Appendix A: Proposed Regulatory Amendments

Background

The *Building More Mines Act, 2023* ("BMMA"), which amended the *Mining Act*, was passed on May 18, 2023. The amendments were designed to reduce administrative burden, clarify requirements for rehabilitation, and create regulatory efficiencies. The government's ongoing objective is to ensure that Ontario has a modern and competitive regime for mineral exploration and development.

Most of the amendments made by the BMMA have not come into force yet, as the main details of the requirements and standards for mineral exploration and development are contained in regulations made under the *Mining Act*. As a result, and in order for the majority of the BMMA's amendments to come into force, corresponding regulatory amendments are required. The Ministry of Mines (the "Ministry") is in the process of developing proposals to government for these regulatory amendments.

After considering feedback from all parties on the Spring 2023 ERO posting and refining our approach, the Ministry is now pleased to share additional details of these proposed regulatory changes for further comment.

The majority of the proposed regulatory amendments would affect Ontario Regulation 240/00 – *Advanced Exploration, Mine Development and Closure* (the "**Regulation**"). This is the regulation that deals with closure plans for advanced exploration and mine development projects. It also currently contains the Mine Rehabilitation Code (the "**Code**"), which is a document that sets standards and procedures for mine rehabilitation in Ontario.

In addition to the amendments to the Regulation, additional changes will be required to other affected regulations. These consequential amendments are expected to be administrative in nature and are not expected to have environmental impacts. The potentially affected regulations are described in more detail below.

The intended outcome of these proposed regulatory changes, as described in the Spring 2023 ERO postings and in our earlier consultation materials, is to create a modern regulatory framework that is flexible, encourages innovation, decreases regulatory overlap, and relies on technical expertise of qualified persons and industry professionals. Changes are intended to drive investment and resource development in Ontario's mining sector, which is expected to benefit Indigenous communities, and reduce red tape while maintaining public health and safety, respecting the environment and Aboriginal and treaty rights. Another intention is to clarify aspects of the current Regulation and Code which, in practice, are not always clearly understood or consistently applied.

The Ministry anticipates this will lead to a clearer, more streamlined process for mining project proponents to prepare and submit fully certified closure plans, which either meet or exceed Ontario's standards for how mines should be rehabilitated.

It is important to note that none of this streamlining would affect the Crown's obligations to consult with Aboriginal communities whose Aboriginal and/or treaty rights may be adversely impacted by mining activities.

It is also important to note that, while many of these changes are intended to provide flexibility for project proponents, this does not mean that the rules would be less stringent. Although the Code provides a set of default standards for mine rehabilitation which are very detailed and strict, there is a great deal of flexibility already enabled in the Regulation and Code (for example, through the exemptions available in the Regulation and through the designation of an alternative future use). In many instances, proponents find the current regulation either unclear or inconsistent in how flexibility is to be achieved. As a result, these mechanisms for flexibility have been seldom used, and a perception has developed that Ontario's mine rehabilitation standards are inflexible. This deters the application of new technologies or new approaches, and prevents proponents from developing more cost-effective solutions to achieve similar or better environmental results. Many of the proposed changes in this document are intended to clarify and streamline the mechanisms which already exist, without compromising environmental outcomes.

These proposals would be the first time the Regulation has been opened for significant revision since 2000. With that in mind, it is expected that structural changes to the regulation will also be required. These structural changes would not significantly modify how the Regulation works; instead, the intention is to clarify for all interested parties how the Regulation applies and in what circumstances.

The following sections provide more detail on the Ministry's current proposals. The regulatory framework remains in development as the Ministry continues to seek input on these changes.

Please note, the Ministry is no longer proceeding with the concept of making amendments to the Regulation and Code to automatically allow delayed delivery of baseline studies, as had been previously proposed in the Spring 2023 Environmental Registry of Ontario posting: https://ero.ontario.ca/notice/019-6750.

Changes to Certifications

Currently, closure plans and closure plan amendments must contain statements by the Chief Financial Officer and one other senior officer (where the proponent is a corporation), in which these officers certify, among other things, that the closure plan complies with the requirements of the *Mining Act* and Regulation, including the Code (often referred to as the "corporate certification"). However, these officers are not required to have technical qualifications, and closure plans are highly technical documents.

