.

Ministry staff while having been hamstrung over the last 5 years, when allowed to regulate as was always their job, are very qualified and objective in their consideration of projects.

1.2 New Technical Certification for Alternative Measures:

Again, as above, ORA strongly rejects this proposal. This is a measure to exempt the proponent from the closure plan and rehabilitation measures if the “properly qualified person” can certify that the alternate measure meets or exceeds the objective of the applicable Part of the Code. It has been our considerable experience that employees or contracted consultants tend to work subjectively on behalf of the proponent, instead of remaining objective and serving the environment, the public, and stakeholders in their considerations.

1.3 Changes to Certificates:

It is crucial that the regulations include the requirement for a qualified technical professional to provide certifications guaranteeing that proper closure and rehabilitation have been completed once the advanced exploration or mining project has finished. ORA objects to the removal of this requirement.

1.4 Corporate Certifications:

ORA has no objection to this amendment, as long as the proponent cannot wiggle out of their certification responsibilities.

2. Who can give certifications:

For the reasons already set out in section 1 above with regards to any “properly qualified persons”, ORA strongly objects to anyone outside of the regulatory and professional regime from certifying any technical aspects of the closure or rehabilitation plan or its completion.

3. Updating the Mine Rehabilitation Code:

It is a gross misrepresentation when the Ministry claims it “is not creating new standards, but rather clarifying the application of existing standards, or clarifying the methods by which the flexibility allowable under the Regulation and Code can be achieved”. In fact, the Ministry is relieving the proponent from long-term responsibility with weakened requirements for ensuring the long-term safety of the environment and stakeholders, which places both at considerable risk of safety.

3.1 Moving the Mine Rehabilitation Code to Policy:

Policy refers to a broad statement or set of principles or guidelines that guide decision-making and provide a framework for achieving specific goals and regulations; whereas regulations are specific, detailed rules and requirements that are derived from policies.



Regulations are used to implement and enforce the principles and objectives set forth in the policies. Regulations have the force of law and are legally binding. Violating regulations can result in penalties or legal consequences.

There are numerous mining effluent-holding ponds in Ontario that must be continually monitored and maintained over the years to prevent leakage into local rivers and lakes. It is imperative that the government ensures that the public interests are protected from irresponsible and failing proponents who would abandon their responsibilities if given the opportunity.

Consequently, ORA strongly rejects the proposal to move mine rehabilitation code to policy.

3.2 – New Part – Infrastructure:

This proposal to leave machinery, pipelines, storage tanks and utility poles in the ground if stripped of hazardous material is letting the proponent off the hook once they have reaped the resources and profits from the land. This government is pandering to proponents and not protecting the interests of the public, stakeholders and Indigenous communities.

ORA strongly recommends this proposal to be more flexible in rehabilitating infrastructure is rejected.

3.3 Changes to Objective Statements:

ORA strongly objects to the ability of a “qualified person” to certify alternative measures or those proposed in Parts 1, 2, 3, 5, 7, 8 and 9, as they all weaken the requirements for a safe and healthy environment, and a fully rehabilitated mine site.

3.4 Specific Changes to Detailed Requirements:

Again, ORA rejects the proposal for a “qualified person” to certify anything in regard to mining.

Mining effluent and tailings have an extremely high potential for pollution and heavy metal contamination that can be long-lasting and highly detrimental to the environment and stakeholders. Most mines and/or ore processing plants are in close proximity to creeks and rivers which can carry contaminants for hundreds of miles, impacting on countless lakes and rivers in its path for decades.

4. Revegetation:

The proposal could allow the site to remain open if self-sustaining vegetation growth has not been established – which is very passive. The longer the site remains vegetation-free, the more pollution that will impact our freshwater resources.

ORA supports the free-standing requirement to revegetate all disturbed areas.

5. Conditional Filing:

ORA strongly objects to conditional filing orders as the closure plan is a key consideration when undertaking a mining project that will have severe implications for the environment and stakeholders if not properly carried out.



