

Comments on Bill 71, Building More Mines Act 2023

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Ontarians for a Just Accountable Mineral Strategy

OJAMS.ca

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Thank you for this opportunity to comment on the proposed amendments to Ontario's Mining Act.

In existence since 2015, Ontarians for a Just Accountable Mining Strategy (OJAMS) is a network of people from diverse communities and interests in Ontario that want to see a mineral strategy that

- Sustains the environment and the resources for future generations,
- Protects the public from the risks associated with mining, smelting and refining,
- Heals the damage already caused by the industry
- Captures a fair share of the revenues generated by the industry for Ontarians and First Nations, and
- Respects the rights of First Nations to free, prior, informed consent to development on their lands

The Building More Mines Act, 2023 aims to make mining in the province “an easier process, attracting more investors while advancing ongoing critical mining projects and critical mining project planning.” It also purports to facilitate advances in the remining of tailings and waste rock.

The rules regarding mine closure are set out in Part VII of the Mining Act, and in Regulation 240-00. Currently, these requirements are overseen by the Director of Mine Rehabilitation.

These amendments, if passed, would increase conflict with Indigenous Peoples in Ontario, increase financial risk to taxpayers from the mineral industry, and will enable further destruction of the environment on which we all depend.

Mine closure matters more than the mine itself. Until this latest push for “critical minerals”, the industry itself talked about the need to “mine for closure”. All mines expand beyond their original footprint, affecting a larger and larger area.

Mining is a waste management industry with short-term benefits and long-term consequences. It is not sustainable, by definition: it depletes the very resource it depends upon. More than 99% of the rock it digs up and pulverizes becomes waste, often acid-generating and toxic. Most of the tailings are held behind dams made of waste rock in ponds that have to be managed in perpetuity. If the mine is an underground operation, some of the waste can be returned underground as paste backfill, but not all. With open pit mines, the enormous pits themselves are hazards, as they take decades to fill with water, which can also be toxic. As the hunger for metals increases, underground mines become open pits, with their concomitant environmental problems.

While Ontarians for a Just Accountable Strategy supports the re-mining of mine wastes to produce the metals we need, we do not support the changes to the Act and Regulations as proposed by the government.

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Let's look at the issues with these proposed amendments:

1. Lack of consultation with First Nations about the proposed amendments.

The amendments are already being opposed by many First Nations in northern Ontario. Attawapiskat, Ginoogaming, Constance Lake and Aroland First Nations are challenging the process in the courts. Five northwestern Ontario First Nations (Kitchenuhmaykoosib, Grassy Narrows, Neskantaga, Wapakeka and Muckrat Dam) are challenging the free entry provisions in the current Mining Act. In 2021, Attawapiskat, Neskantaga and Fort Albany signed a moratorium on new developments in the Ring of Fire deposit. The government decision to delegate consultation for the Ring of Fire access roads to the Marten Falls and Webequie First Nations by paying them to become the proponents for the Environmental Assessment of the roads to the Ring of Fire has created anger and division. Any "efficiency" that the amendments are supposed to create will be offset by constitutional challenges and protests by First Nations and their allies. The amendments do not have the Free Prior Informed Consent of Indigenous peoples who will be most affected, and if they cannot be subjected to rigorous public review and the consent of affected Indigenous peoples, they must be rejected.

2. Change in statutory decision-making authority

The proposal would provide the Minister with decision-making authority and flexibility to delegate decision-making authority to others within the Ministry. The position of Director of Mine Rehabilitation is to be eliminated and any decisions of the Director of Mine Exploration can be over-ridden by the Minister.

The expertise and institutional experience that has been accumulated in the Department of Mine Rehabilitation will be disregarded and possibly lost under this amendment, and will be easily over-ridden by the Minister. Regulation 240-00 and its Schedule 1 (the Mine

Rehabilitation Code) were developed over decades by the hard work of public servants like Dick Cowan, Bill Mackasey, and John Robertson. They had seen first-hand the result of unfettered mine development and inadequate financial assurance, and the resulting abandoned and orphaned mines, all 5700 of them, that dotted the Ontario landscape. They helped create the Abandoned Mine Information Systems (AMIS) database, fought for effective financial assurance and long-term stewardship of sites, and helped create the Mine Reclamation Code. The government of the day ensured that these protections were implemented under a Mine Rehabilitation Department.

It is with trepidation that we see that hard work undone, and the discretion once again returned to the Minister - especially a Minister like the current one, who is deeply connected to the mining industry and has expressed so little regard for its people or the environment.

3. Change in standard required for reclamation

The proposed changes would amend the requirement that rehabilitation land be “improved,” replacing it with a requirement that the land be made “comparable to or better than” the prior condition – in each case, with respect to “one or both of public health and safety or the environment.”

What this means in practice will be left to the regulations, but statements from the government seem to indicate that public health and safety AND/OR the environment could be disregarded in determining the standard for remediation. Most old metal mining sites in Ontario are sacrifice zones (Sudbury, Kirkland Lake/Cobalt, Timmins), with innumerable mine hazards and inadequate financial assurance. One has only to look at the devastation caused by mining, smelting and its wastes to know why the areas need to be improved. The mines and tailings dumps in these areas are the most likely candidates for re-mining.

4. Changes to closure plan requirements

A description of what will happen with the mine wastes after the mine closes, a “closure plan” is required by the province before a mine operator can undertake advanced exploration and/or production. In all other jurisdictions in Canada, an Environmental Assessment is required before a mine can go into production. A closure plan is integral to that process. However, almost all mines in Ontario were developed without an Environmental Assessment or a closure plan. Ontario still does not require EAs for mining projects. Ontario does not review the full scope of the mine’s potential impacts nor evaluate the fundamental question about public interest. Federal Impact Assessment is limited to the largest mines and to issues of federal jurisdiction.

