



Mineral Resources Act Review

Improving Our
Competitive Position
Through Modern and
Effective Legislation

Introduction

Mining holds a long tradition in Nova Scotia. For centuries, what comes from underneath the ground has provided economic benefits for those who live on top of it. Today, the mining sector enables Nova Scotia to use its mineral resources to improve the everyday lives of its citizens. For example, salt improves road safety during the winter months and has been used for food preparation and preservation for centuries. The province can use and export natural minerals such as gypsum, used in construction materials such as fire-resistant wallboard, and coal resources to fuel its electric generating plants. The province's limestone resources are used to make Portland cement, capture sulphur dioxide from coal-fired electric generating plants and help farmers grow nutritious foods. The mineral development and mining sector provides better opportunities for students who graduate from science and engineering programs to stay in the province and engage in a dynamic and challenging industry that uses leading edge technology and produces products that benefit society.

Mining activities fall within the mandate of several departments:

- **Department of Natural Resources** – regulates and administers mineral rights, mineral leasing, reclamation and bonding of exploration and mining operations, and collection of royalties, through the *Mineral Resources Act*; and the leasing of Crown lands through the *Crown Lands Act*
- **Nova Scotia Environment** – regulates and administers the requirement of environmental assessments, administers the industrial approval process when applicable, and oversees the requirements of reclamation and bonding on mining operations, through the *Environment Act*
- **Department of Labour and Advanced Education** – regulates all workplace health and safety requirements under the *Occupational Health and Safety Act*.
- **Department of Finance** – administers taxes for mining activities under various laws, including the *Mineral Resources Act* and the *Gypsum Mining Income Tax Act*.

Purpose of review

The *Mineral Resources Act* and its regulations are currently under review by government. This document provides background information to support public, stakeholder, industry, and Mi'kmaq consultation in the review. At the end of the document you will find information about participating in the review.

Legislation establishes the rules we all must follow for government to achieve its objectives on behalf of Nova Scotians. A modern and effective *Mineral Resources Act* will improve Nova Scotia's competitive position and further support an 'open-for-business' environment for mineral exploration and mining in the province. Administered by the Department of Natural Resources, the *Mineral Resources Act* and its regulations establish in law overarching rights and obligations to support and encourage responsible mineral resource management that is consistent with sustainable development. A revised *Mineral Resources Act* will make dealing with government easier, faster, less expensive for industry, and provide more transparency for industry, stakeholders and the public.

Government is responsible to all Nova Scotians to ensure the *Mineral Resources Act* and its regulations, coupled with other government legislation, strike the right balance between responsible resource extraction to meet the needs of the economy and managing our collective portfolio of natural resources for current and future generations. With this review, government seeks to improve the legislative framework; as important as supporting a framework for business is, the revised *Mineral Resources Act* will adopt the principles of sustainability and strengthen mechanisms to support and protect the various interests of communities and the rights of landowners and mineral rights holders.

The last full review of the Act was in 1990. As part of the Natural Resources Strategy "The Path We Share" (2011), the Department of Natural Resources is committed to good governance, with plans to review at least 50% of its Acts by 2020. With respect to mineral resources, good governance means providing clear and effective laws and policies that support responsible, sustainable mineral resource development.

Specifically, the Natural Resources Strategy commitment is to review and revise the *Mineral Resources Act* to "provide clear and effective laws and policies that support sustainable geological resources development" (The Path We Share, 2011).

Further, in 2014 the Auditor General recommended operational changes to improve the way government monitors mineral development and the mining industry. Reviewing the legislation provides an opportunity to address some of these recommendations.

Focus of the review

As stated in the Report of the Nova Scotia Commission on Building Our New Economy (“OneNS Report”, February 2014), the Government seeks to amend the *Mineral Resources Act* in order to provide a modern and responsive legislative framework to support and promote sustainable mineral resource management. This is a big challenge, often reflecting competing values.

We know that Nova Scotians can continue to benefit from this challenging but rewarding industry and the benefits it creates. This can be achieved through improved regulatory clarity and certainty. This, in turn, could increase the number of claims staked, increase the amount of money spent on mineral exploration (so that more of the province’s mineral resources can be found and accessed) and increase the number of mineral leases issued (so that mineral wealth can be generated in a responsible way that respects the principles of sustainable development).

The government wants all Nova Scotians to be informed of mineral industry activities and engaged as part of the mineral development process, ensuring that development is carried out responsibly and sustainably and that Nova Scotians support and share in the benefits generated by the development of the Crown’s mineral resources.

