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Recommended Amendments of the Mineral Resources Act, Bill 149 April 25, 2016

Good

- An engagement process will be required at the exploration phase (Section 44 of new Actⁱ). This is something we have been recommending for years now, and was also a key recommendation of the Natural Resources Strategy.ⁱⁱ
- Written permission from private property owners is required to go on land if any disturbance is to happen (Section 25 (3)) and verbal and / or written consent is required for non-disturbance access to land (Section 25 (2)).
- Reclamation is required for all projects. Lots of work done in this area of the new Act, probably as outcome of the May 2014 NS Auditor General's Report (<http://www.oag-ns.ca/sites/default/files/publications/2014%20-%20may%20-%20Ch07%20-%20Natural%20Resources%20-%20Mineral%20Resource%20Management.pdf>).
- Environmental Goals and Sustainable Prosperity Act and Mi'kmaq concept of Netukulimk are meant to be considered by the Minister in administering the Act.ⁱⁱⁱ
- Purpose of the Act no longer includes reference to "promote" "mineral resources management", although the term *encourage* remains.^{iv}

Good / Bad

The Act allows (but does not require) for the appointment of a commissioner or a board to settle disputes such as that which occurred regarding the Higgins' family land at the Moose River Gold Mine (this is good), but the Minister can still take land via a "vesting

order".^v In addition, the Minister still has too much discretion in granting surface access rights, Land Access (see Section 26 (2) in endnote v), no objective criteria for granting land access. This means a decision could be entirely political. An appeal can be made to the Supreme Court if a landowner has the means to do so, but this does require the ability to carry legal costs. While it is true that government is elected to make decisions, no one person is ever elected by any constituency as Minister of Natural Resources. Therefore, some objective criteria are required to guide Minister's decisions, and a straightforward appeals process is essential to provide fairness and transparency.

Bad

Maximizing Local Benefits and Recycling

Nothing in the Act requires examination of processing and recycling of minerals locally to maximize benefits to Nova Scotians.

Recommendation

Section 59 states that:

- (5) The Minister shall not accept an application for an exploration licence or mineral lease under this Section if, in the Minister's opinion, it would not be in the best interest of the Province to do so.

But how is the Minister to determine the "best interest" is being served? Regulations for applying for a mineral lease must include to requirement to lay out benefits to the province in terms of local processing and re-processing plans.

No increased transparency

We recommended that information regarding security bonds, inspections, etc. be made public via the Mineral Resources Registry. Not being able to know how much is held in security in case of a tailings breach and/ or for reclamation of a mine site causes stress to neighbours of the mine. Since they may bear the weight of any possible impacts, it is only fair that they be able to see what the securities are. Similarly, information regarding discharges levels, tailings etc. should be made public. This is not required under the new Act. In addition, attempts to circumvent FOIPOP Act – Administration, Section 18, 2(a)(c) and (d, which require a Ministerial order to disclose information, should be removed from the Act.

Recommendation

Remove portions of Section 18 and 140 of the Act allowing confidential information to be withheld, unless permitted by the Minister.

Section 18

18 (1) Upon payment of the prescribed fee, an interested person may, subject to subsection (2), inspect records of mineral rights and non-mineral registrations and records of names of mineral right holders and registrants and obtain copies of applications for mineral rights and non-mineral registrations by

(a) submitting a request in person at the office of the Registrar during office hours, with respect to records that are not filed in the electronic registry; or

(b) accessing the electronic registry.

~~(2) Notwithstanding the Freedom of Information and Protection of Privacy Act,~~

~~(a) departmental notations, other than the application number and date stamp, not forming part of a document;~~

~~(b) leases and other instruments or documents of a confidential nature and filed for information purposes only under Section 15 or 17;~~

~~(c) options; and~~

~~(d) financial information,~~

~~must be held in confidence by the Registrar unless the Registrar is directed to release the information by the order of a court of competent jurisdiction or by the Minister under subsection (3).~~

~~(3) Notwithstanding the Freedom of Information and Protection of Privacy Act, the Minister may direct that information that must be held in confidence under subsection (2) be released in connection with an order of a court respecting procedures under and provisions of this~~

~~Act or the regulations with respect to the information contained in the portion of the record ordered to be released, and upon such notice to the parties concerned as the Minister considers appropriate.~~

....

