



Quartz Mining Act and Placer Mining Act Review

Class 1 Mining Land Use

Discussion Paper

June 2013

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1.0 Introduction

In recent years, increased levels of mineral exploration have highlighted concerns about the lack of information around Class 1 exploration programs and Class 1 placer land use operations (Class 1 programs). The ongoing development of regional land use plans has also identified the need to review how government manages these types of activities and how the current regulatory system may need modification. Yukon is also aware of its obligations to work with Yukon First Nations – including those that have entered into Yukon First Nation Final Agreements and those that have not yet settled land claims – and mineral rights holders.

Added to the above is the recent declaration of the Yukon Court of Appeal which stated that the Government of Yukon (Yukon)¹ has a duty to notify and, where appropriate, consult with and accommodate the Ross River Dena Council before allowing any mining exploration activities to take place within the Ross River area, to the extent that those activities may prejudicially affect aboriginal rights of the Ross River Dena Council. This declaration takes effect December 27, 2013.

In light of the above, Yukon is proposing to amend the regulatory regime affecting Class 1 programs as set out in the *Quartz Mining Act* and the *Placer Mining Act* (the mining legislation). Amendments to the legislation must be in force by December 27, 2013 to meet the timeline imposed by the Court of Appeal for implementing the declaration of the Court of Appeal. This discussion paper sets out proposed changes to the legislation.

1.1 Issues of Concern to be addressed by Amendments to the *Quartz Mining Act* and *Placer Mining Act*

In summer of 2012, the Department of Energy, Mines and Resources undertook a review of the mining legislation to identify the issues and concerns with the current regime for Class 1 programs and to find possible solutions. Four main areas of concern were identified. These are discussed below.

(1) Environmental protection and compliance monitoring for Class 1 Activities – Persons carrying out Class 1 programs are required by law to undertake the program in accordance with operating conditions set out in regulations. Adding the requirement that a person must notify the Chief of Mining Land Use before carrying out a Class 1 program will enhance the ability of inspectors appointed under the mining legislation to monitor compliance with the operating conditions, including requirements to reclaim land as part of the Class 1 program. It will also enable Yukon to more easily share information about these activities with other users of the land.

(2) Consultation with Yukon First Nation – In some situations Class 1 programs may adversely affect asserted aboriginal and treaty rights. The present regime does not enable notification and, if required,

¹ *Ross River Dena Council v Government of Yukon*, 2012 YKCA 14

consultation and accommodation, in respect of these rights. Amendments to the mining legislation for Class 1 programs will enable notification, and if required, additional consultation.

(3) Security for Class 1 Exploration – Currently, the mining legislation enables the Chief of Mining Land Use to require a person undertaking a Class 2, 3, or 4 program to provide security if there is a risk of significant adverse environmental effect from the program. Security cannot be sought in relation to Class 1 programs. While the environmental effects of Class 1 programs are typically not significant, it would be beneficial in some situations if the Chief of Mining Land Use could require security.

(4) Identification of Areas for Specific Operating Conditions – Mining exploration, at all class levels, may have a greater impact in some areas of Yukon, particularly those areas identified in land use planning or other initiatives as having high or sensitive environmental or socio-cultural values. Amendments to the mining legislation enable designated of areas within which additional or site-specific operating conditions apply.

The following objectives for the amendments were identified:

- Ensure Yukon can meet its duty to consult, when such a duty arises, with respect to Yukon First Nations with Final Agreements and Yukon First Nations without Final Agreements.
- Improve information sharing between First Nations, government, and industry.
- Provide enhanced environmental protection and compliance monitoring.
- Manage multiple resource interests effectively in areas of high value or requiring specific operating conditions.

1.2 Background

The current framework for managing mineral exploration activities is set out in Part 2 of the mining legislation. Exploration activities are divided into classes, distinguished from one another by the type of activity and thresholds for each level of activity. There are four classes of exploration program, with the level of allowable activity increasing as you progress from a Class 1 program through to Class 4. The allowable activities include such things as construction of permanent structures, number of persons allowable per camp, storage of fuel, construction of cut lines, corridors and clearings and trenching.

Regulatory oversight occurs at all levels of activity, but requirements for oversight change significantly between Class 1 programs and Class 2, 3, and 4 programs. The current legislation does not require the person or company engaging in a Class 1 program to notify any government official of the commencement of the program, although it does require that all Class 1 programs be undertaken in accordance with operating conditions set out in the regulations. This differs from a Class 2 program where the program operator must provide notification acceptable to government or Class 3 and 4 programs, which may only proceed in accordance with an operating plan approved by government. Class 2, 3 and 4 exploration programs are all subject to evaluation under the *Yukon Environmental and Socioeconomic Assessment Act* (YESAA).

2.0 Key Amendments Proposed to *Quartz Mining Act* and *Placer Mining Act*

The amendments are primarily focused on potential changes to the administration of Class 1 programs under the mining programs. The proposed changes to the regulation of Class 1 programs will result in these activities being treated very similarly to how Class 2 exploration programs and placer land use operations were considered prior to the introduction of YESAA. The changes to the regime include the following. A draft process chart has been included for discussion, see attached Appendix A.

