

ABORIGINAL COMMUNITY CONSULTATION POLICY FOR THE MINING SECTOR

NEW VERSION – NOVEMBER 2017

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Wendake, December 6, 2017

PLAN OF PRESENTATION

- Introduction
- Roles and Responsibilities
- General Guidelines
- Specific Guidelines
 - Mine exploration activities
 - Mine extraction activities
- Updating
- Appendices

MINING ACT

Provisions applicable specifically to Aboriginal communities

- The Mining Act must be construed in a manner consistent with the obligation to consult Aboriginal communities.
- The Minister must consult Aboriginal communities separately if the circumstances so warrant.
- Taking into account the rights and interests of Aboriginal communities is an integral part of reconciling mining activities with other possible uses of the territory.
- The Minister draws up, makes public and keeps up to date an Aboriginal community consultation policy specific to the mining sector.

ISSUES

- Upholding the Crown's duty to consult and accommodate the Aboriginal communities
- Meeting the Aboriginal communities' expectations regarding mine development
- Clarifying the roles of the various stakeholders
- Enforcing the legislative and regulatory framework applicable to promoters under the Mining Act and the related regulations
- Upholding the Government's aim of simplifying the regulations applicable to users

INTRODUCTION

The aims of the Policy are to:

- Foster true, fair and adequate consideration of the concerns expressed by Aboriginal communities
- Clarify the consultation processes specific to the mining sector
- Foster coordination of Government actions in consultations specific to the mining sector
- Strengthen relationships and promote dialogue between Québec, the Aboriginal communities and promoters

INTRODUCTION

Beyond the constitutional duty

- Be open and transparent towards the Aboriginal community
- Emphasize the importance of exchanging information
- Maintain harmonious relationships
- Obtain the maximum number of positive spin-offs for the Aboriginal communities

STEPS IN THE MINE DEVELOPMENT PROCESS

Ressources non découvertes

Ressources identifiées

Réserves

Exploration

Mise en valeur

Exploitation

1

2

3

4

5

6

7

8

9

10

11

Hors claim

Permis coupe

Baux de location

Autorisation d'échantillonnage

Bail minier

Reconnaissance régionale

Prospection au sol

Vérification des anomalies

Découverte

Travaux de développement du gîte

Évaluation finale du gîte

Étude de faisabilité

Décision

Développement minier

Exploitation minière

Fermeture et restauration

Claim

CA divers

CA divers

Autorisation pour emplacement

Baux de location

Baux de location

CA d'exploitation

Plan de restauration

Garanties financières



INTRODUCTION

Legislation and Regulations – Mining Activity

- Mining Act
 - Regulation respecting mineral substances other than petroleum, natural gas and brine
- Act respecting the lands in the domain of the State
- Sustainable Forest Development Act
 - Regulation respecting standards of forest management for forests in the domain of the State
- Act respecting the conservation and development of wildlife
 - Regulation respecting wildlife habitats
- Environment Quality Act
 - Regulation respecting pits and quarries
 - Regulation respecting environmental impact assessment and review

ROLES AND RESPONSIBILITIES

The Policy applies to:

- Government authorities involved in mineral resource development

The Policy is of concern to:

- Aboriginal communities whose rights and interests may be affected
- Promoters involved in exploration or extraction activities

ROLES AND RESPONSIBILITIES

Québec

- The MERN initiates, leads and ensures the smooth application of the consultation process set out in the Policy.
- It consults the Aboriginal communities separately.
- The consultation must take place in accordance with the procedures set out in the Interim Guide.
- The MERN is available at all times to answer questions and discuss concerns.

ROLES AND RESPONSIBILITIES

The Aboriginal communities

- Collaborate with and take part in the consultation processes initiated by the Department.
- Are encouraged to express clear, precise concerns with regard to the potential harmful impacts of the proposed mining activity on their existing or credibly asserted ancestral or treaty rights, throughout the consultation process.
- Are encouraged, where applicable, to propose accommodation measures and to try to find mutually satisfactory solutions.

ROLES AND RESPONSIBILITIES

The Aboriginal communities:

- Are invited to use the support offered by Québec in order to learn how to use Québec's mining title management system (GESTIM).
- May contact the Department at any time with questions or concerns.
- May approach the mine promoter to inform it of the aspects of the project they consider to be sensitive.

ROLES AND RESPONSIBILITIES

Mine promoters:

- May be called upon to play a significant role in a consultation process organized by Québec.
- Are strongly encouraged to approach the Aboriginal communities as far upstream as possible in the mine development process.
- Must undertake to maintain good relationships with the Aboriginal communities, and build upon those relationships at the various phases of their project's development.