Section 140

~~140 — (1) — Notwithstanding the Freedom of Information and Protection of Privacy Act and except as otherwise provided in this Act and the regulations, all feasibility studies, financial data, mine and mill design studies, plans and equipment specifications in respect of a mine and information submitted under Section 70 are to remain confidential for the life of the relevant mineral lease or non-mineral registration.~~

~~(2) — Notwithstanding subsection (1), the Minister may release information referred to in subsection (1)~~

~~(a) — if, notwithstanding any enactment, there is a grave environmental danger involving the mine to which the information pertains; or~~

~~(b) — for the purpose of providing statistics regarding mineral production, employment, municipal taxes or economic impacts on the Province, if the statistics are general in nature and do not disclose financial or technical data that would result in undue financial gain or loss to the mineral right holder, the registrant or another person.~~

~~(3) — An assessment work report is confidential for two years from the date of submission, unless the exploration licence expires and is not renewed before the two-year period expires, in which case the report submitted and held in confidence may be released upon the expiry of the licence.~~

~~(4) — Notwithstanding subsections (1) and (3),~~

~~(a) — the mineral right holder or registrant may, upon application to the Registrar in writing, request an extension of the period of confidentiality granted under this Section, and the Registrar may grant such extension if satisfied that the application shows reasonable cause for the extension;~~

~~(b) — the period of confidentiality may be terminated if~~

~~(i) — the mineral right holder or registrant agrees to a release of the information, or~~

- ~~(ii) the mineral right or non-mineral registration is surrendered, cancelled or forfeited or has expired; and~~
~~(c) the Minister may use confidential information with the consent of the owner of the information.~~

Add to Section 15 of the Act:

- (2) The Registrar shall maintain an electronic registry for the purpose of this Act that is publicly accessible.

Establish a Common Reclamation Fund with Percent of Royalties

No common reclamation fund has been established to deal with issues related to abandoned mines and cases when companies can or will not pay for the consequences of an ecological disaster.

Recommendation

New Section be added to the ROYALTIES portion of the Act, stating that the Crown will establish a common reclamation fund to be created for making old mine sites safe and as a common emergency fund in cases where any future exploration license or mineral lease holder fails to pay for mine reclamation or disasters.

Land Trusts Still Open for Mining?

No provision to require that lands that are protect as part of land trusts are automatically withdrawn from mineral staking.

Recommendation

We support the NS Nature Trust & Nature Conservancy Canada's recommendation of the following amendment:

[SECTION] The Minister may, upon application by an Eligible Body prescribed by this Act and with the approval of the Governor in Council, withdraw Land Trust Protected Areas in the Province from being subject to granting of exploration licenses, special licenses and leases.

(2) Where any land, or part thereof, to which this Section applies, ceases to be Land Trust Protected Area, the Minister, with the approval of the Governor in Council, may re-open the land for granting of exploration licenses, special licenses and leases.

Where "Eligible Body" is defines as "a charitable land trust organization dedicated to biodiversity conservation and prescribed by Regulation under this Act. "

The Act would also define "Land Trust Protected Area"

(ii) "Land Trust Protected Area" means, for the purposes of this Act, any lot of land that is

(i) subject to a conservation easement that is primarily dedicated to the protection of biodiversity and natural processes, and is entered into in perpetuity within the meaning of the Conservation Easements Act, or

(ii) owned by an Eligible Body and primarily dedicated to the protection of biodiversity and natural processes,

Excluding any buildings or structures on the land and any of the land used in connection with those buildings or structures, and excluding any lands used or permitted to be used for purposes other than the protection of native biodiversity and natural processes.

Oversight and Enforcement

The Section on PROSPECTING, MINERAL RIGHTS AND NON-MINERAL REGISTRATIONS, Section 69 (1) states "Every lessee shall keep in the Province records, accounts, correspondence and documents in which are entered a clear and distinct statement of ... (e) the quantity and analysis of tailings and waste discharges." In addition, there needs need government mandated and regular oversight, inspection and enforcement of compliance with this provision, performed by conservation officers at the Department of Environment. This issue needs to be specifically covered under ENFORCEMENT.

Recommendation

Under Section 124 and 125 of the Act, granting powers to officers to inspect mining operations should require frequency of inspections, on at least a quarterly basis.

Re-Naming the Act

No name change for the act seems like missed opportunity to be more comprehensive in their approach to Minerals to include Geological Resources. The Natural Resources Strategy recommended the Department provide "leadership in the collection and use of

earth science research and knowledge to benefit and protect Nova Scotians" (*The Path We Share: A Natural Resources Strategy for Nova Scotia 2011-2020*, p. 52).

Recommendation

Section 1 This Act may be cited as the ~~Mineral Resources Act~~ Geological Resources Act.

