

# Mining Act

## ONTARIO REGULATION 308/12 EXPLORATION PLANS AND EXPLORATION PERMITS

**Consolidation Period:** From April 10, 2018 to the [e-Laws currency date](#).

Last amendment: 190/18.

Legislative History: 308/12, 190/18.

*This is the English version of a bilingual regulation.*

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#### DEFINITIONS, GENERAL REQUIREMENTS FOR EARLY EXPLORATION AND EXCEPTION

##### Definitions and interpretation

1. (1) In this Regulation,

“circulation date” means,

- (a) the date on which a Director sends, by whatever means, an exploration plan or an application for an exploration permit to an Aboriginal community that the Director has identified for the purposes of section 7 or 14, or
- (b) if the Director has not identified any Aboriginal communities for the purposes of section 7 or 14, the date on which the Director sends, by whatever means, a notice to the early exploration proponent that the exploration plan or exploration permit application has been received and meets the requirements of this Regulation; (“date de circulation”)

“Director” means a Director of Exploration appointed under section 78 of the Act; (“directeur”)

“early exploration” means prospecting and mineral exploration, including those activities that fall within section 1 of Schedule 2 and section 1 of Schedule 3 but not including the activities of advanced exploration or mine production as they are defined in Part VII of the Act; (“exploration initiale”)

“early exploration proponent” means a person who is a holder of a mining claim, mining lease or a licence of occupation for mining purposes and is conducting or proposes to conduct early exploration activities and includes,

- (a) directors, officers, agents and employees of the early exploration proponent,
- (b) partners, subsidiaries and affiliates of the early exploration proponent,
- (c) contractors and subcontractors of the early exploration proponent, and
- (d) successors and assigns of the early exploration proponent; (“promoteur d’activités d’exploration initiale”)

“Provincial Standards for Early Exploration” means the current version of the document entitled Provincial Standards for Early Exploration published by the Ministry of Northern Development and Mines and posted on the Ministry’s website; (“normes provinciales d’exploration initiale”)

“qualified supervisor” means an individual who has successfully completed the prescribed *Mining Act* awareness program not more than five years before the proposed start of the early exploration activities and who provides advice to the early exploration proponent regarding any proposed early exploration activity. (“superviseur qualifié”) O. Reg. 308/12, s. 1 (1); O. Reg. 190/18, s. 1.

(2) In this Regulation, a reference in a section to an approved form means a form that is approved by the Minister for the purposes specified in the section. O. Reg. 308/12, s. 1 (2).

(3) In this Regulation, a reference to the Provincial Standards for Early Exploration is a reference to the current version of the document as it is amended from time to time whether the document is amended before or after the day this Regulation is made. O. Reg. 308/12, s. 1 (3).

#### **Early exploration, general**

2. An early exploration proponent engaged in any early exploration activity, whether or not the activity falls within section 1 of Schedule 2 or section 1 of Schedule 3, shall,

- (a) comply with the general requirements set out in Schedule 1; and
- (b) conduct activities in a manner consistent with the protection provided for existing Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982*. O. Reg. 308/12, s. 2.

#### **Early exploration, exceptions**

3. This Regulation does not apply to the following early exploration activities:

1. Early exploration activities that are subject to the requirements of Ontario Regulation 349/98 (Work Permit — Disruptive Mineral Exploration Activities) made under the *Public Lands Act*.
2. Early exploration activities that are carried out on land subject to a filed certified closure plan under section 140 or 141 of the Act by an early exploration proponent who is also the proponent of the filed certified closure plan. O. Reg. 308/12, s. 3; O. Reg. 190/18, s. 2.

## **EXPLORATION PLANS**

#### **Prescribed activities re s. 78.2**

4. The early exploration activities that fall within section 1 of Schedule 2, referred to as exploration plan activities, are prescribed for purposes of subsection 78.2 (1) of the Act. O. Reg. 308/12, s. 4.

#### **Submission of exploration plan**

5. (1) An early exploration proponent who proposes to carry out any exploration plan activities shall submit an exploration plan, in the approved form, to a Director. O. Reg. 308/12, s. 5 (1).