Since announcing the review in 2013, the department has received input from both industry and non-industry stakeholders. The following topics were highlighted in the information we have received to date:

- **Land access** – gaining permission to conduct prospecting, exploration and mining activities on private and Crown lands.
- **Reclamation and bonding** – requirements for reclaiming lands under lease and obligation to those lands if a lease is forfeited, abandoned, or surrendered.
- **Royalties** – how royalties are calculated and administered under the Act and its regulations.
- **Community Engagement** – how to keep communities adequately informed of mining activities about to or continuing to take place within their community. Undertaking community education and communication activities in order to generate support within the community.

Additional input from industry, stakeholder groups and the general public will further inform the review and contribute to the revised Act. After the legislation process is complete, the department will provide information about what was heard.

Staff will also work to streamline the Act creating process efficiencies, reducing red tape and improving the organization and layout to make it is easier to interpret and administer.



While the entire Act is open for review, certain changes will not be considered as part of this project. Changes to areas dealing with mineral rights and ownership, or what resources are defined as a mineral are not within the scope of this review. For example, the Nova Scotia government owns and administers all resources designated as minerals under the *Mineral Resources Act*, on both Crown and private lands. This is consistent with all other jurisdictions in Canada and will not change.

Further, the department will not change what is defined as a mineral under the Act, which currently includes all metals (e.g., gold, silver, copper, lead, zinc, tin), coal, and many industrial minerals, including industrial clays, quartz, anhydrite, and marble, but excludes aggregates. Aggregate quarries and resources pits, like sand pits, will continue to operate under the guidelines within the mandate of Nova Scotia Environment.

Mining sector overview

There are many active mines in the province supplying more than 20 different mineral products to domestic and export markets. Everything from coal and limestone to salt and gold is mined here in Nova Scotia. With technological advances and changing global markets, other materials that lie beneath the surface could be discovered, developed and marketed one day.

Industry activities include:

- Mineral exploration (staking claims, collecting and interpreting geological data, drilling holes, identifying deposits, etc.)
- Research related to minerals, mineral deposits, mineral extraction (by mining underground and in pits and quarries), mineral recovery, mineral end-use applications, mineral markets, and mineral recycling
- The responsible development of economic mineral deposits (identified as a result of exploration)
- The operation of mines and processing plants and the sale of mineral products
- The reclamation of the land after minerals have been extracted

According to a 2012 report on the economic impact of the mineral industry by Gardner Pinfold, the mining and mineral development sector directly or indirectly employs approximately 5,500 people. Those employed are working in a variety of areas ranging from exploration to extraction of minerals and reclamation of mining sites. Most jobs are located in rural areas of the province, providing good paying employment opportunities. There are currently 11 active mining operations across the province with an annual payroll of approximately \$88 million dollars.

Mineral industry activities make a significant contribution to the Nova Scotia economy. In 2012, an estimated \$12 million were invested in Nova Scotia for mineral exploration alone. Further, it was estimated in 2012 that primary production mining activities generated \$141 million toward Nova Scotia's gross domestic product (the dollar value of mineral products and services provided by the industry). Mineral industry activities in 2012 also generated exports (salt, gypsum, etc.), with a value estimated at \$18 million, contributing to new revenue and economic activity in the province.

The province recognizes that the mineral industry will continue to be an important contributor to Nova Scotia's economic future. Already, the industry contributes approximately \$2.5 million of annual revenue to the province in the form of royalties and taxes.

Some topics identified for review

Land access

Prospectors, exploration companies and mining companies need access to land to carry out their activities. For the most part, prospecting and preliminary exploration activities do not disturb land and do not impact any ongoing use of lands. Where economic discoveries have been made, advanced exploration and development activities generally require exclusive use of a specific land area that is much smaller than is required in preliminary exploration activities. While the level of disturbance for the purposes of exploration may be minimal, the level of disturbance for mining and processing may be far greater. There remains a need for balance between land use for economic development purposes (including mineral development) and other land use values (including wildlife and recreation).

