Submission to the Environmental Registry of Ontario re: Bill G71, the *Building More Mines Act*, 2023

ERO #019-6717, #019-6715, # 019-6718

MiningWatch Canada
April 11, 2023

Introduction

Thank you for the opportunity to comment on Bill 71, the proposed *Building More Mines Act.* MiningWatch Canada has a record of more than two decades of observing, analysing, and critiquing mining governance in Ontario, and also of proposing and pressing for improvements in all aspects of mining, from claim staking to operations to decommissioning and cleaning up abandoned mines. Our objective is a mining industry that benefits its host communities and the people of Ontario, accounting for the full costs of its activities, fulfilling its obligations to protect people's health and the environment, and honouring First Nations' Treaty and Indigenous rights including the right to free, prior, informed consent as per the UN Declaration on the Rights of Indigenous Peoples.

The government has brought forward a proposal that has not been broadly consulted and discussed, if it has been discussed at all other than with the mining industry. As a result, the proposed amendments to the *Mining Act* are unlikely to meet their stated purposes. The proposed legislative amendments will set back the protection of the environment – and the treasury – substantially, leaving taxpayers on the hook for significantly greater liabilities when it comes to cleaning up decommissioned (and often toxic) mine sites, waste rock, and tailings. Rather than speeding up the approval of new mining projects, it will more probably lead to greater uncertainty and conflict.

The government states that these changes are intended to "reduce administrative burden" of developing new mines and "demonstrate responsiveness to feedback received from industry."[1] However, Ontario's regulatory burden on mining is already minimal, and provides poor protection for Indigenous peoples' rights, the environment, or taxpayers burdened with inadequately insured clean-up costs. If anything,

[1] https://ero.ontario.ca/notice/019-6715

certainty for investors would be better served by building constructive relationships with Indigenous peoples, a strong baseline of science and planning, and a more reliable and robust regulatory environment.

The *Building More Mines Act* would reduce the already-inadequate requirements for mining companies to post bonds or other financial securities to cover the costs of cleaning up their operations when they close. It would also relax rehabilitation standards, allow operators to approve their own technical plans, and exempt companies from having comprehensive closure plans in place before starting operations.

At the same time, nothing in this package deals with the primary source of delay in project development, which is the financial markets that determine feasibility and arrange financing. Neither does it address the decades-long decay of administrative, technical, and scientific capacity within government – nor the absence of land use plans and baseline knowledge of all kinds that would allow for effective and efficient responses to mining projects at all stages of development.

Ontario does not require mining projects to undergo environmental assessments. This means that there is no mechanism to ensure that closure plans, for example, are subject to review by Indigenous peoples – whose consent is required by the UN Declaration on the Rights of Indigenous Peoples – or by affected communities, public interest groups, or independent experts.

In fact, the proposed changes may well lead to more delays, not more mines. As northern Ontario NDP MP Charlie Angus points out in a recent article in Policy Magazine:[2]

> "The irony is that Ford's plan to defer commitments on closure and clean up is likely to result in increased opposition to new mining developments. …Doug Ford's attempt to fast-track mining projects by cutting environmental obligations downloads the risk to Indigenous communities and the people of Ontario, including the risk of turning the North into a conflict zone as Indigenous communities rightfully push back. And such conflict will only rattle investors and hinder development."

The northern First Nations of Webequie and Marten Falls have been persuaded by the Ontario government and industry to allow mining access to the Ring of Fire[3] in return for access roads to their own communities. However, Neskantaga First Nation opposes opening up the region to mining without the opportunity to exercise their free, prior, and informed consent. First Nations and environmental groups have raised serious concerns about the effects of such development on the region's extensive and sensitive peatlands.[4]

Neskantaga First Nation Chief Wayne Moonias spoke passionately at PDAC[5] against the latest approvals, while Indigenous law specialist Kate Kempton, who represents the northern Ontario First Nations of Attawapiskat, Ginoogaming, Constance Lake, and Aroland, told CBC that the government's actions will only lead to further confrontations, saying, "Doug Ford is basically setting himself and his government up for a bunch of injunctions and blockades. He's paved the road for court action and possibly direct action as well."[6]

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[2] https://www.policymagazine.ca/politics-meets-the-minerals-rush-at-the-worlds-biggest-mining-convention/
[3] https://news.ontario.ca/en/release/1002784/ontario-approves-first-nations-led-plan-for-the-road-to-the-ring-of-fire
[4] https://globalnews.ca/news/9524388/peatlands-climate-canada-ring-of-fire/
[5] https://www.youtube.com/watch?app=desktop&v=8Rh5id8YZPE
[6] https://www.cbc.ca/news/canada/sudbury/ontario-government-mining-proposal-critics-1.6766176