(2) In an exploration plan submitted by an early exploration proponent, the proponent shall,

- (a) identify the qualified supervisor for the proposed exploration activities; and
- (b) include information to verify,
  - (i) that the qualified supervisor successfully completed the prescribed *Mining Act* awareness program not more than five years before the proposed start of the early exploration activities, and
  - (ii) if the early exploration proponent is an individual, that he or she has successfully completed the prescribed *Mining Act* awareness program not more than five years before the proposed start of the early exploration activities. O. Reg. 190/18, s. 3.

#### **Notice of intent to submit an exploration plan**

6. (1) An early exploration proponent who proposes to carry out any exploration plan activities on lands for which there is one or more surface rights owners shall, before the early exploration proponent submits the exploration plan to a Director, provide notice of their intent to submit an exploration plan to the surface rights owners. O. Reg. 308/12, s. 6 (1).

(2) The early exploration proponent shall confirm that all surface rights owners have been provided with the notice of intent to submit an exploration plan, when submitting an exploration plan to a Director. O. Reg. 308/12, s. 6 (2).

(3) If an early exploration proponent who proposes to carry out any exploration plan activities proposes to notify Aboriginal communities of their intent to submit an exploration plan before submitting a plan, the early exploration proponent shall first request that the Director identify the Aboriginal communities to be notified. O. Reg. 308/12, s. 6 (3).

(4) If an early exploration proponent notifies the identified Aboriginal communities of their intent to submit an exploration plan, the early exploration proponent shall, when submitting the exploration plan to the Director and if requested to do so by the Director, include a consultation report detailing how comments received from Aboriginal communities, if any, have been considered. O. Reg. 190/18, s. 4.

#### **Notice of submitted exploration plan**

7. (1) The Director shall identify Aboriginal communities to be notified of a submitted exploration plan and shall notify those communities by sending a copy of the plan to them. O. Reg. 308/12, s. 7 (1).

(2) Aboriginal communities that are notified of an exploration plan may provide written comments to the Director regarding any adverse effects the exploration plan activities proposed in the plan may have on their existing or asserted Aboriginal or treaty rights. O. Reg. 308/12, s. 7 (2).

(3) If the Director receives comments from an Aboriginal community regarding any adverse effects the exploration plan activities proposed in the plan may have on the community's existing or asserted Aboriginal or treaty rights, the Director may require the early exploration proponent to consult with the community as directed. O. Reg. 308/12, s. 7 (3).

#### **Withdrawal or adjustment of exploration plan**

8. (1) An early exploration proponent may withdraw or make adjustments to a submitted exploration plan, including in response to comments received from an Aboriginal community or a surface rights owner, at any time within 30 days after the circulation date. O. Reg. 308/12, s. 8 (1).

(2) If an early exploration proponent withdraws an exploration plan and then submits a new exploration plan, sections 5, 6 and 7 apply, with necessary modifications, to the new plan. O. Reg. 308/12, s. 8 (2).

#### **Commencing exploration**

9. (1) An early exploration proponent may commence the exploration plan activities included in an exploration plan on the day that is 30 days after the circulation date unless,

- (a) the early exploration proponent withdraws the exploration plan under section 8; or
- (b) a Director determines that an exploration permit is required under section 18. O. Reg. 308/12, s. 9 (1).

(2) An exploration plan is effective for a period of not more than two years that begins on the day that is 30 days after the circulation date. O. Reg. 308/12, s. 9 (2).

#### **Requirements for exploration plan activities**

10. An early exploration proponent who proposes to carry out any exploration plan activities shall comply with the following requirements:

1. The requirements set out in Schedule 1.
2. The requirements set out in the Provincial Standards for Early Exploration that apply to the activities being conducted.
3. The requirement that the exploration plan activities be conducted in accordance with the exploration plan as reviewed and accepted by the Director as complete.
4. The requirement that the exploration plan activities be conducted in a manner consistent with the protection provided for existing Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982*. O. Reg. 308/12, s. 10.

#### **Where exploration permit allowed for exploration plan activity**

10.1 (1) For the purposes of subsection 78.2 (4) of the Act and despite subsection 78.2 (1) of the Act and sections 5 to 9 of this Regulation, an early exploration proponent may apply for an exploration permit to carry out exploration plan activities if the proponent is proposing in the permit application to carry out both exploration plan activities and exploration permit activities. O. Reg. 190/18, s. 5.

