



October 17, 2023

Nathalie Camden
Associate Deputy Minister of Mines
Ministry of Natural Resources and Forestry
5700 4th Avenue West, Suite D 327
Quebec City, QC
G1H 6R1

Subject: KEAC and KRG comments regarding the Regulation to amend the Regulation respecting mineral substances other than petroleum, natural gas, and brine

Dear Ms. Camden,

On September 6, 2023, the government of Québec announced the *Regulation to amend the Regulation respecting mineral substances other than petroleum, natural gas and brine*. This regulation stems from the adoption of Bill 102 in April 2022, which amended the Mining Act among others, with the goal of improving the social acceptability of mineral exploration activities.

Despite our previous participation in the November 2022 pre-consultations and collective observations regarding the proposed list of impact-causing mineral exploration activities sent to the Ministry of Natural Resources and Forests (MRNF) on January 13, 2023, neither the Kativik Environmental Advisory Committee (KEAC) or the Kativik Regional Government (KRG) were officially made aware of this proposed regulatory modification being publicised. Due to the tardiness in which we were informed, our organizations were left with a much shorter period in which to review the proposed modifications and consequently, the KEAC and KRG have collaborated to provide comments.

General Comments

The KEAC and KRG welcome the regulatory requirement of an authorization for mineral exploration projects that will include impact-causing activities. Furthermore, informing the KRG and Nunavik communities most likely to be affected by these activities allow for authorization conditions to be set immediately such as those linked to transparency, community outreach, respect for the land and culture as well as the follow-up in connection with site restoration once the activities are terminated. Nevertheless, our organizations would like to better understand the duration of the principal authorization and note that the Ministry should consider a short enough deadline so as not to allow for drastic changes to the initial project or abandonment of infrastructure and materials and ensure compliance with conditions set under the authorization. As such, the KEAC and KRG recommend a maximum period of 2 years before a required renewal.

KEAC Secretariat
P.O. Box 930, Kuujuaq QC J0M 1C0
Tel.: 819-964-2961, ext. 2287
Fax: 819-964-0694
Email: bpatenaude@krg.ca

As per the intentions of the Ministry to change the name of the *Regulation respecting mineral substances other than petroleum, natural gas and brine* to the “Mining Regulation”, we agree with this initiative and will refer to the regulation as such in our correspondence.

The *Mining Regulation* refers to “Native communities” several times. This term does not apply to the organizational and administrative structure of Nunavik as the region’s governing bodies were created under the James Bay and Northern Québec Agreement (JBNQA) and include the Northern Village and Landholding Corporations, the KRG, and the Makivik Corporation. Additionally, the *Mining Regulation* also refers to “Local municipalities” numerous times. Pursuant to section 408 of the *Act respecting Northern Villages and the Kativik Regional Government*, the KRG is considered a municipality under the Environment Quality Act. As such, the KEAC and KRG request an assurance that all the regional and community organizations as well as northern villages and Landholding Corporations in Nunavik be included in the terms as set out in the *Mining Regulation*.

Impact-Causing Activities

The KEAC and KRG understands that section 11 in the *Mining Regulation* will list what constitutes impact-causing exploration work as per section 69 of the *Mining Act*, as replaced with section 44 of Bill 102.

As stated in our January 2023 letter, the KEAC and the KRG are of the opinion that all impact-causing mining exploration activities carried out in the Nunavik region should require authorization from both the MRNF and the KRG. Notwithstanding, it is our opinion that the list under section 11 of the *Mining Regulation* does provide for a thorough inclusion of many exploration activities. However, the exclusion of access roads and trails leading to temporary camps, drilling sites, airstrips, and any other related infrastructures in sensitive areas (ex. caribou calving zones) is noteworthy. These access roads and trails can potentially lead to land use and territory fragmentation as well as potential impacts from hydrocarbon spill or destruction of habitat for fragile or at-risk plant species. As such, the KEAC and KRG recommend they be added to the list of impact-causing activities.