In addition to the corporate certification, there are requirements in the Regulation and Code for qualified professionals (like professional engineers and professional geoscientists) to review technical aspects of closure plans and provide certificates of

compliance to the Ministry. However, in many cases, these certificates are given during the mine closure process, long after the closure plan is submitted.

Currently, it is common practice for proponents to send drafts of closure plans to the Ministry in advance of formal submission and filing, so that Ministry staff can conduct a proactive technical review to flag concerns that reviewers may identify about whether the draft met the requirements of the Act and Regulation. This practice of technical review is not a regulatory requirement and is inconsistent with a Regulation and Code which were originally designed around principles of self-certification. This process was put in place in response to recommendations from the Auditor General of Ontario in reports delivered in 2005 and 2015 but has posed an additional challenge for proponents and the Ministry ever since, proving to be extremely time-consuming in practice. As a result, the government believes that a better approach for up-front quality assurance of closure plans is required.

The BMMA laid the groundwork for a more streamlined process, where the practice of Ministry technical review of drafts would be eliminated. Instead, the Ministry would rely primarily on new certifications given by qualified technical persons to confirm that all aspects of the closure plan comply with each Part of the Code. The following sections of this document provide more details on these proposed changes.

1. New Up-Front Technical Certifications of Closure Plans

The Ministry is proposing to add a new requirement for closure plans to contain technical certifications related to compliance with each Part of the Code.
Specifically, proponents would be required to provide certifications from one or more properly qualified persons as part of their closure plan submission. In providing these certifications, the qualified persons would certify that aspects of the closure plan relating to their area of expertise are compliant with the prescribed standards relating to that Part of Code (except where they certify that any non-compliant aspects of the closure plan meet or exceed the objectives of that Part, as described below).

This approach is intended to replace the practice of Ministry technical review of draft closure plans. The goal is to ensure that proponents are responsible and accountable for delivering closure plans that comply with Ontario's requirements in keeping with the site-specific nature of closure planning, while improving cost-efficiency for proponents by eliminating the time-consuming practice of Ministry review.

2. New Technical Certification for Alternative Measures

Currently, under the Regulation, proponents may be exempted from complying with

any standard, procedure, or requirement in the Regulation, including the Code, if the Director determines that the closure plan meets or exceeds the objective of the provision in which the standard, procedure, or requirement is set out. However, there is no clear process for seeking these exemptions; as a result, their use has been rare.

The Ministry proposes to address this issue by creating a new mechanism for achieving the same outcome without requiring discretionary decisions from the Ministry on whether to grant an exemption. Instead, it would allow proponents to submit closure plans that contain rehabilitation measures that are different from the ones required by the Regulation and Code, as long as a properly qualified person can certify that the alternate measure meets or exceeds the objective of the applicable Part of the Code. In all circumstances, any alternative measures that vary from applicable standards, procedures, or requirements in the Regulation will meet or exceed the objectives of the Code.

Like the technical certification described above, the Ministry believes this approach would be more effective, since it relies on the judgement of properly qualified people, such as engineers or geologists, that have knowledge and expertise in the most current and cutting-edge practices and technologies used in mine rehabilitation. This mechanism would allow proponents to take advantage of new and evolving practices and technologies used in mine rehabilitation that meet or exceed the objectives of the Code.

In instances where this proposed mechanism would be used, the applicable section of the closure plan would be required to include a description of the variance from the standard, procedure, or requirement in the Regulation or Code, and a statement that the variance follows sound scientific principles, industry standards and best practices.

3. Changes to Certificates

There are two points in time when qualified technical persons are required to provide certified statements – (i) at the time a closure plan or closure plan amendment is submitted for filing (often called “certifications”), and (ii) at points in time during the rehabilitation process once the advanced exploration or mining project has finished (often called “certificates”). For example, when mining is finished, open shafts may be capped with concrete. Once that is done, a qualified professional engineer is required to undertake a number of tests on the cap and certify the results of the testing. This is provided in a separate certificate sent to the Ministry, not provided through a closure plan or closure plan amendment.

In administering the Regulation and Code over the past two decades, it has become increasingly clear that there is operational confusion about what time in the life of a

mine these certificates are required, and the extent to which they are necessary in connection with a closure plan or closure plan amendment submission.