Almost 70% of the land in Nova Scotia is privately owned. Under the current *Mineral Resources Act*, prospectors and exploration companies must obtain permission from the landowner — both private and Crown — before accessing their mineral claims. Generally, this has worked well for all parties. There are cases, however, in which the landowner and the mineral right holder are unable to reach agreement on land access by the mineral right holder. Section 100 in the Act provides the ability for the Minister of Natural Resources to grant a mineral right holder access on private lands. The Minister, or his designate, will review the matter, meet with both parties, either individually or jointly, and make his/her decision. The Minister will determine the compensation that the landowner will receive from the mineral right holder and the terms and duration of access. This access is referenced as a “surface rights permit”. As well, in cases where the landowner cannot be located, a mineral right holder may apply under Section 100 for a surface rights permit.

The issuance of a Section 100 surface rights permit is rare. Since 2000, there have been about 12 applications for surface rights permits, but none has been heard. Many of the applications were withdrawn or settled by the parties before a hearing could be scheduled.

In general, mineral development and mining require full access to lands and multiple land uses may not be compatible. Under the *Mineral Resources Act*, mineral right holders who intend to operate a mine must obtain a Mineral or Special Lease and obtain surface access from the owners of that land. In most cases, the mineral right holder will buy or lease the lands required for their planned mining operations. In some cases, however, the mine developer is unable to locate or to reach agreement with the landowner for access to the required lands. Section 70 in the *Mineral Resources Act* provides the ability for the holder of a Mineral or Special Lease to be granted such lands, on the terms and conditions determined by the Minister of Natural Resources. The mechanism for this process is for the Lease-holder to apply to the Minister to “vest”, or grant, the lands to the Lease holder.

Vesting is an extremely serious course of action and is rarely used under the Act. Upon receipt of an application for a vesting order, the Minister conducts a review of the matter, reviews an appraisal of the value of the lands in question, and meets with the various parties. If the Minister considers vesting to be in the best interest of the province, the Minister may grant the vesting order on terms and conditions that the Minister determines. The two parties are always encouraged to work out an arrangement between themselves, but in the case where no agreement is possible, the Minister does retain the ability to grant a vesting order.



Since 2000, there has been one application for a vesting order, which was granted to the Mineral Lease holder.

The expropriation of lands and assets for the “public interest” provides a mechanism for projects and activities considered essential for the benefit of the general population to go forward where essential lands or assets are held by persons who cannot be located or with whom an agreement for access cannot be reached. In Nova Scotia, the province, the private power utility, and the telephone utility all have the ability to expropriate land, given the approval of Governor-in-Council (provincial cabinet). As well, most municipalities in the province have the ability to expropriate lands.

Development of mineral resources requires land access. Over history, provincial governments have considered if the economic and social benefits provided by mining warrants the use of expropriation of lands in specific situations.

The granting of a surface rights permit or a vesting order is a very serious matter. By elevating these decisions to the Minister, the legislation ensures that they are given thorough review and consideration.

Questions to consider:

- How should land access for mineral exploration and development be dealt with in the new Act?
- What compensation should land owners expect from mineral rights holders either exploring for or planning to produce minerals?
- Is the Minister of Natural Resources the appropriate person to make decisions on surface access permits and vesting orders? If not, who should make these decisions, and how should they be made?
- Should the issuance of an exploration license include the right to access Crown lands for prospecting and exploration purposes?

Royalties

Minerals in Nova Scotia are owned by the Crown (the province). Within the existing *Mineral Resources Act*, the province requires the mineral lease holder to pay a royalty to the province based on the quantity of mineral produced, the value of the mineral produced, or the profit realized as a result of the mineral produced and sold. The Act indicates that the Crown will identify the royalty amount, the method for calculation and set the date payment is due. According to the Department of Natural Resources a total of \$714,000 in mineral royalty revenue were collected in 2013/14, of that amount, \$476,000 came from coal sales. These royalties, once collected, are added to the general provincial budget.

How are royalties set in Nova Scotia? There are several different options: a set percentage of an operation's net revenue or a set percentage of an operation's net income (whichever is greater); or depending on the substance being mined a set dollar figure per identified unit of measurement. The Mine Assessor may also assign the royalty amount as a percentage of net revenue if the company does not meet a set gross income threshold.

In order for the Mine Assessor to properly determine an annual royalty, each operator must submit requested information (as identified by the Mine Assessor) within three (3) months of the end of the mine operation's fiscal year. The assessor reviews the information, formulates the royalty amount and notifies the operator of the required royalty. Royalties are paid at the end of each quarter of the fiscal year. If the annual royalty is estimated to be less than \$1,000 the operator is able to pay a single payment at the end of the fiscal year. Operators have an opportunity to appeal the assessed royalty if the assessed amount is greater than what the operator paid throughout the year.

