

# Focus on Mining

## May 2011

## New social and environmental obligations for mining companies in Quebec

On May 12, 2011, the Government of Quebec tabled before the National Assembly Bill 14, a new bill aiming to modernize mining law in Quebec in the wake of the unveiling of the *Plan Nord*, of which mining development was made a key aspect.

Through Bill 14 (entitled: *An Act respecting the development of mineral resources in keeping with the principles of sustainable development*), the government proposes amendments to mining law to promote the social acceptability of mining activities and the restoration of mining sites. As such, Bill 14 proposes measures which will increase obligations for mining companies significantly and create new restrictions on mining development activities, namely:

- (i) prohibit mining activity in certain urbanized and vacation zones
- (ii) allow the Minister to prohibit or limit mining activities in certain areas to avoid conflicts with other land uses
- (iii) require proponents to hold public consultation before awarding certain mineral leases (mining lease and others)
- (iv) impose restrictions and conditions when issuing new mineral leases, taking into account other land uses
- (v) increase the financial guarantee to complete the rehabilitation and restoration work on mining sites and accelerate the payment schedule (complete payment within three years)
- (vi) strengthen the rules regarding exploration work credits to stimulate exploration
- (vii) update the penalties under the law
- (viii) impose obligations with regard to the exploration and discovery of uranium oxide

The new Bill 14 constitutes a revised version of Bill 79, which was abandoned by the government due to repeated criticism by the official opposition, environmental groups and municipalities. Although Bill 14 reiterates many of the modifications first proposed in Bill 79, it also provides additional amendments to the *Mining Act*, namely new territorial restrictions on exploration and mining activities.

Below is a review of a number of the proposed amendments to the mining system:

### Social measures

**Notice to owner and municipality.** Under Bill 14, the claim holder is required to notify the owner (on private lands), the lessee (on public lands leased by the province) or the holder of an exclusive lease to mine surface mineral substances, within 60 days following registration of a claim. The claim holder will also be required to notify the municipality 90 days before any work is to be executed on the municipality's territory.

**Consultation of Aboriginal people.** When issuing mining titles, the government will need to consult Aboriginal communities separately from any other groups or stakeholders. This provision (which was not included in Bill 79) reiterates the Crown's constitutional obligation to consult with Native communities before taking action that might infringe

an existing or claimed aboriginal right. The government must take into consideration aboriginal interests and concerns through a special and distinct process, given the particular relationship between the Crown and aboriginal people.

**Public consultation.** Proponents of mining projects will have to hold public consultations in the area where they intend to carry out the project. This requirement will apply to applicants that request a mining lease, a peat lease or a lease for surface mineral substances when they are required for an industrial activity or for commercial export. In the case of mining leases, the promoter must hold a public consultation before the lease is requested, and must make the rehabilitation and restoration plan accessible to the public at least 30 days before the beginning of the consultation. It will be within the Minister's purview to decide if the consultation is sufficient, imposing additional measures if not.

The consultation requirements will be laid out in an upcoming regulation. However, the ministry indicated that it will be possible for the consultation required by this new provision to be held jointly with the public consultation and information period, which must be held pursuant to the *Environment Quality Act* for certain mining projects.

**Reconciliation of mining activities with other land uses.** Following the public consultations, the Minister will be entitled to add conditions in the mining lease with a view to avoid conflicts with other land uses or to take into account the comments received during the public consultations – a ministerial power which does not exist under the current *Mining Act*. Furthermore, the proponent will be required to form a committee to follow-up with the undertakings made during the public consultation.

**Refusal of a lease for surface mineral substances.** The Minister will have the discretion to refuse a request for a lease to mine surface mineral substances (including, for example, peat, sand, gravel, limestone and dolomite) or terminate the lease before the end of its term for reasons that are in the public interest. However, if the lease is terminated by the Minister, the leaseholder will be entitled to an indemnity or a new lease on another parcel of land.

**Urban and vacation areas protected.** The registration of new claims will be prohibited within urban areas (**urbanization perimeters**) and vacation zones identified in land use planning and development plans adopted by regional county municipalities or metropolitan communities (this restriction was not provided for in Bill 79). Individuals holding claims in those areas before this restriction comes into effect will nevertheless be permitted to execute their work as long as they obtain the affected municipality's consent. That said, mechanisms have been proposed to enable the regional county municipalities or metropolitan communities to request that the minister cancel the restriction on their territory or authorize mining activities under certain conditions.