The Ministry is proposing to simplify this and decrease confusion by clarifying, through a terminology change, that certificates for completed rehabilitation measures are to be delivered after-the-fact, in the course of mine rehabilitation. For example, the Ministry is considering using a term such as “certified as-built report” instead of “certificate” in some cases.

In addition, in cases where the Regulation currently requires that a certification be given by a qualified person and delivered with a closure plan prior to filing, the Ministry is proposing to remove that requirement as it will be replaced by the broader technical certifications described above.

4. Corporate Certifications:

Pursuant to subsection 12(4) of the Regulation, closure plans submitted by incorporated proponents are required to contain a corporate certification signed by:
(i) Chief Financial Officer and (ii) one other senior officer. “Senior officer” is currently defined as the chair or a vice-chair of the board of directors of a corporation, the president, a vice-president, the chief financial officer or the general manager of the corporation, or the president of a division of the corporation if he or she is an officer of the corporation.

The mechanism for the corporate certifications has posed challenges for the Ministry and the regulated public. For example, some proponents do not have a Chief Financial Officer, and many people who perform the functions that would be expected of the positions currently contained in the definition of “senior officer” in the Regulation have titles that are not in the definition today. The lack of flexibility in the Regulation in these areas has been problematic in practice.

To address these difficulties, the Ministry is proposing to make two revisions to the Regulation:

- The Ministry is proposing to revise the corporate certification requirement to allow that, where a proponent has no Chief Financial Officer, the corporate certification can be provided by a person performing a similar function; and

- The Ministry is proposing to amend the definition of “senior officer” to add additional eligible positions, including a Chief Executive Officer, a Chief Operating Officer, a Chief Administrative Officer (all of which are currently not allowed, meaning that, where the proponent’s CEO signs a corporate

certification, the Ministry may be forced to return the closure plan or closure plan amendment for resubmission unless that person otherwise met the definition of “senior officer”). The following would also be added to the definition "any other duly appointed officer" to capture any corporate officer duly appointed under the applicable corporation’s legislation, irrespective of title.

These changes are intended to provide operational flexibility to proponents, while still ensuring that those in senior positions at a proponent continue to have oversight of and accountability for closure planning.

Who can give certifications?

The BMMA established authority for the creation of regulations that require that statements in closure plans be certified by qualified persons or other individuals specified in the regulations. In order to provide for the technical certifications described above, the regulations need to establish both who are “qualified persons” and also which persons can certify what statements. The Ministry’s goal is to develop criteria that ensure sufficient protection for the public interest, while remaining achievable for proponents. The Ministry recognizes that qualified professionals are already involved in many aspects of mine closure planning today, from preparation to implementation, and play a critical role in ensuring that project design is safe and appropriate; the requirements should reflect this reality.

Our proposal is that, in most circumstances the people providing certifications will need to be authorized to practice in Ontario in the areas of engineering, geoscience, agrology, or landscape architecture. These people would be able provide certifications in respect of any Part of the Code, subject to the limitations of the scope of professional practice (a professional engineer would certify to engineering aspects of a closure plan, for example, whereas a professional geoscientist would provide certifications related to geoscience).

In addition to the regulated professionals listed above, the Ministry is proposing to allow other persons to give certain certifications, in limited circumstances. In particular, the proposal would allow for certifications related to Parts 5, 6 and 9 of the Code (which relate to surface water quality, ground water quality, and revegetation, respectively) to be provided by people who are not a part of a regulated profession, as long as those people have:

- a university degree in science or engineering from a post-secondary institution, and

- at least five years of practicing experience that is relevant to the subject matter of the closure plan and any technical certification that they provide.

Allowing these people to provide certifications related to compliance with Parts 5, 6, and 9 of the Code recognizes that there are many rehabilitation practitioners working in fields that would have the appropriate skills and experience to certify these aspects of a closure plan but that do not have a regulatory college in Ontario governing their practice (for example, biologists who play a role in evaluating aquatic and terrestrial ecology, or other experienced environmental consultants who have sufficient scientific background to opine on surface water, ground water, and/or vegetation but are not professional engineers, geoscientists, agrologists or landscape architects). However, these practitioners could not certify to compliance with the other Parts of the Code, as those other Parts involve matters that fall within the scope of a regulated professional practice (mainly engineering and geoscience).