(2) For greater certainty, if an early exploration proponent applies for an exploration permit to carry out exploration plan activities under subsection (1),

- (a) section 78.3 of the Act and sections 12 to 17 and 19 of this Regulation apply to the exploration plan activities as though they were exploration permit activities; and
- (b) the proponent is not required to submit an exploration plan to the Director. O. Reg. 190/18, s. 5.

## EXPLORATION PERMITS

### Prescribed activities re s. 78.3

11. The early exploration activities that fall within section 1 of Schedule 3, referred to as exploration permit activities, are prescribed for purposes of subsection 78.3 (1) of the Act. O. Reg. 308/12, s. 11.

### Application for exploration permit

12. (1) An early exploration proponent who proposes to carry out exploration permit activities shall apply to a Director for an exploration permit in the approved form. O. Reg. 308/12, s. 12 (1).

(2) In an application for an exploration permit submitted by an early exploration proponent, the proponent shall,

(a) identify the qualified supervisor for the proposed exploration activities; and

(b) include information to verify,

(i) that the qualified supervisor successfully completed the prescribed *Mining Act* awareness program not more than five years before the proposed start of the early exploration activities, and

(ii) if the early exploration proponent is an individual, that he or she has successfully completed the prescribed *Mining Act* awareness program not more than five years before the proposed start of the early exploration activities. O. Reg. 190/18, s. 6.

(3) An exploration permit is effective for a period of not more than three years that begins on the day it is issued. O. Reg. 308/12, s. 12 (3).

### Notice of intent to apply for exploration permit

13. (1) An early exploration proponent who proposes to carry out exploration permit activities on lands for which there is one or more surface rights owners shall, before the early exploration proponent applies to a Director for an exploration permit, provide notice of the intent to file an application to the surface rights owners. O. Reg. 308/12, s. 13 (1).

(2) The early exploration proponent shall confirm that all surface rights owners have been provided with the notice of the intent to file an application to carry out exploration permit activities when submitting an application for an exploration permit. O. Reg. 308/12, s. 13 (2).

(3) If an early exploration proponent who proposes to carry out any exploration permit activities proposes to notify Aboriginal communities of their intent to submit an application for an exploration permit, the early exploration proponent shall first request that the Director identify the Aboriginal communities to be notified. O. Reg. 308/12, s. 13 (3).

(4) If an early exploration proponent notifies the identified Aboriginal communities of their intent to submit an application for an exploration permit, the early exploration proponent shall, when submitting the application to the Director and if requested to do so by the Director, include a consultation report detailing how comments received from Aboriginal communities, if any, have been considered. O. Reg. 190/18, s. 7.

### Notice of submitted application for exploration permit

14. (1) The Director shall identify Aboriginal communities to be notified of a submitted application for an exploration permit and shall notify those communities of the application by sending a copy of the application to them. O. Reg. 308/12, s. 14 (1).

(2) Aboriginal communities that are notified of an application for an exploration permit may provide written comments to the Director and the early exploration proponent regarding any adverse effects the activities proposed in the application may have on their existing or asserted Aboriginal or treaty rights and the early exploration proponent shall consult with Aboriginal communities pursuant to any direction provided by the Director. O. Reg. 308/12, s. 14 (2).

(3) The Director may require the early exploration proponent to file a consultation report regarding any consultation process that has been conducted, including with regard to any arrangement reached with an Aboriginal community or the efforts made to reach such an arrangement, before deciding whether to issue an exploration permit. O. Reg. 308/12, s. 14 (3); O. Reg. 190/18, s. 8.

### Decision on application

15. (1) Subject to section 16, within 50 days after the circulation date, if the Director is satisfied that appropriate Aboriginal consultation has been carried out, the Director shall,

(a) make a decision as to whether to issue an exploration permit and, if so, as to what terms and conditions apply to the permit; and

(b) provide a copy of the permit to the early exploration proponent, any surface rights owners who have commented on the application and identified Aboriginal communities. O. Reg. 308/12, s. 15 (1).