Secondly, article 66 of the *Mining Act* states that “*The claim holder may not erect or maintain any construction on lands of the domain of the State without first obtaining authorization from the Minister, except if the construction is located on the parcel of land subject to the claim and is a construction of a type defined by a ministerial order...*”

Accordingly, Ministerial Order 2000-44 defined this as, “*On lands of the domain of the State, the types of construction that the holder of a claim, a mining exploration licence or a licence to explore for surface mineral substances may erect or maintain without ministerial authorization on the land subject to the right are temporary, portable shelters that can be dismantled and are made of pliable material stretched over solid supports.*”

As evidence of disregard for these legal obligations and a lack of monitoring in the region, it can be noted that since 2007, the KRG, in collaboration with Makivik, the Fonds Restor-Actions Nunavik, the MRNF, northern villages and regional organizations, has remediated over one hundred abandoned mineral exploration sites in Nunavik with constructions that are neither temporary nor dismantled. As such the KEAC and KRG recommend that beyond adding the construction, renovation or remediation of camps built on claims to the list of exploration activities to be considered as impact-causing, the MRNF should also consider a requirement for a ministerial land lease which would allow for greater mapping and monitoring of activities on claims.

KEAC Secretariat
P.O. Box 930, Kuujuaq QC J0M 1C0
Tel.: 819-964-2961, ext. 2287
Fax: 819-964-0694
Email: bpatenaude@krg.ca

Furthermore, the KEAC and KRG recommend the temporary storage of hazardous waste, particularly hydrocarbons, at exploration camps, airstrips or at work sites located on claims be considered as an impact-causing activity. These products are often stored in drums and are sometimes abandoned or are damaged which can lead to spills.

Dialogue with communities

Section 12 of the *Mining Regulation* lists the obligatory information required of claims holders to obtain or renew an authorization including gathering the questions, requests and comments of the local municipalities and Native communities concerned as well as providing answers and a report on these exchanges. The KEAC and KRG understand this is intended to improve the social acceptability of mineral exploration activities in the region. However, we would like to take this opportunity to recall that the JBNQA is guaranteed and protected under Section 35 of the Constitution Act, 1982. The current *Mining Act* also extends this recognition by stipulating: “*This Act applies subject to the Act respecting the Land Regime in the James Bay and New Québec Territories (chapter R-13.1), the Act approving the Agreement concerning James Bay and Northern Québec (chapter C-67) and the Act approving the Northeastern Québec Agreement (chapter C-67.1)*” As such, the obligation to consult with Native communities under *Mining Regulation* must also be extended to the communities in Nunavik.

Additionally, section 5.2.6 b) of the JBNQA notes that persons wishing to carry out exploration activities are required to obtain an authorization from Québec. “Such a request for authorization shall have to include the following information: objective, nature, importance of the work to be affected, duration and a description of the installations involved. In case such authorization is granted, the Native people shall be advised of the information so given to Québec, as soon as is reasonably possible”. Also, that the exploration activities “shall be carried out in such a manner as to avoid unreasonable conflict with the rights of the Native people under the Hunting, Fishing and Trapping Regime.

Finally, section 2.11 of the JBNQA refers to the fact that the treaty should not diminish the application of legal provisions otherwise implemented to all and more so to other Nations or Native communities and as such provisions specific to Native communities in the *Mining Act* are fully applicable in the JBNQA and NEQA context.

In addition, the Government’s Regulation Impact Analysis (RIA) states that in order to mitigate the effects associated with the burden of authorization on the industry, the MRNF plans to ensure that information required for an authorization will lend to project analysis by the KRG. As you are aware, project proponents must obtain a certificate of conformity from KRG for development projects, including mineral exploration, undertaken on the Kativik territory. Through this process, Landholding Corporations in the vicinity of the project site, and the Naskapi Nation of Kawawachikamach, when required, are consulted.