Updating the Mine Rehabilitation Code

Currently, the Mine Rehabilitation Code (the "Code") consists of nine Parts, each pertaining to a particular aspect of a site, such as surface water, tailings dams, or physical stability monitoring. Each Part commences with an objective statement, which establishes what outcome is intended to be achieved by that Part of the Code (for example, the objective of the tailings dam Part of the Code is to ensure the long-term physical stability of tailings dams and other containment structures).

Following the objective statement, each Part then contains specific requirements, standards, and procedures for rehabilitation, which must be reflected in the closure plan unless an exemption is obtained.

The Ministry is proposing updates to the Code which conform with the broader goals of this regulatory development project. In most cases, the Ministry 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.

The Ministry is also aiming to ensure that the standards, requirements, procedures, and objectives in the Code are all clear enough that a third-party qualified person could certify that closure plans comply with them or otherwise meet or exceed them. This is particularly important since, given the elimination of Ministry technical review of draft closure plans, there will not be an easy way obtain advice from the Ministry about compliance prior to submission. Importantly, however, the general goal in this set of changes is to maintain the environmental standards for mine rehabilitation in Ontario.

1. Moving the Mine Rehabilitation Code to Policy

The Ministry is proposing that the Regulation be amended to move the Code outside of the Regulation to a policy document that would be incorporated by reference in the Regulation.

This would allow the Code to be updated from time to time by the Ministry without an amendment to the Regulation being required (although proposed changes would still be posted for public comment on the Environmental Registry of Ontario and, where required, consulted on with Indigenous communities). This would make it easier for the Code to keep pace with changes and developments in mine rehabilitation technology and best practices.

Since the Code would still be incorporated by reference in the Regulation, the standards set out in the Code would still carry the force of law and be binding on proponents except where an exemption is validly obtained.

2. New Part – Infrastructure

Currently, the requirements for rehabilitating mine infrastructure (such as roads, pipelines, airstrips, transportation corridors, and buildings) are set out in different sections of the Regulation, and there is no corresponding set of standards in the Code for most infrastructure items. There is duplication and inconsistency in related language in the Regulation and Code that can create operational confusion for proponents, particularly where there is an approved post-mining end use for which the infrastructure would add value.

To resolve these issues, the Ministry is proposing that a new Part of the Code be established, which would contain the requirements and standards for rehabilitating site infrastructure, equipment and transportation corridors and differentiate between surface and underground, which is currently not captured.

The Ministry's current proposal is to generally maintain the current requirements for rehabilitating these features, subject to some increased optionality as described below. However, establishing these requirements in a standalone part of the Code, together with a corresponding objective statement, would allow proponents to utilize the mechanism described above by which they could include rehabilitation measures that vary from the Code if a qualified person certifies that such measures meet or exceed the objective of the Part. The current proposed objective statement is about ensuring public safety and minimizing potential for contamination.

While many of the current requirements for rehabilitating infrastructure would remain the same as they currently are, there would be some requirements that would be made more flexible. The intention is for some infrastructure features to be allowed to remain on site by default where appropriate measures are taken to reduce environmental and health and safety-related risks.

Specifically, the following new options would be available to proponents:

- Buried pipelines and storage tanks may remain in place if decontaminated and capped.
- Utility poles may remain in the ground if removed to ground level.

In addition, the following current practices which are not currently established in the code will be added:

- Machinery and equipment may remain underground in the mine if stripped or drained of fluids and stripped of any other hazardous material.
- Powerlines, pipelines and other service infrastructure may remain in the mine underground if sealed off and decontaminated.

3. Changes to Objective Statements

Given the new ability for qualified persons to certify that an alternative measure meets or exceeds the objective of the relevant Part of the Code, the objectives require additional focus to minimize ambiguity and ensure that Ontario's intentions for rehabilitation are adequately expressed. The following updates are proposed:

- Part 1 – Protection of Mine Openings to Surface: expand statement to include prevention of intentional access (unauthorized).
- Part 2 and 3 – Open Pits; Stability of Crown Pillar and Room and Pillar Operations: "restore the site to an appropriate land use" is no longer necessary to state in the objective statement; changes from the BMMA and elsewhere in this project, related to the new definition of "rehabilitate", should be sufficient to cover this.
- Part 5 – Surface Water Monitoring: revise to clarify the goal of ensuring that mine impaired water does not impact the receiving environment.
- Part 7 – Metal Leaching and Acid Rock Drainage Requirements: enhance language to ensure that the objective conveys the expectation that proponents take appropriate action where the potential for acid rock drainage or metal leaching exists.
- Part 8 – Physical Stability Monitoring: enhance language to ensure that the objective conveys the expectation that proponents develop monitoring

programs that demonstrate the stability of mine related structures.