Non-payment of royalties can result in a lien being placed on all outputs from the mining project. This includes rough and processed materials, slimes and tailings, as well as any other mining assets. It also includes the proceeds from the sale of any raw materials or assets. This essentially means non-payment of royalties places the royalty debt in the category of a secured creditor if bankruptcy occurs. The Act also states that this debt, in the case of bankruptcy, is considered as separate from all other money and assets of the organization. This ensures the royalties, either in part or in whole, will be paid in the case of bankruptcy, if there is no money available to pay the outstanding royalty the Act indicates that mined and processed materials may be taken as payment.

Operations that are found to be operating without the required license, lease, permits, and/or permissions will have a royalty assigned to them by the province's Mine Assessor. The Assessor will assign a royalty based on what they see as a reasonable amount of production based on the size of the operation involved.

Penalties, of set percentages of the identified royalty, are assessed to operators who avoid payment or provide inaccurate or altered documents in order to avoid paying the royalty.

As part of this consultation, DNR will explore potential changes to the current royalty structure, looking at different royalty systems from a variety of jurisdictions.

Question to consider:

- Should the province continue to charge a mineral royalty?
- If so, how do you think mineral royalties should be set?
- Does the existing royalty structure provide an acceptable balance between maximizing economic benefit to the province and to the operators? Should there be rebates for some minerals?
- What penalties, if any, should there be for mining operations that fail to pay their assigned royalties?
- Do you have any suggestions on how mineral royalties could be cost-effectively administered?
- What sections of the Act could be improved to clarify how royalties are calculated?

Reclamation and bonding

Mining is a temporary use of the land. When a mining operation ceases in Nova Scotia, the land is reclaimed to its original use or prepared for another use that has been predetermined by the mining company and accepted by government regulators at Natural Resources and Nova Scotia Environment. Sections 15, 75 in the Act and Section 77 in MRA Regulations outline the requirements under the Act and regulations. The requirements in Nova Scotia are consistent with legislation in most provinces in Canada.

There are generally two conditions under which mineral deposit extraction is considered to be completed:

- 1) The physical limits of the ore deposit have been reached; or
- 2) Prevailing economic conditions make extraction uneconomic.

Typically during reclamation, buildings and other infrastructure are removed, pumps are turned off allowing underground mine workings and open pits to fill with water, and rock piles and other disturbed areas are contoured and re-vegetated. In short, the land is readied for useful purposes after mineral extraction.

Wherever practical, mining companies reclaim mining sites immediately after the mineral resource has been extracted. Sometimes this can be accomplished at the same time that mining activity takes place on another part of the same property. This is called concurrent or progressive reclamation. In other situations much of the reclamation work occurs after mineral extraction is complete near the end of the mine operations.

If mining at a site ceases permanently, reclamation must, by law (*Mineral Resources Act* and the *Environment Act*) begin immediately.

Care and maintenance

Sometimes an operation is placed on a “care and maintenance” status, which may occur if economic conditions change and make profitable mining impossible in the short-term. In cases like this government may delay the requirement for reclamation.

Reclamation security / bonding requirements

Mine operators are required by the *Mineral Resources Act* and the *Environment Act* to set aside sufficient funds during mining to guarantee completion of the reclamation work after mining ceases. This financial security is held in trust by either Department of Natural Resources or Nova Scotia Environment until the reclamation work has been completed to the satisfaction of each department.

Today, before a mineral resource is developed, Nova Scotia legislation (*Mineral Resources Act* and the *Environment Act*) requires potential mine operators to have an engineering plan for reclaiming their site. This plan and the estimated cost of carrying it out must be acceptable to both the Department of Natural Resources and Nova Scotia Environment, who collaboratively set the required security and monitor reclamation activities at mine sites. The security is calculated using standard industry methods to estimate the costs to execute the accepted reclamation plan. The amount of the security held must be satisfactory to the Minister of Natural Resources and Minister of the Environment.

The reclamation security value must be reviewed every two years by Department of Natural Resources during operations or upon an application to modify the approved mining and reclamation plans by the mine operator.

Reclamation work in Nova Scotia

There are many examples of good reclamation practice in Nova Scotia. Land has been successfully reclaimed and the work well documented. Some areas have been returned to pre-existing land uses such as wildlife habitats, while others have become municipal parks, farmlands, or areas with other beneficial uses to local communities. There are circumstances, however, in which a lack of adequate reclamation activity has been shown, and there is need to encourage compliance and use of best practices in reclamation planning and work efforts.

