

MINING BLOG

EXPLORATION PLANS AND PERMITS – ONE MONTH LATER

Effective April 1, 2013 the Ministry of Northern Development and Mining ("MNDM") introduced a new regulation under the *Mining Act* (Ontario) (the "Act") requiring persons proposing to undertake early exploration activities to apply to the Director of Exploration appointed under section 78 of the Act (the "Director") to submit exploration plans or apply for early exploration permits. The regulation contains graduated requirements applying to early exploration activities with low to moderate impact on mining claims, mining leases and licenses of occupation for mining purposes. A more detailed summary of these new requirements is set out below.

Analysis of Applications Submitted to the Director

As recorded in the Ontario Environmental Registry <http://www.ebr.gov.on.ca/ERS-WEB-External/> the first application to obtain an exploration permit pursuant to section 78.3 of the Act was made on December 6, 2012 by Randall W. Salo. A total of 5 applications were submitted in the month of December 2012. To date, there does not appear to be a decision published by the Director in respect of this first application made by Mr. Salo. However, the other 4 applications made during the that month (all made on December 7, 2012 by John P. Rapski) were all approved by the Director on January 25, 2013 each with the following notation:

Decision on Instrument:

Exploration Permit was issued.

The Exploration Permit was issued once all Aboriginal communities and Surface Rights Owners had the opportunity to comment on or raise their concerns. No terms or conditions were added to the Exploration Permit as a result of comments received. The accepted Exploration Permit is valid for 3 years from the date of issue.

Comment(s) Received on the Proposal: 0

Public Consultation on the proposal for this decision was provided for 30 Days, from December 07, 2012 to January 06, 2013.

As a result of public consultation on the proposal, the Ministry received a total of 0 comments.

Effect(s) of Consultation on this Decision:

No comments were received resulting in no impact on the decision whether or not to proceed with this proposal.

For the month of April, 2013, being the first month when the new requirements were mandatory, the Environmental Registry discloses that a total of 45 applications under section 78.3 of the Act were submitted to the Director. This number compares to 21 applications made in March, 3 applications in February and 11 in January, 2013.



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At this time, it appears that very little exploration work is being conducted. This may simply be due to mineral companies not complying with the legislation. The law requires an exploration permit regardless of when the work began, so companies who commenced a drilling program in 2012 will need to obtain an exploration permit to conduct future work. Going forward, it will be interesting to see how long the approval process will take and whether the new requirements will impact upon the ability of resource companies to develop their projects. Much will depend on whether the Aboriginal communities are consulted in a meaningful way which will facilitate favourable rulings by the Director. On a preliminary basis, it appears that the vast majority of applications are being approved within approximately 7 weeks, however, there is insufficient data at this time to reach any definitive conclusions respecting the timing and potential delays resulting from the new permitting requirements.

A summary of the legislative requirements respecting the submission of exploration plans and exploration permits is set out below.

Exploration Plans

Certain exploration work may be conducted without the requirement to obtain an exploration plan or permit. Such activities include soil sampling, grab sampling, low impact overburden removal, small scale trenching and transient geophysical surveys.

An Exploration Plan is required to be submitted to the Director where a proponent proposes to engage in early stage exploration work which would include the following:

- Geophysical surveys requiring a generator.
- Mechanized drilling for the purpose of obtaining rock or mineral samples, if the assembled weight of the drill is less than 150 kilograms.
- Line cutting, where the width of the line is 1.5 metres or less.
- Mechanized surface stripping (overburden removal) where a single location is to be stripped does not exceed 100 square metres or two or more locations are to be stripped within a 200 metre radius and the aggregate of the area of the locations to be stripped does not exceed 100 square meters.
- Pitting and trenching of rock where the total volume of rock does not exceed 3 cubic meters.

Exploration plans are not approved by the Director, however they must be circulated to the affected Aboriginal communities (the date of delivery being referred to as the "circulation date"). Proponents may not commence work until 30 days has elapsed after the circulation date but are encouraged to begin consultations with the Aboriginal communities at this early stage.