(2) In deciding whether or not he or she is satisfied that appropriate Aboriginal consultation has been carried out, the Director may consider any arrangement reached with an Aboriginal community or the efforts made to reach such an arrangement. O. Reg. 308/12, s. 15 (2).

#### **Temporary hold on application**

**16.** (1) At any time before a Director's decision under section 15 or subsection 18 (1), the Director may put a temporary hold on the process to obtain an exploration permit for any of the following reasons:

1. There are concerns raised by an Aboriginal community whose existing or asserted Aboriginal or treaty rights are potentially affected by the proposed exploration activity which, in the opinion of the Director, warrant additional time to adequately consider.
2. The early exploration proponent has applied for the Minister's written permission to test mineral content under subsection 52 (1) of the Act and the application for an exploration permit includes the activity of extracting the mineral bearing substance.
3. The proposed early exploration activity in the application for an exploration permit is to take place on lands for which the Minister has issued notice of an intent to order a surface rights restriction pursuant to subsection 51 (4) of the Act.
4. The early exploration proponent requests that a temporary hold be put on the process. O. Reg. 308/12, s. 16 (1).

(2) During the period when the process to obtain an exploration permit is on temporary hold, the time frame that applies to the process is also on hold. O. Reg. 308/12, s. 16 (2).

(3) The Director shall end the temporary hold on the process to obtain an exploration permit when, in the opinion of the Director, it is reasonable in the circumstances to do so and the process resumes from the point at which the temporary hold was placed on it. O. Reg. 308/12, s. 16 (3).

#### **Terms and conditions for early exploration activities**

**17.** (1) Subject to section 19, an early exploration proponent who proposes to carry out any exploration permit activities shall comply with the following requirements as standard terms and conditions:

1. The requirements set out in Schedule 1.
2. The requirements set out in the Provincial Standards for Early Exploration that apply to the activities being conducted.
3. The requirement that the exploration permit activities be conducted in a manner consistent with the protection provided for existing Aboriginal and treaty rights in section 35 of the *Constitution Act, 1982*. O. Reg. 308/12, s. 17 (1).

(2) In addition to the standard terms and conditions, the early exploration proponent shall comply with the exploration permit issued by the Director, including any additional terms and conditions in the permit that the Director has determined are appropriate in the circumstances. O. Reg. 308/12, s. 17 (2).

#### **Discretion to require exploration permit**

**18.** (1) For the purposes of subsection 78.2 (3) of the Act, a Director may require an early exploration proponent to obtain an exploration permit for any early exploration activity that does not fall within section 1 of Schedule 3 where,

- (a) in the Director's opinion, an exploration permit may be necessary to address issues pertaining to,
  - (i) existing or asserted Aboriginal or treaty rights, or
  - (ii) potential adverse impacts on surface rights interests, public health and safety and the environment; or
- (b) the proposed early exploration activity is to take place on lands for which the Minister has issued notice of an intent to order a surface rights restriction pursuant to subsection 51 (4) of the Act. O. Reg. 308/12, s. 18 (1); O. Reg. 190/18, s. 9.

(2) Subject to subsection (3), sections 13 to 16 apply to an early exploration proponent who is required to obtain an exploration permit under subsection (1). O. Reg. 308/12, s. 18 (2).

(3) Where an early exploration proponent, who is undertaking early exploration activities that require an exploration plan but who is required to obtain an exploration permit under subsection (1), has submitted an exploration plan but the plan is not yet in effect, the Director shall,

- (a) provide direction as to the process the early exploration proponent shall follow in order to obtain the exploration permit; and
- (b) subject to section 16, decide whether to issue an exploration permit within 50 days after having notified the early exploration proponent of the requirement to obtain an exploration permit, and the Director may include additional terms and conditions in the permit as the Director has determined are appropriate. O. Reg. 308/12, s. 18 (3).

(4) Section 17 applies to an exploration permit issued under this section. O. Reg. 308/12, s. 18 (4).