This new mechanism may bring about significant uncertainties for mining companies as municipal governments, through a mere modification to their planning and development plans, will have the ability to restrict mining activities in certain areas and compromise mining companies' investments that will eventually have been made in those areas.

**Other lands withdrawn from mining activity or state-reserved lands.** Beyond the limitations related to urban areas and vacation zones, the Minister will also have an increased ability to withdraw land from mining activity or create State-reserves (a reserve allows the minister to limit mining activity). Pursuant to the current law, the Minister can use these measures when he determines that it is for the public interest. Bill 14 will allow the minister to invoke these mechanisms not only for reasons of public interest, but also to avoid conflicts with other land uses. Therefore, the Minister will be able to take into account the regional planning and land uses laid out, for example, in the land use planning and development plans drawn up by regional county municipalities. In addition, other land users will have the possibility to ask the Minister to prohibit or limit mining activity on the land to protect other land uses.

## Environmental measures

**Approval of the rehabilitation plan.** According to Bill 14, the rehabilitation and restoration plan will need to be approved by the Minister before the mining lease is issued. Currently, the law allows the mining lease to be issued before the plan is approved. In addition, the plan will need to be made public 30 days before the public consultations begin.

**Financial guarantee.** Bill 14 will increase the financial guarantee for the work related to the rehabilitation and restoration of the mining site. Currently, the financial guarantee must cover 70% of the anticipated costs of rehabilitation and

restoration of the **tailings areas** only. According to Bill 14, the guarantee will have to cover **100%** of the anticipated costs of all the planned rehabilitation and restoration work related to the mining site. The financial guarantee will also cover the rehabilitation and restoration work related to exploration.

Furthermore, the guarantee will have to be provided in full within a shorter time span. The mining company will need to provide the guarantee in connection with exploration work before the work begins. The guarantee required in connection with mining operations will need to be provided within three years of the approval of the rehabilitation and restoration plan, (50% within 90 days of approval of the plan and two payments of 25% on the anniversary date of approval of the plan). With certain exceptions, rehabilitation and restoration work will be required to begin within three years after operations stop.

Mining projects for which the restoration and rehabilitation plans have been approved before Bill 14 comes into force will be subject to the new financial guarantee obligations three years after the bill comes into effect. Finally, a fine of 10% of the total amount of the guarantee will be enforced if the required guarantee is not provided.

**Release certificate.** Bill 14 will restrict the criteria allowing the Minister to release a mining company of its restoration and rehabilitation obligations and liability. On the one hand, the release certificate will only be issued after the minister obtains a signoff from the Ministry of Sustainable Development, Environment and Parks. On the other hand, to be released, the operator will need to ensure that the land where the mining activities took place no longer represents a risk to the environment, and to the health and safety of individuals. This requirement has a broader reach than the current provisions, which are limited to risks of acid mine drainage.

**Discovery of uranium.** A claim holder will be required to declare to the minister any discovery of mineral substances containing 0.05% or more of uranium oxide within 60 days of the discovery.

## Measures to encourage mining exploration

**Mining exploration.** To encourage mining exploration on active claims, Bill 14 proposes several new measures relating to mining exploration:

- (i) when requesting the map designation of a claim (registration of claim), the claim holder will need to provide a plan of the work to be performed in the year following the issuance of the claim
- (ii) the claim holder who does not complete the required statutory exploration work will need to pay a penalty to the minister double the amount of the exploration work that he failed to complete to renew his claim
- (iii) the period during which excess exploration work credits may be carried over to the claim's subsequent term is limited to 20 years
- (iv) the area of the land where excess exploration work credits may be used to renew other claims will be reduced
- (v) it will no longer be possible for a claim holder to transfer to his claim's excess credits for work carried out on a mining lease.

## Conclusion

The Committee on Agriculture, Fisheries, Energy and Natural Resources of the National Assembly will hold public consultations on Bill 14 in August 2011. Twenty interest groups have been invited to participate in the consultations.

The Government's new proposal for the modernization of the mining system, if adopted, will undoubtedly create additional constraints on mining development in Quebec. Many of the proposed measures are likely to have financial consequences on mining companies. Furthermore, in addition to the fact that mining activity could be prohibited in urbanized and vacation areas, citizens would have greater ability to express their concerns and ask that measures be taken to protect existing land uses from mining activities.

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