The proposed changes cover six key areas:

1. eliminating the requirement for technical review of mine closure plans by government officials, relying instead on private sector "qualified professionals";
2. allowing projects to proceed with incomplete closure plans;
3. allowing proponents to submit financial assurance in incremental amounts, even though existing assurances are already inadequate;
4. allowing alternate rehabilitation measures and alternate post-closure land uses, potentially allowing land to be rehabilitated to much lower standards;
5. removing the requirement that the re-mining of mine wastes leave the condition of the land better than it was before, just "comparable";
6. transferring the decision-making authority of the Director of Mine Rehabilitation to the Minister, as well as allowing the Minister to make decisions for the Director of Exploration.

These all present serious challenges to the viability of the mining industry in Ontario. While they may initially appear to boost profitability, they will increase the environmental, health, and financial risk to the province and its people, and will diminish the potential for consensus and increase the potential for conflict with Indigenous peoples and non-Indigenous communities alike.

1. No technical review of closure plans

The government plans to eliminate the technical review of mine closure plans by government officials, instead allowing the mining companies' own staff to endorse them as certified "qualified persons." This will create a clear conflict of interest. While there already exists a risk of 'capture' of the Ministry of Mines by industry interests, at least ministry officials are not actually employed by the company filing the plans they are reviewing. Regardless of the qualifications of the individuals involved, it is hard to imagine how they would not feel pressured to support their own employers' plans.

British Columbia provides an unfortunate illustration. B.C.'s over-reliance on qualified professionals (its policy of "professional reliance") was a significant factor in the Mount Polley disaster, according to B.C. Auditor General Carol Bellringer's 2016 Audit of Compliance and Enforcement of the Mining Sector.[7]

This issue was also identified by the Environmental Law Centre (University of Victoria)'s 2014 submission to the Mount Polley Independent Expert Engineering Investigation and Review Panel[8] and the B.C. Chief Inspector of Mines' 2014 Investigation Report[9] into the Mount Polley spill, the largest environmental disaster in Canadian history, which saw 25 million cubic metres of contaminated material pour into Quesnel Lake (where heavy metals are remobilized from the sediment every year) and the Fraser River watershed.

2. Incomplete closure plans

[7] https://www.bcauditor.com/sites/default/files/publications/reports/OAGBC%20Mining%20Report%20FINAL.pdf
[8] http://www.elc.uvic.ca/wordpress/wp-content/uploads/2015/01/Mount-Polley-Engineering-Panel-Submission_2014Dec7.pdf
[9] https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/mineral-exploration-mining/documents/directives-alerts-incidents/chief-inspector-s-report-page/m-200_mount_polley_2015-11-30_ci_investigation_report.pdf

Ontario also plans to allow the deferral of part of a mine's closure plan, allowing projects to proceed with incomplete closure plans. Specific clean-up and monitoring activities can be made possible, or impossible, by the way the mine is built and operated from the beginning. This is called "mining for closure and has been a key part of responsible mining practices for decades.[10]

The government seems to have forgotten – or maybe they just want us to forget – that the requirement for a comprehensive closure plan before a mine is permitted is precisely to avoid situations where important closure and rehabilitation measures would turn out to be impossible to implement. They promise that this would only be done where these studies/elements can reasonably be deferred without compromising the integrity of the closure plan. But there is no way to do this reliably, precisely because those elements are interdependent. For example, how and where wastes are placed will change what remediation options are viable. There will be a serious risk of elements being excluded, only to discover later on that they are important – and cannot be implemented due to other factors or actions already taken.

3. Phased Financial Assurance

The proposed changes would allow proponents to submit financial assurance in incremental amounts (phases) on a schedule tied to the construction of new mine features. This would make sense if Ontario's existing financial assurances were not frighteningly inadequate to start with. The Auditor General of Ontario's 2015 Annual Report[11] identified a ballooning clean-up liability of some $3.1 billion dollars for 216 closed and abandoned mine sites, with barely half that amount covered by some form of financial assurance, including "self-assurance" and corporate assets that can easily and almost instantly vaporise under the wrong conditions.