**Waiver of standard requirements, etc.**

19. A Director may, with or without a request from the early exploration proponent, waive any of the standard terms and conditions that would otherwise apply to exploration permit activities or to early exploration activities that fall within section 18 where in the opinion of the Director it is reasonable to do so in the circumstances. O. Reg. 308/12, s. 19.

**Amendments and renewals**

20. (1) A Director may,

- (a) amend an exploration permit on the Director's own initiative or on application by the early exploration proponent; and
- (b) renew an exploration permit on application by the early exploration proponent. O. Reg. 190/18, s. 10.

(2) Where a Director is considering renewing or amending an exploration permit, including an exploration permit required under section 18, sections 13 to 17 and section 19 apply with necessary modifications to the amended or renewed permit unless otherwise directed by the Director. O. Reg. 190/18, s. 10.

RESOLUTION OF DISPUTES RE ABORIGINAL CONSULTATION

**Dispute resolution process**

21. (1) The requirements described in this section are prescribed for the purposes of clause 170.1 (1) (c) of the Act and pertain to disputes arising with respect to an application for an exploration permit under subsection 78.2 (3) and section 78.3 of the Act. O. Reg. 308/12, s. 21 (1).

(2) At any time after an application for an exploration permit is submitted but before an exploration permit is issued, the Director may, in his or her sole discretion, refer a dispute within the meaning of subsection 170.1 (1) of the Act to an individual or body designated by the Minister under subsection 170.1 (1) of the Act. O. Reg. 308/12, s. 21 (2).

(3) The purpose of a dispute resolution process conducted by the individual or body designated by the Minister is to facilitate consultation among early exploration proponents, Aboriginal communities and the Director, and is not an appeal. O. Reg. 308/12, s. 21 (3).

(4) Within 30 days after the dispute is referred to the designated individual or body, he, she or it shall provide a report to the Minister setting out their recommendations, if any. O. Reg. 308/12, s. 21 (4).

(5) The Minister shall pay the costs of the designated individual or body and the costs associated with conducting the dispute resolution process, at a scale and to a maximum amount set and approved by the Minister. O. Reg. 308/12, s. 21 (5).

(6) The designated individual or body's report and recommendations form part of the record of the Minister in consulting with Aboriginal communities regarding the application for an exploration permit and may be disclosed in judicial or other proceedings as may be necessary or appropriate. O. Reg. 308/12, s. 21 (6).

(7) The designated individual or body's own work product, including notes, case file and any other materials of the individual or body pertaining to the dispute, are confidential to the individual or body and are not subject to disclosure in any judicial or other proceedings. O. Reg. 308/12, s. 21 (7).

TRANSITION

**Transition, general**

22. (1) Subject to section 23, early exploration activities that require the submission of an exploration plan under subsection 78.2 (1) of the Act or the obtaining of an exploration permit under subsection 78.3 (1) of the Act may be undertaken without submitting an exploration plan or obtaining an exploration permit, as the case may be, until March 31, 2013 if the early exploration activities,

- (a) began before November 1, 2012 and are ongoing as of that date; or
- (b) begin on or after November 1, 2012 but before April 1, 2013 and are ongoing. O. Reg. 308/12, s. 22 (1).

(2) As of April 1, 2013, an early exploration proponent shall not continue early exploration activities that fall within subsection (1) until,

- (a) the early exploration proponent has submitted an exploration plan and it is in effect, for early exploration activities that require an exploration plan pursuant to subsection 78.2 (1) of the Act; or
- (b) the early exploration proponent has obtained an exploration permit, for early exploration activities that require an exploration permit under section 12 or 18. O. Reg. 308/12, s. 22 (2).

**Transition, exceptions**

23. (1) An early exploration proponent shall comply with sections 78.2 and 78.3 of the Act as of November 1, 2012 where a Director,

- (a) exercises his or her discretion to require an exploration permit under section 18; or
- (b) determines that the circumstances described in clause 18 (1) (a) or (b) apply with respect to exploration permit activities. O. Reg. 308/12, s. 23 (1).

(2) An early exploration proponent shall comply with sections 78.2 and 78.3 of the Act where the early exploration proponent seeks permission, in accordance with subsection 52 (1) of the Act, to mine, mill or refine more than the prescribed quantity of mineral on or after November 1, 2012. O. Reg. 308/12, s. 23 (2).