ROLES AND RESPONSIBILITIES

Mine promoters:

- Should focus their communication processes on transparency and information sharing.
- Are invited to learn about the general Aboriginal context in Québec and the specific aspects and situation of the individual communities concerned.
- Are asked to inform the MERN of the steps they have taken with the Aboriginal communities concerned, and any mitigation measures that have been applied.

ROLES AND RESPONSIBILITIES

Mine promoters:

- May enter into an agreement with an Aboriginal group on the impacts, benefits and other aspects of a mine development project.

TYPES OF AGREEMENTS

APPENDIX

Letter of Intention

- Usually the first agreement signed by the parties.
- States that a mining company is willing to enter into other agreements if it discovers a commercial deposit.

Exploration Agreement, Collaboration Agreement, Memorandum of Understanding

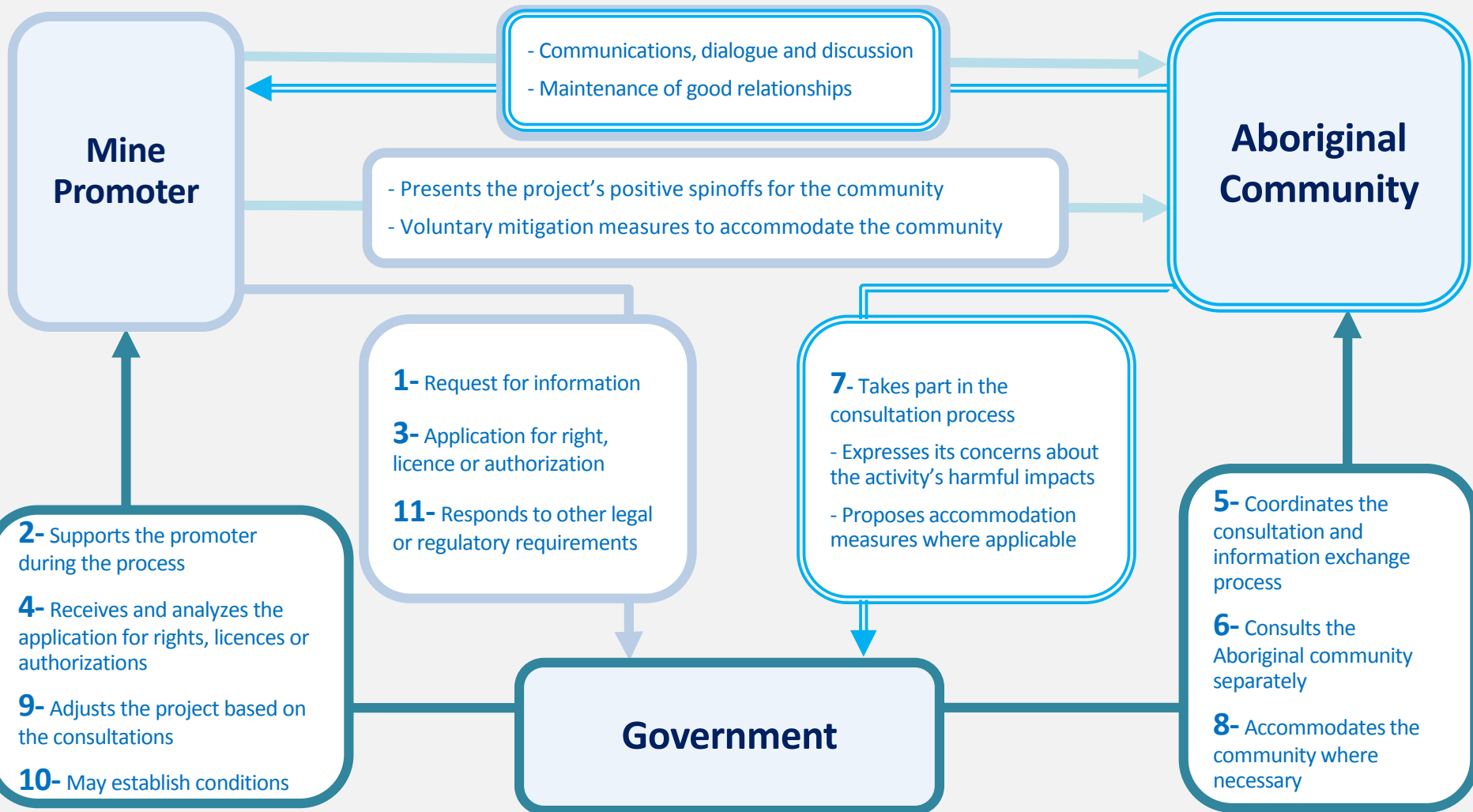
- Agreements setting out the principles of collaboration at the exploration stage.

