**Critical Minerals – Report Back on Review of Bulk Sample Thresholds**

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**Introduction**

The Critical Minerals Framework Discussion Paper (‘the discussion paper’) outlined Ontario’s proposal for developing a critical minerals strategy and solicited feedback from stakeholders and Indigenous communities to inform the strategy.

Through the discussion paper, the Ministry of Northern Development, Mines, Natural Resources and Forestry (‘the ministry’) committed to undertaking a review of bulk sample thresholds to ensure they meet the balance of a competitive mining sector with environmental protection and sustainability. This document summarizes the findings of that review and identifies the next steps the ministry is pursuing in this regard.

**Bulk Sample Permission**

Under Section 52 of the *Mining Act* (‘the Act’), minister’s permission (‘bulk sample permission’) is required to extract more than the prescribed quantity of a mineral bearing substance from an unpatented mining claim for the purpose of testing mineral content.

Bulk sample permission is required if a proponent is extracting more than 100 tonnes of mineral bearing substance (excluding lapidary stones, semi-precious stones or precious stones where the threshold is 100 kilograms) on an unpatented mining claim for the purpose of testing. While there is a lower threshold, the Act does not define a maximum limit for a bulk sample.

In addition to bulk sample permission, other regulatory requirements such as an early exploration plan or permit are required, depending on the activity. Where proposed extraction is greater than or equal to 1,000 tonnes, or where the activity otherwise meets the definition of advanced exploration, an advanced exploration closure plan must be filed in addition to obtaining bulk sample permission.

**Thresholds Review**

The review of bulk sample thresholds consisted of three components:

* + A review of the bulk sample definition, process and procedures;
  + A case study review of previous bulk sample requests; and
  + A discussion and consolidation of feedback received during the critical minerals engagement sessions, including a discussion with the Ontario Mining Association to understand member perspectives and proposed solutions.

**Outcomes**

Engagement on the discussion paper and with the Ontario Mining Association (OMA) and some of its members clarified that bulk sample thresholds in relation to s. 52 of the Act (permission to test mineral content) are not a significant barrier for critical minerals projects.

By contrast, concerns with other aspects of the bulk sampling process and closure planning process where highlighted. While it has been determined that amendments to bulk sample thresholds are not required, other changes are proposed as part of other Open for Business (OfB) initiatives to address these concerns.

**Bulk Sample Proceeds**

Identified Concern: Stakeholders have expressed concerns about the lengthy process currently needed to apply for bulk sample permission and permission to retain the proceeds of a bulk sample under s.52 of the Act.

Resulting Action: s. 52 of the *Mining Act* was amended through the Spring 2021 Open for Business (OfB) package. The amendments enable a ‘permit by rule’ model, allowing claim holders to sell the end product of a bulk sample, and retain proceeds, without the need to first obtain consent, provided that certain conditions are met. Consequential regulatory amendments are proposed in the Fall 2021 OfB package to support the legislative items that was approved in the Spring.

**Misinterpretation of the Term “Bulk Sample”**

Identified Concern: The term “bulk sample” has different meanings in different contexts. Stakeholders were not necessarily referring to the *Mining Act* concept of “bulk sample” when suggesting bulk sampling should be treated differently under the Act. While the *Mining Act* has a very narrow definition of bulk sampling, in industry, a “bulk sample” is a sample taken to confirm the economic feasibility of a deposit, may be much larger in volume than is typically permitted under the Act, and may be taken from all types of tenure (not just unpatented mining claims). This has led to misunderstanding of the requirements of the *Mining Act* and its regulations.

Resulting Action: The ministry is developing a bulk sampling guidance document which will be released in conjunction with the above ‘permit by rule’ model, to clarify terminology and process.

**Opportunities for lessees and mining rights owners**

Identified Concern:

Under the *Mining Act*, the definition of “mine production” and the resulting requirement for a mine production closure plan, is triggered whenever a proponent is mining with the intention to sell materials or stockpile them for future sale. Small-scale testing activities (sampling) are caught by that definition if the proponent’s intention is to sell the tested materials (often done to offset the costs of testing). Currently, where mining claimholders have obtained ministerial permission under section 52 of the *Mining Act*, the ministry allows mining claimholders to sell materials extracted for the purposes of testing, and retain proceeds to the extent of eligible cost recovery, without first filing a mine production closure plan. Lessees, licensees and owners of mining lands, however, cannot sell any quantity of material without first filing a mine production closure plan.

Resulting Action: The government is proposing an amendment to the *Mining Act* through the OfB bill, to allow lessees and patent holders to sell materials extracted for the purpose of testing and to retain proceeds without the requirement to file a mine production closure plan, similar to those with unpatented mining claims. If permission is granted, proponents would then be required to comply with the regulatory requirements applicable to early exploration or advanced exploration activities but would not be subject to the requirement to file a mine production closure plan. Should proponents wish to profit from the sale of the sample, they remain required to file a mine production closure plan.

**Closure Planning Scalability**

Identified Concern: Some stakeholders have asserted that closure plan requirements (required in conjunction with bulk sample permission) do not adequately reflect the different scales of operations, particularly advanced exploration, and that this causes confusion and burden for the mining industry. They assert that smaller projects are particularly impacted by this perceived lack of clarity, scalability and flexibility.

Resulting Action: The ministry has prepared the “Closure Planning Through the Mineral Exploration and Development Sequence” guidance document to aid proponents in identifying aspects of the closure planning process which are scalable to their projects and help navigate through the process. This document is being posted for comment as part of the fall OfB package. The ministry is also committed to providing further more comprehensive guidance on bulk sampling, advanced exploration and mine production closure planning.

**Critical Minerals**

Identified Concern: Some stakeholders with interests in advancing the development of particular critical minerals in Ontario, have asserted that the current regulatory thresholds do not recognize the dynamics of the developing/niche markets for such minerals.

Resulting Action: The ministry, through the posting of a policy proposal being released through the fall OfB package, is consulting on a new regulatory framework for low impact mining, which would provide for a truly graduated and scalable approach to the regulation of mineral exploration and development activities.