- Part 9 – Revegetation: remove the subjective requirement that revegetation "improve the appearance and aesthetics of a site", which is too subjective for a qualified person to certify toward. The focus of this objective would be on the aspects of revegetation that mitigate public health and safety and environmental impacts of advanced exploration and mine development.

4. Specific Changes to Detailed Requirements

The Ministry has reviewed all Code sections to ensure that requirements are appropriate and sufficiently clear for a qualified person to certify to. The following updates are proposed:

- Clarify that testing for cyanide is not required if cyanide is not used on site. This is consistent with the *Metal and Diamond Mining Effluent Regulation under the Fisheries Act*.
- Expand allowable surface water quality requirements at the closed-out state so that requirements from site-specific water quality objectives issued by the Ministry of the Environment, Conservation and Parks are acceptable (in addition to the current options, where proponents are required to either achieve water quality that is consistent with background conditions or with Provincial Water Quality Objectives). This approach is intended to make the Regulation's requirements conform to requirement that may be issued by the Ministry of Environment, Conservation and Parks, where applicable.
- The Ministry also expects that some provisions of the Code may be unnecessary due to redundancy with the new mechanisms created above (for example, the mechanism for alternative revegetation in the current section 76 of the Regulation is redundant with the new general mechanism for alternative rehabilitation measures certified by a qualified person.

Revegetation

In addition to the changes to the objective statement for Part 9 (revegetation), discussed above, the Ministry is proposing to remove the free-standing requirement to revegetate all disturbed areas (currently located at s. 24(2), para 19 of the Regulation). This requirement is already established in Part 9 of the Code which states that a site is not considered closed out until self-sustaining vegetation growth is established leading to eventual site-wide revegetation. The purpose of this change is to eliminate duplication and to clarify that the primary purpose of revegetation of the site is to mitigate impacts on public health and safety and the environment.

Conditional Filing

Barriers have been identified by proponents and ministry officials in meeting project development timelines on the current requirements to file a closure plan.

To reduce these barriers, the BMMA amended sections 140, 141 and 143 of the *Mining Act* to enable "conditional filing orders". The conditional filing order process would allow a proponent to request the Minister approve the filing of a closure plan and/or closure plan amendment that does not contain all regulatory requirements at the time of submission. The Minister would have the ability to review the request and could reject it or accept it. Any conditional filing order would include a condition that the proponent meet the outstanding requirements within a specified time and manner. Orders would also be subject to any other terms or conditions the Minister considers appropriate. Ontario remains committed to satisfying the Crown's duty to consult, where it arises, including in connection with conditional filing order decisions.

Conditional filing orders are intended to prevent the delays typically imposed on mining projects by the requirements of the closure planning process, where aspects such as studies or elements of a project / site features not planned for construction in the near term can reasonably be deferred without compromising the integrity of the closure plan.

The Ministry is proposing to amend the Regulation to prescribe the form and manner for these requests, including that the requests would come in writing, in the form approved by the Ministry. The form is proposed to require the following:

- An itemized list of each requirement of a closure plan that is not expected to be met in the upcoming closure plan submission;
- For each such required component:
    - A proposed delivery date;
    - An explanation of the basis for why the required component is not available at the time of submission and why the absence of the required component would not impair the ability of the proponent to determine or propose adequate rehabilitation measures for the rest of the items in the closure plan;
    - An explanation of environmental, health, or public safety implications or uncertainties that could derive from the absence of the required item at the time of submission, if such implications or uncertainties exist.

Once a request for a conditional filing order is received, the Ministry would assess the potential implications of the requirements being deferred, including any potential Aboriginal consultation requirements and any impacts to the environment, and public

health and safety, if any, that could result from the deferral.

In the event that a conditional filing order were issued, the proponent would then be able to submit a closure plan or closure plan amendment (as applicable) for filing.

The Ministry is proposing requirements which are intended to provide sufficient detail at the time of application for the Ministry to make informed and appropriate decisions, and to consult where required.

