

Building More Mines Act, 2023

FACT SHEET

September 2024

DEEMED EXPLORATION

Recent amendments to the *Mining Act* (the “Act”) provide holders of mining leases, licences, and fee simple patents the ability to apply to the Minister to have certain activities that would otherwise be “mine production”, as defined in the Act, deemed instead to be early exploration or advanced exploration. This applies to mining, milling, and refining carried out for the purpose of testing mineral content, where there is an intention to sell the mineral or mineral-bearing substance that is the end product of the testing.

A determination by the Minister is issued in writing pursuant to subsections 139.0.1 (1) or 139.0.1 (2) of the Act, depending on whether, if the intended sale of the end product of testing were not taken into account, the underlying activities would have constituted early exploration or advanced exploration. The effect of this determination is to relieve the applicant from the requirement to have a filed mine production closure plan prior to undertaking the mining, milling, and refining activities carried out for the purpose of testing.

It is important to note that issuance of a determination under subsection 139.0.1(1) or (2) does not provide the applicant with any authority to engage in the proposed mining, milling, and refining activities carried out for the purpose of testing. If the activities are deemed to be early or advanced exploration, an early exploration plan or permit, or a filed advanced exploration closure plan is still required, respectively, before the activities may be undertaken.

Proponents who are subject to this deeming may not profit from the sale of the tested materials unless a mine production closure plan is filed before the sale, although they can recover certain costs associated with the work program.

The proponent is encouraged to reach out to the Mineral Exploration and Development Consultant (MEDC) for information prior to applying. The proponent may submit draft materials, if desired, for the MEDC to review prior to their final submission (e.g., copies of the required maps for feedback on whether they meet applicable ministry mapping standards).

Application Process

A proponent must fill in the [Application for Deemed Exploration](#) form and submit it to the Ministry of Mines, [Mineral Exploration and Development](#) Section. The MEDC will review the application for completeness and where needed, will work with the proponent to ensure it is complete.

The applicant will be required to indicate in their application whether they are applying for deemed early or advanced exploration; however, the correct categorization of the deeming (i.e., early or advanced exploration) will be determined by the Minister based on the contents of the application and the description of the proposed activities. The application must also include certain other prescribed information, such as details regarding the mineral or mineral-bearing substance that will be extracted and how and where it will be processed, details regarding certain surface stripping, pitting or trenching, the proposed location, a description of the testing and schedule for the proposed activity. The applicant will also need to provide a map of appropriate scale that identifies the tenure of the lands.

If it is determined by the Minister after receipt of the complete application that the duty to consult is triggered by a proposed deeming decision, the Minister will provide the proponent with written direction regarding Aboriginal consultation. The Minister will identify the Aboriginal communities to be notified and may require the applicant to prepare a consultation plan, report to the Minister on an established schedule, and/or direct the applicant to do such things by way of consultation as the Minister, in his or her sole discretion, considers appropriate in the circumstances.

In making a determination on the application, the Minister shall consider, among other things, whether Aboriginal consultation occurred in accordance with any prescribed requirements.

Early Exploration Plan, Permit or Advanced Exploration Closure Plan

A proponent may obtain the necessary authorizations to carry out the underlying work program (e.g., the deemed early exploration or advanced exploration activities), such as an early exploration plan, early exploration permit, or filed advanced exploration closure plan, either before or after the deeming decision is made. The work program cannot occur until all necessary authorizations are received. If the proponent has not obtained applicable authorizations prior to their deemed exploration application, the MEDC may assist the proponent throughout the process of applying for the applicable authorizations.

Reporting

The proponent is required to report back to the Minister on the sale of the mineral or mineral-bearing substance, in the approved form (Reporting Form for Deemed Exploration Activities).

Reporting shall occur by a date specified by the Minister in the determination.

Reporting shall include the amount of proceeds from the sale, together with receipts, and the total cost of the activity, including all related costs to the proponent.

Payment of Sale Proceeds (less costs)

The proponent is obligated to pay to the Crown any amounts received by the proponent, directly or indirectly, for the sale of the mineral or mineral-bearing substance, that exceed the cost to the proponent of any related consultation with Aboriginal communities, and the related excavation, processing, transportation, testing, evaluation and rehabilitation.

Disclaimer

While this fact sheet is intended to provide information on deemed exploration under the *Mining Act*, it is not legal advice. Requirements relating to deemed exploration are contained in the *Mining Act* and its regulations. While all efforts are made to ensure the accuracy of this information, if there is any discrepancy between this information sheet and the Act or its regulations, the provisions of the Act and/or regulation prevail.