TYPES OF AGREEMENTS

APPENDIX

Impact and Benefit Agreement (IBA) or Participation Agreement

- Usually negotiated for mining projects at the development stage
- Private agreements
- List the parties' respective obligations in connection with various aspects of the project
 - Examples: employment prospects, workforce training, business opportunities for the community and financing provisions
- Vary according to the project, the community and the issues addressed



Mine Promoter

Aboriginal Community

Government

- 1-** Request for information
- 3-** Application for right, licence or authorization
- 11-** Responds to other legal or regulatory requirements

- 7-** Takes part in the consultation process
 - Expresses its concerns about the activity's harmful impacts
 - Proposes accommodation measures where applicable

- 2-** Supports the promoter during the process
- 4-** Receives and analyzes the application for rights, licences or authorizations
- 9-** Adjusts the project based on the consultations
- 10-** May establish conditions

- 5-** Coordinates the consultation and information exchange process
- 6-** Consults the Aboriginal community separately
- 8-** Accommodates the community where necessary

- Communications, dialogue and discussion
- Maintenance of good relationships

- Presents the project's positive spinoffs for the community
- Voluntary mitigation measures to accommodate the community

GENERAL GUIDELINES

- Exchanges of information between the parties:
 - begin as far upstream as possible in a mine exploration project
 - continue in a dynamic way
- The MERN coordinates the consultation.
- The MERN allows a reasonable time for the Aboriginal communities to express their concerns:
 - at least 30 days
 - may vary according to the factors at stake
 - the MERN may grant an extension

GENERAL GUIDELINES

- The accommodation measures may include conditions for the exercise of rights, licences or authorizations.
- The consultation may have several effects:
 - Change the scope of the mining project.
 - Mitigate the impacts of mining activity by introducing mitigation or accommodation measures.
 - Cause the promoter to abandon the project.
 - Cause the MERN to refuse to issue certain rights, licences or authorizations.

SPECIFIC GUIDELINES

Mine Exploration

- Claims and related exploration activities
- Exploration activities requiring a right, licence or authorization

Mine Extraction

- Not subject to the environmental impact assessment and review process in southern Québec
- Subject to the environmental impact assessment and review process in southern Québec

SPECIFIC GUIDELINES

EXPLORATION

Claims and related exploration activities

- The MERN makes information on claims available through GESTIM.
 - Registered claims, claim applications, annual work reports, work statements.
- The MERN offers GESTIM training sessions upon request.
- Upon request, the MERN may send specific electronic data files from the Register of Real, Immovable and Mining Rights on the specific territory of interest.

SPECIFIC GUIDELINES

EXPLORATION

Claims and related exploration activities

- The MERN recommends that promoters should inform the Aboriginal communities of the claim's existence, within 60 days of registering it.
- Promoters are strongly advised to inform the Aboriginal communities about any exploration work they intend to carry out, at least 30 days before beginning the work.

SPECIFIC GUIDELINES

EXPLORATION

Claims and related exploration activities

- Promoters are expected to:
 - answer any questions raised by the Aboriginal communities;
 - take their concerns about the proposed work into consideration;
 - try to eliminate or reduce potential impacts.

SPECIFIC GUIDELINES

EXPLORATION

Claims and related exploration activities

- The promoter may sign a memorandum of understanding with the Aboriginal communities concerned, to encourage their involvement in project development.

SPECIFIC GUIDELINES

EXPLORATION

Exploration activities requiring a right, licence or authorization

- Québec consults the Aboriginal community concerned on all mine exploration activities that require the granting of rights, licences or authorizations.
- The consultation takes place in accordance with the generic guidelines.

SPECIFIC GUIDELINES

EXPLORATION

Exploration activities requiring a right, licence or authorization

- Québec sends as much relevant information as possible to the Aboriginal community concerned, by means of a written notice. For example:
 - ✓ *Claims concerned*
 - ✓ *Identity of the promoter or claim holder, and its rights and obligations*
 - ✓ *Period during which work will take place*
 - ✓ *Mineral substance being sought*
 - ✓ *Nature and location of the proposed exploration activity*

MINING ACTIVITY	GOVERNMENT	PROMOTER
Claim application	<ul style="list-style-type: none"> - Makes information on claims available via GESTIM - Training sessions on GESTIM 	Informs the community within 60 days of obtaining the claim
Geological surveys Geochemical surveys Geophysical surveys Line cutting	Makes information available on annual work reports and work statements via GESTIM	- Informs the Aboriginal community of the exploration work it intends to carry out, at least 30 days before beginning the work
Mine drilling	Makes information available on annual work reports and work statements via GESTIM	<ul style="list-style-type: none"> - Answers the community's questions - Where applicable, takes into consideration the community's concerns
Bulk sampling: + 50 metric tons	Consults the Aboriginal community concerned before issuing sampling authorizations and other related rights	<ul style="list-style-type: none"> - Discusses voluntary mitigation measures and informs the Government of the measures
Underground work All excavation requiring: <ul style="list-style-type: none"> ✓ <i>Movement of unconsolidated deposits ≥ 1,000 m³;</i> ✓ <i>Rock scaling or movement of unconsolidated deposits over an area of ≥ 10,000 m²;</i> ✓ <i>Bulk sampling ≥ 500 m.t.</i> 	Consults the Aboriginal community concerned, depending on the rights and related authorizations. Publishes the restoration plan.	<ul style="list-style-type: none"> - Informs the community of the progress made throughout the mine development process