Questions to consider:

- What recommendations can you make to improve the current regulations regarding mine reclamation?
- Should the Department of Natural Resources and Nova Scotia Environment make public the amount of reclamation bond held for each mining operation in the province? Currently these securities are treated as confidential business information.
- What forms of security should the province accept to protect the public’s interest while mines are operating? Examples include: cash, guaranteed letter-of-credit, surety bonds, self-bonding.

Community engagement

For hundreds of years, mineral industry activity in Nova Scotia has provided many goods and services essential to the province. Mineral development has brought benefits to Nova Scotia and our quality of life. At the same time, Nova Scotians have an expectation that companies will explore for and extract minerals responsibly, following not only the *Mineral Resources Act* and regulations (as well as current environment and health and safety legislation), but also adhere to the best practices for obtaining and maintaining a social license to operate.

Globally, demand for minerals continues to increase and the potential to increase mineral exports is promising. We know meeting that demand and achieving benefits for Nova Scotia has a cost. Nonetheless, positive overall benefits can be achieved if the mineral industry effectively engages with the community.

Nova Scotians have high expectations for social, safety and environmental performance. People want to see greater transparency and more participation in decision-making. The atmosphere in which the industry operates is constantly changing and stakeholders are challenged to stay on top of the evolving situation.

Nova Scotians are challenging the assumptions of traditional approaches to social and environmental impacts. There is a need for more collaborative involvement of multiple stakeholders. Industry needs to engage with all communities to determine their concerns and to address them or mitigate them.

In addition to the legal licence to extract and process minerals, which is clearly defined in the *Mineral Resources Act*, the concept of social licence to operate has been widely accepted by the mineral industry as an essential element of success. Currently the province's *Environment Act* has provisions to ensure public input during the environmental assessment process as well as providing for the establishment of community liaison committees to help facilitate communications between mine operators and local residents.

To further assist with community engagement and working in collaboration with the Ecology Action Center, the Mining Association of Nova Scotia, and the Sierra Club – Atlantic, the Department of Natural Resources has developed A Guide for Prospectors and Mineral Exploration Companies Working in Nova Scotia (see <http://novascotia.ca/natr/meb/data/pubs/ic/ic68.pdf>). Additional general information about consultation is available at <http://novascotia.ca/natr/meb/community-consultation/>.

For collaboration to be effective, the responsibilities of government, companies and communities need to be clearly defined.



Questions to Consider:

- Do you think that the collaborative involvement of the mineral industry and communities of interest should be recognized in the Mineral Resources Act or regulations?
- If yes, why?
- How do you recommend government address the following:
 - Defining the responsibilities of government, companies and communities of interest
 - Monitoring, reporting and an evaluation system
 - Enforcement?
- If no, why not?

Next steps

The formal consultation process on the *Mineral Resources Act* will start on January 2, 2015 with the launch of an on-line questionnaire designed to seek input from Nova Scotians on the Act. The questionnaire will be open for input from January 2 to February 2, 2015.

The questionnaire will allow for longer, written documents to be uploaded on-line.

During the consultation period, stakeholder groups may request a meeting to discuss their submissions. Stakeholders and the public should contact the Department of Natural Resources to request a face-to-face meeting with a Review Panel to discuss their thoughts on the Act.

Input received via the consultation will be analyzed and themes identified.

Based on all of the input, the department plans to seek amendments to the Act during the Spring 2015 legislative session.

The information and comments received will be compiled and posted to DNR's website after the legislative process is complete.

For more information, please contact:

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References

Mineral Resources Act

Regulations under the Act

Economic Impact of the Mineral Industry of Nova Scotia – Gardner Pinfold (2013)

The Path We Share, A Natural Resources Strategy for Nova Scotia (2011-2020)

Natural Resources Strategy, The Path We Share (2011-2020)

A Natural Balance – Working towards Nova Scotia’s Natural Resources Strategy Phase 2 Report (including the “Minerals: A Natural Foundation for Nova Scotia’s Future” Technical Report)

Discussion papers received to date: Mining Association of Nova Scotia (MANS) and Sierra Club/ Ecology Action Centre

One NS Report - Now or Never: An Urgent Call to Action for Nova Scotians

Information about programs of the Geoscience and Mines Branch of the Department of Natural Resources

Working Paper DNR 2014-001