Determining Compatibility with Adjacent Land or Alternative Future Uses

The BMMA amended the definition of “rehabilitate” in the *Mining Act.* The changes to the definition of “rehabilitate” are intended to make it easier for proponents and the Ministry alike to navigate the process of getting approval for a post-mining end state that is not the site’s prior use or condition, particularly (but not exclusively) where that end land use is consistent with the use of adjacent land.

The changes to the definition require supporting regulatory amendments to prescribe aspects of the process for how alternative future uses could be requested, and how the Minister would make decisions on any requests.

The Ministry is proposing to prescribe two aspects of the process by which the Minister would make determinations.

1. Proponents must apply for the post-closure use or condition in a form approved by the Ministry, and

2. That the Minister shall, in making the determination, consider prescribed items including whether:

    - the proposed future use or condition is likely to be achieved, having regard to the land tenure of the site and any other applicable land use planning considerations,
    - the site would require active management after closure,
    - the proposed future use or condition could pose additional risk to public health and safety and the environment, and
    - whether Aboriginal consultation has occurred.

In addition to the requirements for an application for an alternative future use, the Ministry is also proposing to amend the Regulation to specify how the requirements applicable to closure plans are impacted by any decision on an alternative future use.

Specifically, it is proposed to establish in the Regulation that, where the Minister makes a determination regarding a proposed future use or condition, the rules in the Code that establish how a closure plan for the site is to be prepared be modified accordingly. By way of example, if the Minister were to accept that the future use of a site were to include the preservation of on-site buildings and infrastructure, the Code should not require that the infrastructure nevertheless be removed.

Phased Financial Assurance

Another change introduced through the *Building More Mines Act, 2023* was the concept of "Phased Financial Assurance" (Phased FA).

The intent of this change is to provide a simple and clear mechanism for a practice that is already allowed under the *Mining Act* and commonly used by proponents – providing financial assurance on a schedule that is aligned to construction milestones for a project.

The Ministry is proposing that the Regulation include requirements that are specific to closure plans which used a phased form of financial assistance. Proponents would be required to specify each mine hazard that would be constructed during each phase, an approximate timeframe for each phase, and the total costs of rehabilitation measures for each mine hazard. Proponents would be required to submit the next phase of financial assurance to the Ministry at least 30 days prior to activities in the next phase beginning. This would give the Ministry sufficient information to ensure that the Province always has financial assurance to rehabilitate the mine hazards existing on a site at any point in time (the core requirement for Phased FA). Where Phased FA is being used for an advanced exploration closure plan, rehabilitation measures and financial assurance would only be required for hazards being impacted by the proposed project, rather than all mine hazards located on the site.

Streamlining the Regulation

<u>Removing Redundancy – Overlap between the Regulation and its Schedules</u>

This project is in many ways the first time that the Regulation has been the subject of a comprehensive review since it was first filed in 2000. As a result, the Ministry has reviewed the Regulation and the Code in an attempt to identify areas of overlap and determine areas where changes could be made to reduce the identified overlap.

An example of an area that has been identified for improvement is at ss. 22(2), 23(2), and 24(2) of the Regulation, where several requirements for the various stages of closure are set out. On review, the details of the requirements in these provisions are

largely duplicative of legal obligations imposed by other provisions in the Regulation (specifically, the requirements for the contents of a closure plan as set out in Schedule 2 of the Regulation). This duplication can be problematic, particularly where the wording in these provisions is inconsistent with or disconnected from Schedule 2 of the Regulation and/or applicable Code requirements.

To eliminate this duplication, the Ministry is proposing to remove the requirements found in subsections 22(2), 23(2), and 24(2), as well as potentially 24(3). In the course of the removal of these requirements the Ministry would ensure that the underlying legal obligations for mine rehabilitation continue to be imposed, either through the requirements for the contents of a closure plan, or through other requirements contained in the Act or Regulation (except as otherwise noted in this proposal, particularly under the heading of "revegetation" above).

The goal of this editorial effort is to eliminate the overlap that currently exists and ensure that the requirements for achieving a state of closure in the Regulation do not conflict with, or create ambiguity regarding, the requirements set out in the Code.

While it is possible that, from an editorial perspective, this restructuring effort could result in substantial changes to the Regulation, the intention is not to fundamentally change the underlying rules but rather to clarify their source and application. The end goal of these structural changes is to streamline process of preparing and reviewing closure plans for all parties involved, without detracting from any of the legal obligations for mine rehabilitation in Ontario or from associated processes of Aboriginal consultation.