(1) Requirements for notification prior to the commencement of a Class 1 program

In order to address the key issues above, the proposal requires notification Yukon-wide and to include both mining acts. Both regulatory regimes contain many of the same provisions and criteria for Class 1 exploration activities.

To allow for enhanced environmental protection and compliance monitoring, notification provides an opportunity for the Chief of Mining Land Use to place additional conditions on a Class 1 program and to determine whether security is necessary in areas where impacts from certain types of Class 1 activity might be significant. The notification will provide Client Services and Inspections Branch the information on where and when activities are occurring, so monitoring can take place from the beginning of a project.

The proposed notification would consist of a written notice by the person wishing to undertake the Class 1 program to the Chief of Mining Land Use. The notification would describe the location of the project and the activities to be undertaken. A limited amount of information associated with the notification – the date of entry, the name of the operator, the duration of the Class 1 program and the location of program – will be posted on a public register maintained by the Chief of Mining Land Use. Notification does not imply a permitting requirement; however, the Chief of Mining Land Use may require additional terms and conditions to be included in the program.

There will not be a requirement for a YESAA screening. Class 1 activities are not included in the project regulation listing under YESAA as they are understood not to create significant environmental risk if mitigated by application of the operating conditions.

Additional Powers of the Chief of Mining Land Use for Class 1

The proposed amendments will establish that the Chief of Mining Land Use has the authority to do four additional things in relation to a Class 1 program:

- (a) the Chief of Mining Land Use may amend a Class 1 notification if it is necessary to do so to mitigate potential adverse environmental or socioeconomic effects or to address potential adverse impacts on treaty rights or asserted aboriginal rights that are identified during consultation with a Yukon First Nation;
- (b) the Chief of Mining Land Use may refuse to allow the Class 1 program to be carried out as proposed if the environmental or socioeconomic effects cannot be mitigated or adverse effects on treaty rights or asserted aboriginal rights cannot be eliminated or accommodated;
- (c) the Chief of Mining Land Use may require the person carrying out the Class 1 program to provide security if there is a risk of significant adverse environmental effects from the program;
and
- (d) the Chief of Mining Land Use must, when requested to do, so issue a certificate of compliance if security was required and the Chief of Mining Land Use is satisfied that the person has complied with all provisions of the Class 1 notification.

(2) Establishment of a review period for Class 1 exploration activities with the ability to extend the period if needed

Upon receipt of a Class 1 notification, the Chief of Mining Land Use would be required to do two things. First, review the notification to determine if any potential adverse environmental effects of the program would be mitigated. Second, the Chief of Mining Land Use must send a copy of the notification to any Yukon First Nation that may be affected by the Class 1 program.

The person submitting the Class 1 notification will be able to undertake the Class 1 program 25 days after submitting the notification, unless the person is notified by the Chief of Mining Land Use that additional time is required to ensure mitigation or carry out further consultation with a Yukon First Nation.

The process will also look to establish timely consultation procedures to avoid undue hardship to the proponent.

(3) Establish the regulatory power for the Minister to define certain areas that would qualify as 'identified areas' in the legislation.

The proposed amendments would enable the Minister of Energy, Mines and Resources to designate areas across Yukon where specific operating conditions would apply in addition to standard operating conditions currently found in the mining land use regulations.

'Identified areas' could include settlement land, land set aside for the purposes of furthering settlement of aboriginal land claims (i.e., interim protected land), and areas requiring a higher level of care as identified and approved through regional land use planning and zone designation. An example of a specific operating condition could be limiting access to certain areas during calving, lambing or other time periods essential to the well-being of wildlife, or limiting activities to certain seasons to avoid critical habitat disturbance for wildlife or plants at risk.

3.0 Review Process and How to Provide Your Input

The Department of Energy, Mines and Resources is looking for input on the key areas identified for amendment outlined above. The overall purpose of this review is to get feedback to ensure that the notification process developed from amendments to the QMA and PMA meet the needs of all parties.

Copies of this discussion paper are available for download on our website at www.emr.gov.yk.ca/mining. For more information about the review or if you or your staff wish to meet to discuss the review, please contact Bryony McIntyre, Manager, Mineral Planning and Development at (867) 667-3422, or by e-mail at Bryony.McIntyre@gov.yk.ca.

The review process will continue until July 31, 2013. Comments received during the review period will be compiled and considered in the finalization of the amendments to the QMA, the PMA and their regulations. A compilation of comments received will be made available on our website through posting of a post-consultation report after the review period has closed.

If you would like to provide written comments, please submit them by July 31, 2013 to Energy, Mines and Resources, Mineral Resources Branch at:

E-mail: mining@gov.yk.ca

Fax: (867) 456-3899

Mail: Mineral Resources Branch, K-9
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