SPECIFIC GUIDELINES

EXTRACTION

Mining projects not subject to the environmental impact assessment and review process

- The MERN consults the Aboriginal community concerned on every mining project that requires a lease.
- The consultation must not only comply with the Interim Guide, it must also be implemented in accordance with the generic guidelines.

SPECIFIC GUIDELINES

EXTRACTION

Mining projects not subject to the environmental impact assessment and review process

- The MERN sends as much relevant information as possible to the Aboriginal community concerned, by means of a written notice, including:
 - ✓ *The promoter's identity*
 - ✓ *The mineral substance to be extracted and the volume that may be extracted*
 - ✓ *Planning of the work, the time required for the work, and the duration of the work*
 - ✓ *Location of the project's components and infrastructures*
 - ✓ *Rehabilitation and restoration plan (mining lease)*
 - ✓ *Rights and obligations of the eventual holder of rights, licences and authorizations*

BEYOND THE GUIDELINES

EXTRACTION

Public consultation organized by the mine promoter

- Only for mining projects not subject to the environmental impact assessment and review process.
- Aboriginal community members are invited to take part in the public consultation.
- The promoter includes, in its report, information relating to the concerns raised by the Aboriginal communities.

BEYOND THE GUIDELINES

EXTRACTION

Monitoring Committee

- Set up after the mining lease is granted.
- Fosters the involvement of the local community in the project as a whole.
- Includes at least one representative of the Aboriginal community consulted by Québec about the project.

SPECIFIC GUIDELINES

EXTRACTION

Mining projects subject to the environmental impact assessment and review process

- Québec consults the Aboriginal community concerned on all mining projects subject to the process.
- The consultation process should use a comprehensive approach that encompasses all the rights, licences and authorizations needed for the project.
- The consultation follows the steps of the environmental impact assessment and review process.
- Creation of a monitoring committee.

MINING ACTIVITY	GOVERNMENT	PROMOTER
<p>Opening and operation of:</p> <ul style="list-style-type: none"> ✓ a metal mine with a production capacity of 2,000 metric tons per day or more; ✓ a rare earths mine; ✓ Any other mine with a production capacity of 500 metric tons or more per day. 	<p>Applies the environmental impact assessment and review procedure</p> <p><i>Consultation coordinated by the MDDELCC</i></p>	<p>Sets up a monitoring committee including at least one representative of the Aboriginal community consulted by Québec</p>
<p>Opening and operation of a mine not subject to the environmental impact assessment and review procedure</p>	<p>Consults the Aboriginal community concerned before issuing rights, licences or authorizations.</p> <p><i>Consultation coordinated by the MERN</i></p>	<p>Informs the Aboriginal community concerned that a public consultation will be held</p> <p>Sets up a monitoring committee including at least one representative of the Aboriginal community consulted by Québec</p>
<p>Extraction of surface mineral substances</p>	<p>Consults the Aboriginal community concerned before issuing rights, licences or authorizations.</p> <p><i>Consultation coordinated by the MERN</i></p>	<p>Informs the Aboriginal community concerned that a public consultation will be held</p> <p>Carries out the consultation where</p>

UPDATING

- The Mining Act provides that the Minister of Energy and Natural resources must keep the policy up-to-date.
- Updating may be required, among other things, as a result of a legislative amendment, changes in case law or the adoption of new Government orientations.
- Before the policy is updated, the proposed amendments are subject to consultation with the Aboriginal communities where necessary.

APPENDICES

1- The Mine Development Process

All mining activities during the process

2- The Policy's Interrelationship Diagram

Actions taken by the mine promoter, the Aboriginal communities and the Government

3- Specific Mining Sector Consultation Mechanisms

The consultation process described in the Policy

4- Government Assistance

Services available: MERN, MDDELCC, Secrétariat aux affaires autochtones

APPENDICES

- 5- Types of Draft Agreements between Mine Promoters and Aboriginal Communities
- 6- Mine Exploration Work
- 7- Rights, Licences and Authorizations that May be Needed to Carry Out Mining Activities under Québec's Legislation and Regulations
- 8- Consultation Process Applicable to Mine Extraction Projects Subject to the Environmental Impact Assessment and Review Procedure in Southern Québec
- 9- Glossary

QUESTIONS AND DISCUSSION

- Review of objectives
- The Policy's strengths and weaknesses
- Next steps