Based on experience in Ontario and other jurisdictions, MiningWatch estimated[12] that the real liability is probably closer to $7.6 billion, more than twice the official estimates and more than four times the actual financial assurances. (By way of example, at the Kam Kotia mine site near Timmins, costs ballooned over 225% from their original estimates — $41 million vs. $96 million 15 years later when the work was actually being done). That leaves the province of Ontario – that is, the taxpayers – on the hook for the shortfall, footing the bill for clean-up, perpetual water treatment, and so on. The proposed changes through the *Building More Mines Act* do nothing to close that gap, or to end the absurd practices of self-assurance and accepting assets as assurance. There are no public reports on this since the Auditor General of Ontario's 2017 follow up report.[13] It's also important to note that Ontario's mining royalties are the lowest in Canada, so it's not as if the province is generating enough revenue to justify these liabilities.

This proposal would make sense for a mature mining jurisdiction that implemented the polluter-pays principle, ensuring that environmental and health liabilities were fully covered by bonds or other cashable financial assurances – and if there were criteria attached that would allow determinations made on the basis of what it would actually take to clean up and rehabilitate the site as it is at a given time.

4. Looser standards for rehabilitation

[10] https://www.iisd.org/system/files/2021-09/financial-assurance-governance-for-post-mining-transition.pdf
[11] https://www.auditor.on.ca/en/reports_en/en15/3.11en15.pdf
[12] https://miningwatch.ca/news/2015/12/9/wake-call-ontario-ranks-worst-canada-environmental-liability-mine-sites
[13] https://www.auditor.on.ca/en/content/annualreports/arreports/en17/v2_111en17.pdf

Ontario proposes to allow alternate rehabilitation measures and alternate post-closure land uses, for example, to potentially allow land to be rehabilitated to industrial use standards rather than natural habitat. While greater flexibility is a good idea, it should not be used to simply allow more degraded post-closure conditions, and the government has not identified any conditions or criteria to prevent this.

5. Re-mining existing mine waste and tailings

In 2021 the *Mining Act* was amended to allow for the re-mining of old mine wastes, but proponents had to ensure that the condition of the land would be improved when they were done. The government now wants to just ensure that the condition of the land will be "comparable to or better than" it was before. In other words, if the place is a complete horror show, you only have to leave it slightly less messy (or dangerous), not actually clean or safe. This is absurd. Re-mining or recovery operations are an opportunity to serve both private profit and the public interest. They should be allowed only if they can leave the land (and waters) in significantly better condition.

6. Politicised decision-making

The proposed amendments would transfer the decision-making authority of the Director of Mine Rehabilitation to the Minister, as well as allowing the Minister to make decisions for the Director of Exploration at whim. This straight up politicises those decisions. It's already bad enough that there is no accountability within these processes, and that there is already extensive regulatory capture, without just turning decisions over to cabinet ministers who are generally not experts in these matters.

Reassurances

The Environmental Registry entry states that the proposed changes "align with the purpose of the Act which includes encouraging prospecting, registration of mining claims and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights (including the duty to consult) and to minimise the impact of these activities on public health and safety and the environment." It goes on to state that "There are no anticipated environmental impacts as a result of these proposed changes to the *Mining Act*." In the absence of any specific commitments towards that promise, and coming from a government that has repeatedly demonstrated its contempt for both Indigenous rights and the environment, these are truly empty reassurances.

Conclusion

In his reasons for the proposed changes, Minister Pirie laments that mines can take upwards of fifteen years between prospecting and operations. But it only takes that long if market conditions and finances are not looking good for that particular project (i.e. the project is economically marginal) or if there are really serious technical or environmental problems with it. It still *does* take several years to get through various licensing processes (not including environmental assessment, since mining projects are not subject to the provincial assessment process), but much of that time is needed to do and review the necessary engineering – also not something that can be safely streamlined.

The current exploration boom will take years to lead to any actual mining projects, so they won't be meeting current and immediately emerging market demand, and no-one knows what global markets will look like in five or ten years' time. Without a government commitment to supporting such projects, for

example through guaranteed purchasing and processing, all government is doing is boosting exploration activity (a standard vote-buying strategy) and rewarding exploration and service companies (and importantly, investors), with no lasting benefit either to northerners or the province as a whole, but with a lasting impact on communities and sensitive northern ecosystems. The proposed changes need to be rejected and a new process needs to be started to engage with affected First Nations, northern communities, experts, and public interest groups to develop a coherent and effective plan for mining as part of a broader strategy to meet the challenges of both the renewable energy transition and northern development.