Ugly

The Quarry Loophole

There is no inclusion of pits and quarries under the new Act, meaning the 3.9 ha exemption from environmental assessment continues, as does the lack of coordination between departments of Natural Resources, Environment, and Transportation and Infrastructure when it comes to quarries. It also means no royalties on quarried materials, of particular concern for export quarries, where there can be few provincial benefits derived from non-renewable, quarried materials.

Currently, no department is taking the lead on dealing with the many issues which arise from quarries, such as their location, potential geohazards, water issues, inappropriate proximity to dwellings and communities, and quarry creep (See: *Lax environmental rules result in 'quarry creep'* <http://thechronicleherald.ca/opinion/1251852-lax-environmental-review-rules-result-in-%E2%80%98quarry-creep%E2%80%99>). This lack of clarity and coordination also means there is little research done on aggregate resources in the province, and crucial information, including information on groundwater, is routinely lost to the Department of Natural Resources, which is charged with assembling accurate information. It also means that there is no mechanism in place to ensure quarries properties are properly reclaimed. Government is also unable to ensure that Nova Scotians receive maximum benefit from aggregates quarried, particularly for export. Getting full value for our resource base is a key assertion of the Ivany Report ("the province is not realizing the full value of our asset base" - *Report of the Nova Scotia Commission on Building Our New Economy*, p. 66)

We recommend that *MRA* be modified to include pits and quarries. This change would create similar roles for the Departments of Natural Resources and Environment as currently exists for mines. DNR would take a leadership role in mapping aggregate resources and assessing geological impacts of quarries. Department of Environment would perform environmental assessments of quarries of any size. Royalties could be set, particularly for export quarries, so Nova Scotians get a fair return for the use of their resources.

Recommendation

Change Section 3 (INTERPRETATION AND APPLICATION) :

(v) "mineral" means a natural solid inorganic or fossilized organic substance or a substance prescribed to be a mineral, ~~but does not include~~

(i) ~~ordinary stone, building stone or construction stone,~~

(ii) ~~sand, gravel, peat, peat moss or ordinary soil,~~

(iii) gypsum,

(iv) ~~limestone, except that which is vested in the Crown, or~~

(v) oil or natural gas,

unless declared to be a mineral by the Governor in Council;

Land Use Planning Principles Still Shut Out of the Act

No balancing of the Crown rights to grant use of minerals in light of modern concepts of public consultation and land-use planning. No awareness of comprehensive land use planning, as is currently underway through the Open Space Initiative in Halifax. In other jurisdictions, the mining legislation incorporates land-use planning considerations and in Quebec, municipalities can zone areas as incompatible with mining (e.g. such as municipal watersheds). Section 213 of the NS Municipal Government Act requires that "A Department of Government of the Province, before carrying out or authorizing any development in the Municipality, shall consider the planning documents of the Municipality," but the new Act does not integrate this requirement into the Minister of Natural Resources' powers. We had recommended mechanism be incorporated in the new act to call for coordination between government departments & Mi'kmaq communities, and an opportunity for citizens to petition the Minister to withdraw lands from mineral extraction and exploration activities. Other jurisdictions such as Ontario, the Northwest Territories, and Quebec, have already integrated principles of land use planning into their Act. For instance, Quebec's amended its minerals legislation in 2013, giving municipalities the power to zone areas as "incompatible" with mining and/or give conditions under which mining could occur.

Recommendation

We have amended a proposal from EcoJustice for Ontario's *Minerals Act* to demonstrate what this could look like:

(Section) The Minister of Natural Resources or the Minister of Municipal Affairs may conduct a land use planning process to determine those areas where mining may be permitted.

[Section] The council of a municipality, a planning board, or an Aboriginal community may establish, within an official plan, those areas where mining may or may not be permitted.

(2) The council of a municipality, planning board, or an Aboriginal community shall notify the Minister of any areas to be withdrawn from further staking pursuant to a finalized official plan.

(3) After having received notification from a municipal council of lands to be withdrawn from further staking, the Minister shall withdraw the lands from further staking within twenty-four hours.

[Section] The council of a municipality, planning board, or an Aboriginal community may pass by-laws setting land use controls within areas established in an official plan as open to mining.

[Section] Where an area of is not currently subject to municipal organization, the land use planning will be carried out by the Departments of Natural Resources, Environment, and Aboriginal Affairs in consultation with Aboriginal governments.

[Section] Citizens may also petition the Minister to remove lands from mineral resource extraction.