**24. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS REGULATION). O. Reg. 308/12, s. 24.**

#### SCHEDULE 1 GENERAL REQUIREMENTS FOR EARLY EXPLORATION ACTIVITIES

##### **General requirements for early exploration activities**

1. A person who is engaged in early exploration activities on a mining claim, mining lease or licence of occupation for mining purposes, whether or not the activities have been prescribed for purposes of section 78.2 or 78.3 of the Act, shall comply with the following requirements:

- 1. Early exploration sites must be maintained in a clean and safe condition.
- 2. Roads and trails must not be obstructed by early exploration activities.
- 3. On completion of the early exploration activity, or if applicable, before the expiry of any applicable exploration plan or exploration permit, all refuse, fuel drums, equipment and any other material or thing brought onto the lands for the early exploration activity must be removed.
- 4. The applicable requirements in the Provincial Standards for Early Exploration.

O. Reg. 308/12, Sched. 1.

#### SCHEDULE 2 PRESCRIBED ACTIVITIES RE SECTION 78.2 OF THE ACT

##### **Prescribed early exploration activities re s. 78.2**

1. The following early exploration activities are prescribed for the purposes of section 78.2 of the Act:

- 1. Any geophysical surveys that require the use of a generator to be carried out.
- 2. Mechanized drilling for the purpose of obtaining rock or mineral samples, if the assembled weight of the drill and its associated equipment, excluding drill rods, casings and bits, does not exceed 150 kilograms.
- 3. Line cutting, where the width of the lines does not exceed 1.5 metres.
- 4. Mechanized surface stripping where,
  - i. a single location is to be stripped and the total area to be stripped does not exceed 100 square metres, or
  - ii. two or more locations are to be stripped and the edges of a location where stripping is to be carried out are within 200 metres of the edges of another location, and the aggregate of the area of the locations to be stripped does not exceed 100 square metres.
- 5. Pitting and trenching where,
  - i. a single pit or trench is to be dug and the total volume of the pit or trench to be dug exceeds one cubic metre but does not exceed three cubic metres, or
  - ii. two or more pits or trenches are to be dug and the edges of a pit or trench are within 200 metres of the edges of another pit or trench and the aggregate of the volume of the pits or trenches exceeds one cubic metre but does not exceed three cubic metres.

O. Reg. 308/12, Sched. 2.

#### SCHEDULE 3 PRESCRIBED ACTIVITIES RE SECTION 78.3 OF THE ACT

##### **Prescribed early exploration activities re s. 78.3**

1. The following early exploration activities are prescribed for the purposes of section 78.3 of the Act:

- 1. Mechanized drilling for the purpose of obtaining rock or mineral samples, if the assembled weight of the drill and associated equipment, excluding drill rods, casings and bits, is greater than 150 kilograms.
- 2. Mechanized surface stripping where,

- i. a single location is to be stripped and the total area to be stripped exceeds 100 square metres but is less than the threshold for advanced exploration as set out in Ontario Regulation 240/00 (Mine Development and Closure under Part VII of the Act) made under the Act, or
  - ii. two or more locations are to be stripped and the edges of a location where stripping is to be carried out are within 200 metres of the edges of another location and the aggregate of the total area to be stripped exceeds 100 square metres but is less than the threshold for advanced exploration as set out in Ontario Regulation 240/00 (Mine Development and Closure under Part VII of the Act) made under the Act.
3. Line cutting, where the width of the lines cut is 1.5 metres or more.
4. Pitting and trenching where,
  - i. there is a single pit or trench and the total volume of the pit or trench exceeds three cubic metres but is below the threshold for advanced exploration as set out in Ontario Regulation 240/00 (Mine Development and Closure under Part VII of the Act) made under the Act, or
  - ii. there are two or more pits or trenches and the edges of a pit or trench are within 200 metres of the edges of another pit or trench and the aggregate of the total volume of the pit or trench exceeds three cubic metres but is below the threshold for advanced exploration as set out in Ontario Regulation 240/00 (Mine Development and Closure under Part VII of the Act) made under the Act.

O. Reg. 308/12, Sched. 3.

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