It should be noted that currently, obtaining a certificate of conformity from KRG is an informative process in which conditions can be set but the activities cannot be refused. As such, the KRG is currently drafting a first ever land use planning by-law for the Kativik territory, in collaboration with Makivvik, the Cree Nation Government, the Naskapi Nation of Kawawachikamach and the Nunavik Landholding Corporations Association. The by-law’s objectives are to better control the occupation of the territory (e.g., construction, infrastructure, storage of materials, etc.) by outfitting, recreation, and mining exploration activities, among others. Through this new by-law, a consultative process with the concerned stakeholders would be carried out and help to overcome the current lack of consultation in the mining sector.

A link between the upcoming KRG’s urban planning by-law and the *Mining Regulation* is essential to avoid doubling the administrative burden on project proponents. Multiple consultations for a same project must be avoided at all costs since it creates confusion and uncertainty in the communities.

KEAC Secretariat
 P.O. Box 930, Kuujuaq QC J0M 1C0
 Tel.: 819-964-2961, ext. 2287
 Fax: 819-964-0694
 Email: bpatenaude@krg.ca

Additionally, a portion of the RIA and the draft regulation focuses on the impact on enterprises operating in the mining sector due to the additional costs associated with compiling the information necessary for the authorization or renewal of an authorization for impact-causing exploration work and that several administrative procedures will be put in place to mitigate these costs. The draft regulation does not however, address the cost to Native communities and local municipalities in terms of their administrative burden.

Finally, we wish to reiterate that all information shared with the KRG as well as the concerned communities should be available in English and/or Inuktitut and in an appropriate format according to the person to whom this information will be shared (e.g.: shapefile for professionals, map in PDF format for communities who may not have the necessary geomatic software).

Site Restoration and Monitoring

Section 232.1 of the *Mining Act* states that every holder of mining rights who engages in more specific exploration work, listed in section 108 of the Mining Regulation, must submit a rehabilitation and restoration plan to the Minister for approval and carry out the work provided for in the plan.

One may argue the work listed in section 108 is comprised of activities carried out during “advanced fieldworks” such as intensive drilling campaigns which could be described as an impacts-causing activity. As such, our organisations request to better understand how the ministry will distinguish between low-impact and high-impacts drilling campaigns.

The KEAC and KRG do consider the addition of a rehabilitation and restoration plan as positive since junior exploration companies do not currently have formal obligations to rehabilitate their sites. As per section 2.11 of the JBNQA mentioned above, we recommend the sharing of restoration plans submitted to the Minister with the KRG and concerned Nunavik communities in order to have a complete picture of restoration efforts in the region.

Furthermore, the KEAC and KRC understand that the obligation to present a rehabilitation and restoration plan shall be in effect until the work is completed or until the certificate is issued by the Minister under section 232.10 of the *Mining Act* provided the Minister is satisfied that the condition of the land affected by the mining activities no longer poses a risk for the environment or for human health and safety and, in particular, poses no risk of acid mine drainage. The KEAC and KRG request further information regarding how the MRNF intends to ensure the conditions of the rehabilitation and restoration plan have been met when, historically, a lack of presence of authorization bodies in the territory has resulted in exploration companies taking advantage of the territory’s vastness to abandon materials and camps on the land without detection.

It should be noted that under its land use management mandate, the KRG has been conducting inspections to follow up on the certificates of conformity that have been issued in the past 3 years. Eventually, inspections will be carried out within the framework of the application of its first land use planning by-law on the Kativik territory.

In a desire to collaborate with the MRNF, the KRG would be in favour of sharing information and photos taken during inspections on the territory. In view of KRG’s experience and presence on the territory, we therefore recommend the MRNF include regulatory measures that would permit the recognition of monitoring and enforcement powers to KRG for the Nunavik region.

We would like to take this opportunity to request our organizations once again be consulted in a timely manner as we continue our collaboration in reviewing future legislation and policies regarding mining activities in Nunavik.

Best regards,



Raymond Mickpegak
Chairperson, KEAC



Véronique Gilbert
Assistant Director - Environment & Land
Renewable Resources, KRG