ENDNOTES

ⁱ Section 44 of the New Act states:

44 (1) A licensee shall

(a) prepare and implement a stakeholder engagement plan, in the prescribed manner; and

(b) submit the plan if and as required to do so by the regulations or the Minister.

(2) Where the Registrar determines under Section 77 that a licensee has failed to comply with subsection (1), the Minister, or a person authorized by the Minister, may, on report from the Registrar, order the licensee to stop exploration, and the licensee shall stop exploration until the Minister, or the person authorized by the Minister, is satisfied that the licensee is in compliance with subsection (1), or the Minister, or a person authorized by the Minister, issues another order under Section 77.

(3) For greater certainty, an order may be issued under subsection (3) notwithstanding the time periods and other requirements set out in Section 77.

Section 77 states:

77 (1) Where the Registrar has reason to believe that this Act or a term or condition of a mineral right or non-mineral registration has not been complied with, the Registrar may

(a) investigate the matter and, where necessary, with or without notice, make or cause to be made an inspection of the premises and property;

(b) notify the mineral right holder or registrant of the non-compliance; and

(c) provide the mineral right holder or registrant with an opportunity, exercisable within such reasonable period as may be determined by the Registrar, to make representations to the Registrar.

(2) For the purpose of the investigation under subsection (1), the mineral right holder or registrant shall provide all relevant information required by the Registrar in the manner and at the time the Registrar requests.

(3) Where the Registrar is satisfied, after investigating under subsection (1), that this Act or a term or condition of a mineral right or non-mineral registration has not been complied with, the Registrar may require the mineral right holder or registrant to remedy the non-compliance within 30 days.

(4) Where the Registrar determines that the mineral right holder or registrant has not remedied the non-compliance within the period referred to in subsection (3), the Registrar shall

(a) refer the matter, with the Registrar's recommendations, to the Minister; and

(b) notify the mineral right holder or registrant of the referral.

(5) Upon referral by the Registrar, the Minister may

(a) declare a mineral right forfeited or a non-mineral registration cancelled for failure on the part of the mineral right holder or registrant to comply with this Act or a term or condition of the mineral right or non-mineral registration; or

(b) make such order or decision as the Minister considers just and equitable.

(6) Where the mineral right holder or registrant does not comply with an order or decision made under clause (5)(b), the Minister may declare the mineral right forfeited or the non-mineral registration cancelled.

(7) A mineral right holder or registrant whose mineral right has been forfeited or non-mineral registration has been cancelled under subsection (5) may, within 20 days of receiving notice of the forfeiture or cancellation, appeal the forfeiture or cancellation in the manner provided by Section 79.

(8) Subject to subsection (9), upon the forfeiture of a mineral right or cancellation of a non-mineral registration under subsection (5), the Registrar shall immediately post in the office of the Registrar or the electronic registry, as the Registrar considers appropriate, a notice of the forfeiture or cancellation and, upon the posting, claims included in such mineral right or non-mineral registration are, unless withdrawn from application, again open to application at a time set by the Registrar.

(9) Acceptance of an application referred to in subsection (8) is subject to the result of an appeal by a mineral right holder whose mineral right has been forfeited or a registrant whose non-mineral registration has been cancelled.

ii "A key Action in the Natural Resources Strategy is to

"Engage Nova Scotians in project planning and decision-making about mineral resource development that affects their communities. Where mineral resource development affects local communities, citizens will be engaged throughout the life cycle of the mining operation" - *From Strategy to Action: An Action Plan for The Path We Share: A Natural Resources Strategy for Nova Scotia*. p. 13

As part of the Overarching Goal of *Collaborative leadership*, the Strategy also requires that the Department of Natural Resources: "Include interested groups in planning and decision making about natural resources."

(*The Path We Share: A Natural Resources Strategy for Nova Scotia*, p. 13)

ⁱⁱⁱ (2) In administering this Act, the Minister shall consider the principles and goals referred to in the Environmental Goals and Sustainable Prosperity Act, which include the Mi'kmaq concept of Netukulimk.

^{iv} The previous Act states (Emphasis added):

The purpose of this Act is to support and **promote** responsible mineral resource management consistent with sustainable development while recognizing the following goals:

...

(b) encouraging, **promoting** and facilitating mineral exploration, development and production;

The new Act states:

The purpose of this Act is to support and facilitate responsible mineral resource management consistent with sustainable development while recognizing the following goals:

(b) encouraging and facilitating mineral exploration, development and production;

^v 22 (1) Notwithstanding anything in this Act, the Governor in Council may, if authorized by the regulations, appoint a commissioner or establish a board, in accordance with the regulations, to hear appeals of decisions made under this Act, as set out in the regulations.