6. Determining Compatibility with Adjacent Land or Alternative Future Uses:

There is no certainty for the public, stakeholders and Indigenous communities when a Minister can arbitrarily make an exception to a Code, or Regulation or specify how or if the requirements are applicable to individual closure plans. Therefore, ORA strongly objects to this proposal.

7. Phased Financial Assurance:

This proposal is very unclear in this regard; however, ORA recommends that a proponent must be required to provide financial assurance for all mine hazards located on the site at any given time.

8. Streamlining the Regulation:

Actually, this government does not deserve the trust of its constituents because it has eroded all of our environmental protections and public engagement and consultation in related policy and legislation over the last 5 years. Therefore, when it claims that “the intention is not to fundamentally change the underlying rules but rather to clarify their source and application”, it is unbelievable - no longer credible - trust has been lost. Especially since this proposal and the entire Build More Mines Act, 2023 was a total gutting of the Mining Act.

While streamlining mining legislation and policies can bring about certain benefits such as increased efficiency and reduced bureaucracy if done correctly; excessive streamlining without adequate safeguards can impact the environment, communities and even the long-term sustainability of the mining industry. It will also lead to environmental degradation, community displacement and conflicts, social and economic imbalances, and undermine public trust with the lack of transparency and accountability.

To avoid these negative consequences, it is essential to strike a balance between streamlining mining regulations for efficiency and ensuring that there are robust environmental, social and legal safeguards in place. Proper consultation with local communities, adherence to international best practices and strict enforcement of responsible mining standards are crucial for achieving sustainable and responsible mining practices. This is not the case with any of these amendments.

Consequently, ORA rejects this proposal to streamline the Regulation.

9. Class of Facilities Exemption for Battery Mineral Concentrates:

The mining of battery mineral concentrates must not be exempted from the Build More Mines Act, 2023. Minerals are mined from the ground, therefore, there should be no exception or exemption for minerals used for batteries. The processing of ore does not always happen at the mine site; however, nickel, cobalt, manganese sulphates, lithium carbonate, lithium hydroxide and spheronized graphite mining typically involve open-pit mining and chemical processing.

The environmental and public health impacts of processing compounds for battery production can be significant and must be subject to strong regulation and mitigation efforts. It is essential



for companies and governments to adopt responsible practices and for consumers to support environmentally friendly technologies and recycling programs to minimize these impacts.

An effective closure and rehabilitation plan must be required to protect the environment and stakeholders.

10. Other Housekeeping and Administrative Amendments:

10.1 – References to the Director of Mine Rehabilitation Changed to Minister:

In one sentence Appendix A states the proposal that the regulation would remove decision making from the Director of Mine Rehabilitation and transfer it to the Minister, which would “*improve decision-making transparency by having one identified decision maker*”, and in the next paragraph it states, “*the Minister would have the flexibility to delegate day-to-day decision-making to others within the Ministry*”. This is contradictory and is not an effective argument in supporting the proposed amendment.

ORA strongly objects to the proposal and recommends that a Director of Mine Rehabilitation with credentials as a professional engineer and/or a professional hydrologist must be the ‘qualified decision maker’/s and/or delegate/s to the Minister.

10.2 – Instruments Prescribed under the Environmental Bill of Rights:

The ORA will comment on any proposal under the Environmental Bill of Rights on any new instrument in this regard.

10.3 – Other Minor Amendments:

ORA strongly objects to any amendment that would allow for a ‘qualified person’ to replace a ‘qualified professional engineer’ or a “professional qualified in hydrology”.

Consistency and clarity are crucial to policy and legislation; however, it is unacceptable when environmental protections and public safety are compromised with this degree of streamlining. These proposed amendments drastically undermine the Mining Act and the new weakened Build More Mines Act, 2023, and ORA recommends their complete withdrawal.

Thank you for this opportunity to comment.

Respectfully,

Linda Heron
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