Exploration Permits

An exploration permit will be required when certain work, which is moderately more intrusive than those activities noted above is proposed:

- Mechanized drilling for the purpose of obtaining rock or mineral samples, if the assembled weight of the drill is greater than 150 kilograms.
- Line cutting, where the width of the line is greater than 1.5 metres.
- Mechanized surface stripping (overburden removal) where a single location is to be stripped is greater than 100 square metres or two or more locations are to be stripped within a 200 metre radius and the aggregate of the area of the locations to be stripped does is greater than 100 square meters.
- Pitting and trenching of rock where the total volume of rock is greater than 3 cubic meters.

Notice of Intent to Surface Land Owners

An early exploration proponent must send a notice of intent to all affected surface land owners indicating its intention to apply for an exploration permit. The notice of intent should enclose a draft copy of the exploration permit application.

Exploration Permit Application Form

An early exploration proponent who proposes to carry out exploration permit activities must apply to the Director for an exploration permit in the approved form. The form summarizes the proposed exploration activity and must include maps of the general location and where the proposed activity will take place. The applicant is required to verify that a qualified supervisor, being a person who provides advice regarding early exploration activity, has successfully completed the prescribed prospector's awareness program.

If consultation with affected Aboriginal communities occurs before the application is submitted, an aboriginal consultation report should be submitted with the application.

There is presently no fee payable in connection with the filing of an application for an exploration permit. However, it is expected the MNDM will soon start charging a fee of \$200 to file an exploration permit application.

Aboriginal Consultation

The MNDM recommends that consultations with Aboriginal communities occur before the early exploration permit application is submitted to the Director. If a proponent proposes to notify Aboriginal communities of its intent to submit an application for an exploration permit, the early exploration proponent is required to request that the Director identify the Aboriginal communities to be notified.

Once an application for an early exploration permit has been submitted, the Director is required to notify those communities of the application by sending a copy of the application to them. Aboriginal communities that are notified may provide written comments to the Director and the proponent regarding any adverse effects the activities proposed in the application may have on their existing or asserted Aboriginal or treaty rights. The Director may require the proponent to consult with the Aboriginal communities and file a consultation report in the approved form regarding any consultation process that has been conducted, including with regard to any arrangement reached with the Aboriginal community or the efforts made to reach such an arrangement, before deciding to issue an exploration permit.

At any time before the Director's decision regarding an application for an early exploration permit, the Director may put a temporary hold on the process to obtain an exploration permit if there are concerns raised by an Aboriginal community whose existing or asserted Aboriginal treaty rights are potentially affected by the proposed exploration activity which warrant additional time to adequately consider.

The regulation to the Act also contains a dispute resolution process for Aboriginal communities in connection with exploration permit applications. At any time after an application for an exploration permit is submitted but before an exploration permit is issued, the Director may refer a dispute to an individual or body designated under subsection 170.1(1) of the Act. The purpose of a dispute resolution process is to facilitate consultation among early exploration proponents, Aboriginal communities and the Director. A written report is required to be provided to the Minister within 30 days after the dispute is referred to the designated body or individual, setting out their recommendations, if any.

Public Notice and Consultation

Exploration permit applications are required to be posted by the MNDM on the Ontario Environmental Registry. Members of the public are invited to submit comments within 30 days. Comments may be submitted in writing addressed to the MNDM offices or submitted electronically. Comments received within the 30 day review and comment period will form part of the public record and will be considered as part of the decision making process by the MNDM.

Decision on Application

Within 50 days after the date on which the Director sends an application for an exploration permit to an Aboriginal community, if the Director is satisfied that appropriate Aboriginal consultation has been carried out, the Director must make a decision as to whether to issue an exploration permit and the terms and conditions applying to such permit and provide a copy of the permit to any surface rights owners who have commented on the application and identified Aboriginal communities.

If the application is approved, the exploration permit will be effective for a period of not more than 3 years with the possibility of one 3-year renewal.