(2) The Minister may delegate the Minister's authority under Section 26 to a commissioner appointed or board established under subsection (1).

Section 26 and other relevant Sections state:

26 (1) Subject to subsection (3), a mineral right holder or prospector who is unable to obtain consent of the owner or occupier of private lands required under Section 25 may apply, in the prescribed manner, to the Minister, after notice to the owner or occupier, for surface access rights to pass over or enter upon and work such lands.

(2) The Minister, in accordance with the prescribed process, may grant surface access rights, in writing, on such terms and conditions as the Minister determines, and may determine the amount of any compensation to be paid to the owner or occupier of the private land and the manner and time of such payment.

(3) The Minister may order the applicant for surface access rights to post security for payment of the compensation and may prohibit, pending the determination of the proceeding or until the compensation is paid or secured, further entry upon or work by the applicant or a legal representative or other person acting on behalf of the applicant.

(4) Where the Minister is satisfied that the owner or occupier of the private land cannot be identified, located or contacted, the Minister may grant surface access rights on the terms and conditions determined by the Minister.

(5) Where there are several owners or occupiers of the lands sought to be entered upon or worked and there are, in the opinion of the Minister, special difficulties in effecting service of any notice under this Section, the Minister may order substituted service in such manner as the Minister may determine.

(6) Subject to subsection 139(1), there is no appeal of the granting by the Minister of surface access rights, of the Minister's determination as to the amount of compensation, of any order for security or of any order, decision or ruling in respect of any of them.

(7) Where a licensee is delayed in the performance of work on land covered by the licence by refusal of the owner or occupier of the land to permit the licensee to enter upon or work the land and the Minister has granted the licensee surface access rights under this Section, the time within which the licensee is required to perform work under the licence is extended by a period equal to the delay resulting from the owner's or occupier's refusal to permit the licensee to enter upon or work the land from the date the licensee makes an application under this Section to the date the surface access rights are granted under this Section.

(8) The grant of surface access rights under this Section is a decision made by the Minister and may be filed with the Supreme Court of Nova Scotia under Section 138.

27 (1) Where a lessee requires land, or a right or interest in land, for a mine or any purpose connected with or incidental to a mine and no agreement can be made for the acquisition of the land or the right or interest in the land, the lessee may apply to the Minister for a vesting order.

(2) An application must include

(a) a statement that the lessee is the lessee under a certain lease;

(b) a statement that the lessee requires certain land or some right or interest in certain land, of which a plan and description is attached, for one or more of the purposes set out above in connection with the area covered by the lease;

(c) where the owner of the land is known,

(i) a statement that the lessee is willing to make an arrangement with the owner for the acquisition of the land, right or interest that the owner is unwilling to accept, and

(ii) information specifying the nature of the proposed arrangement and the price that the lessee is willing to pay;

(d) where the owner of the land cannot be identified, located or contacted,

(i) a statement that the owner of the land cannot be identified, located or contacted despite reasonable attempts by the lessee to do so, and

(ii) information specifying the attempts made by the lessee to identify, locate or contact, as the case may be, the owner, which information must be sufficient to satisfy the Minister that the attempts were reasonable; and

(e) a request by the lessee that the Minister make an order that the land or the right or interest in the land required by the lessee be vested in the lessee.

(3) Where required by the Minister, the application must be accompanied by a deposit in an amount as directed to cover the costs or expenses that may be ordered to be paid by the lessee to the owner.

(4) The Minister shall consider the application within the prescribed time and may, by order, vest in the lessee the land or the right or interest required by the lessee or such other right or interest as the Minister may determine.

(5) A vesting order issued by the Minister must be filed in the registry of deeds for the registration district in which the land to which the order relates is situate, and the filing thereof is deemed to be a deposit of expropriation documents under the Expropriation Act.

(6) Upon the filing of a vesting order by the Minister, the lessee named in the order is and is deemed to be the expropriating authority within the meaning of the Expropriation Act, and the land, right or interest that is vested is deemed to be expropriated.

28 In connection with the proceedings under Section 27,

(a) the Expropriation Act applies mutatis mutandis to the expropriation;

(b) notwithstanding Section 4 of the Expropriation Act, whenever the provisions of that Act conflict with the expropriation provisions of this Act, the expropriation provisions of this Act prevail;

(c) the lessee is deemed to be the statutory authority for the purpose of the Expropriation Act; and

(d) the Minister is deemed to be the approving authority for the purpose of the Expropriation Act.