Another area of review has been the exemption mechanisms in the Regulation. There are three sections of the Regulation which provide for exemptions: subsection 4(2), section 21, and section 26. These three sections appear to pertain to similar requirements but have slightly different wording and coverage. The proposed changes to the structure of the Code, as well as to subsections 22(2), 23(2), and 24(2), would mean that at least Section 26 would need to change, as it cross- references such subsections (as well as potentially subsection 4(2), which itself references section 26). The Ministry will be exploring whether all these exemption references can be unified so there is one, rather than three provisions related to discretionary exemptions from aspects of the Regulation. It is important to note, however, that there is currently no proposal to expand or remove any of the grounds on which discretionary exemptions from regulatory requirements can be given.

Class of Facilities Exemption for Battery Mineral Concentrates

The definition of a “mine” under the *Mining Act* is extremely broad, capturing many types of facilities that do not operate like a mine, nor face the same economic realities of mines. In many cases, closure and rehabilitation strategies are not required, as they are more like manufacturing facilities than mining operations, and they are appropriately regulated through other Ministries. Exempting these facilities does not relieve their operators of their obligations under other applicable legislation.

The definition also includes the ability of the Lieutenant Governor in Council to exclude classes of facilities from the definition by prescribing them in regulation. Where a class has been excluded from the definition, a closure plan is not required. The mechanism is used in subsection 2(1) of the Regulation, and other facilities such as steel mills, analytical laboratories, and pits and quarries regulated under the *Aggregate Resources Act* are already excluded from the definition of “mine”.

The Ministry is proposing that an additional class of excluded facilities be prescribed. This new class would be facilities which manufacture products needed for the development of batteries for electric vehicles (e.g., facilities that refine lithium) where those facilities are not located on a mine site. Specifically, facilities that primarily produce the following products would not require a closure plan unless they are located on a mine site:

- nickel, cobalt, and manganese sulphates,
- lithium carbonate,
- lithium hydroxide, and
- spheronized graphite

Other Housekeeping and Administrative Amendments

<u>References to the Director of Mine Rehabilitation Changed to the Minister</u>

The BMMA amended the *Mining Act* to provide the Minister with decision-making authority over closure planning and mine rehabilitation. Once these amendments are proclaimed, the Minister will have the decision-making authority that was previously vested in the Director of Mine Rehabilitation. For consistency with these legislative amendments, several regulatory amendments are required to remove all references to the Director of Mine Rehabilitation and replace them with the Minister. This is intended to improve decision-making transparency by having one identified decision maker.

As is standard practice, the Minister would have the flexibility to delegate day-to-day decision-making to others within the Ministry using existing delegation powers (see s. 4(5) of the *Mining Act*). This type of delegation of authority is already done for many decisions for which the Minister is already the specified decision maker under the *Mining Act.* In other words, the new references to the Minister created by these proposed regulatory amendments would not necessarily mean that the Minister is involved in every process; where a delegation is made, the reference to the "Minister" would encompass the Minister's delegates.

The Director of Mine Rehabilitation is mentioned in the Regulation but also in other regulations filed under various acts. As a result, the Ministry will be proposing this change in several other regulations, including:

- O. Reg. 45/11 **General** (*Mining Act*)
- O. Reg. 242/08 **General** (*Endangered Species Act*)
- O. Reg. 349/98, **Work permit - disruptive mineral exploration activities** (*Public Lands Act*)

Instruments Prescribed under the Environmental Bill of Rights

The Ministry will be working with the Ministry of the Environment, Conservation, and Parks to propose appropriate changes to O. Reg. 681/94: Classification of Proposals for Instruments made under the *Environmental Bill of Rights,* so that existing and new instruments (e.g., conditional filing order) are accurately reflected.

Other Minor Amendments

As part of the changes that enable technical certifications, as mentioned above, the Regulation would be amended to provide the details of who is a "qualified person". The Regulation currently requires that a variety of work related to mine closure be performed by a "qualified professional engineer" or a "professional qualified in hydrogeology".

These terms are not used in a consistent manner, and the Ministry will be revisiting this aspect of the Regulation to ensure consistency and clarity.