There are a few mining permits in Ontario that do require an Environmental Assessment before they can be issued, but they are very limited in their scope. The Auditor-General of Ontario said in 2016 that this permit process allows too much proponent control of the process, cumulative impacts are not assessed, the public is inadequately informed, there is no independent review, and social, cultural, and economic factors are not addressed.¹

In 2022, of 30 mine projects currently operating in Ontario, only two – the Rainy River Mine (2015) and Côté Gold (2022) – underwent both a provincial and federal EA. Three others underwent only a federal EA (Totten, 2006; Detour Lake, 2012; Musselwhite, 1996). It should be noted that most of these mines (18 of them) are gold mines. The delays for other proposed mining projects (Magino, Island Gold, Marathon Palladium, NioBay, Goliath) are caused not by closure requirements or EA requirements, but by their inability to get financing. With one exception (Totten), no mines, mills, or smelters in established mining districts like Timmins, Sudbury, and Kirkland Lake have ever received an EA, either federally or provincially.

¹ Auditor-General of Ontario, 2016 report, Chapter 3, section 3.06.

https://www.auditor.on.ca/en/content/annualreports/arreports/en16/v1_306en16.pdf

5. Lay the necessary groundwork for anticipated regulatory amendments to Part VII (Rehabilitation) of the Act

Most of the changes to mine rehabilitation standards will be relegated to new regulations. The amendments to section 176 of the *Act* increase discretion, do nothing to increase transparency, and are a real cause for public alarm. The amendment inserts the phrase “without limiting the generality of the foregoing” and then repeals 176(2) and (2.1) of the *Act* except for the paragraphs that authorize the minister to exempt proponents from compliance (f, g, h). The public will only be able to comment on regulations through the EBR, which does not allow for adequate transparency or discussion.

6. Replace ministry technical review of the closure plan with review by qualified persons.

The Harris government removed a condition that a closure plan had to be reviewed by the Ministry of the Environment before it could be certified. This proposed amendment is a further destruction of government oversight, relegating it to a “qualified person”. The available professionals who are qualified persons, will be those who also work for the industry. In all likelihood, they will be chosen by the proponent, not by the Ministry, and the possibilities of conflict of interest become very high. After a mine closes, it is the nearby and downstream communities and the environment that are at risk.

7. Allow financial assurance requirements to be amended without a closure plan amendment; codify the practice of phased financial assurance; allow pledge of assets as a security.

The purpose of requiring financial assurance for resource extraction operations is to put a price on the risk of pollution from these sites. However, when the amount is not sufficient, the public is the insurer instead of the polluter. Mining is a highly risky and speculative business.

Catastrophic accidents, economic factors and bankruptcy and insolvency can all result in the tax-payer having to pick up the tab or bear the unrehabilitated social and environmental losses.

In addition to the Environmental Commissioner of Ontario, the Auditor General of Ontario has critiqued the ENDM's financial assurance methods in both its 2015 Value-for-Money Audit and the follow-up Value-for-Money Audit in its 2017 Annual Report.

Financial assurance protocols are not transparent. The public does not have access to the financial documents submitted to the Ministry of Energy, Northern Development and Mines (ENDM), nor is information surrounding the closure plan readily available for review. Although a table listing financial assurance held by the government for existing mines is available on line, it has not been updated since June 2021.

The 2021 Financial Assurance Table reports that 166 properties have posted \$2.292 billion in Financial Assurance under Part VII of the Mining Act. Of these, Vale holds 16 properties in the province (\$787.5million). Five Sudbury properties are insured with a "corporate financial test" (\$517.1 million). These include the 35 sq.km Central Management Tailings Area (CMTA) which is assured for only \$330.4 million. A corporate financial test means that the property is insured by a line on the Vale Canada balance sheet – not a cashable financial security. The dams surrounding the CMTA are considered to be "high risk dams" by the Canadian Dam Association. Ontario is the only jurisdiction in Canada that allows such a flimsy form of financial assurance.

Among others on the list, Goldcorp has 15 properties with a total financial assurance of \$204.9 million. Glencore 11 properties assured with \$400.5 million. Many of these properties are insured by a Letter of Credit. The public cannot know who or what holds the letter of credit, although it is standard practice in the industry for the insurer to be a "contract insurer", that is, a related company.

Introducing “pledge of assets” as a form of financial assurance fails to recognize that most mine assets are in fact worthless or a liability after closure. This form of financial assurance has been discredited in most studies.

8. Allow the Minister to defer or amend required elements of the closure plan, upon request of a proponent

Again, this provision allows too much ministerial discretion without adequate public transparency or power to affect decisions. It puts the demands of the industry ahead of the public good.

9. Change the definition of “rehabilitate” and “protective measures” to allow “alternate uses” post-closure (Section 139)

This vague promise will be further defined by the regulations. It may open the door for re-mining, bio-mining and other ways to extract the minerals we need. However, it may also mean hazardous waste dumps and an expanded mine footprint. That these key definitions are left to the regulations to define is cause for alarm, especially when they may be subject “to compliance where a standard is not required.”

Conclusion

The amendments proposed in the *Building More Mines Act* would increase conflict with Indigenous peoples in Ontario, increase long-term risk to communities and the ecosystem, and increase financial risk for taxpayers. They do not have the Free Prior Informed Consent of Indigenous peoples who will be most affected, and if they cannot be subjected to rigorous public review and the consent of affected Indigenous peoples, they must be rejected.