

 Ontario Ministry of Natural Resources / Ministère des Richesses naturelles	<i>Subject:</i> Mining Act, Claims and Leases/ Aggregate Permits	<i>Policy No.:</i> A.R. 5.00.06	<i>New:</i> Yes
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Guiding Principles

An individual, who holds a prospector’s licence, has the right to prospect/explore for minerals under the Mining Act, where the mining rights are open for staking, and upon completion of the necessary assessment work, may bring the claim to lease.

The Mining Act can authorize a claim or leaseholder to prospect for minerals but does not allow them to go into production for aggregate. The production of aggregate requires the authority of an aggregate permit or licence under the Aggregate Resources Act (except where extraction proceeds under ground).

Extraction of consolidated aggregate (i.e. bedrock) is not dependent upon an individual obtaining the mining rights under the Mining Act.

The right to consolidated aggregate is granted on a first-come priority basis (i.e. receipt by MNR of an aggregate permit application vs. staked mining claim).

Policy

Ministry staff must have a basic understanding of the *Mining Act* and its interrelationship with the *Aggregate Resources Act* (ARA) (see Glossary of Terms, below).

The Mining Act

Mining Act 2 The purpose of the Act is to encourage prospecting, staking and exploration for the development of mineral resources and to minimize the impact of these activities on public health and safety and the environment through rehabilitation of mining lands in Ontario.

The *Mining Act* and the regulations, administered by the Ministry of Northern Development and Mines (MNDM), allows a holder of a prospector’s licence to obtain the exclusive right to prospect/explore for specific minerals where the mining rights are open for staking (i.e. unpatented mining rights).

Note: The right to sand and gravel is conveyed to the surface rights holder and not the mining rights holder and consequently, an individual cannot stake for sand and gravel.

Pursuant to subsection 44(1) of the *Mining Act*, a licensee who staked out a mining claim shall, not later than 31 days after the day on which the staking out was completed, make an application to record the claim to the Mining Recorder for the mining division in which the claim has been staked out. A claim must be staked in accordance with the regulations. Expenses incurred by the claim holder are eligible for credit as assessment work (e.g. trenching, blasting,

diamond drilling, geological survey, geophysical survey) if eligible by the regulations. The claim holder is required to perform and submit annual prospecting and/or exploration work (i.e. assessment work) to the appropriate Mining Recorder, to maintain the claim in good standing.

The claim may be brought to lease by making application after completing the necessary assessment work. Cash may be paid in lieu of assessment work (\$4,400 per 16 ha. claim unit) or a combination of both (\$4,400 less the dollar value of assessment work recorded to date). In addition, the application and payment must be accompanied by a plan of survey, an agreement or an order of the Commissioner indicating that surface rights compensation, if any, has been paid, secured or settled. A lease is issued under section 81 of the *Mining Act* and is for a term of 21 years.

Disputes under the Act are adjudicated either by the Provincial Mining Recorder(s) or the Mining and Lands Commissioner.

The *Mining Act* and the regulations authorize the claim holder to conduct limited exploratory work (e.g. stripping an area of less than 10,000 sq. metres (1 ha.) or 2,500 sq. metres if within 100 metres of a water body; bulk sampling/testing of material of less than 1,000 tonnes) within the claim without the need for other approvals. Additional provisions under the *Mining Act* would apply under "advanced exploration". For information regarding the legal requirements under the *Mining Act* and the regulations, contact the MNDM.

Priority of Rights

On lands open for staking (i.e. unpatented mining rights), mining rights for consolidated aggregate (i.e. bedrock) may be acquired either under the *Mining Act* or the ARA. It is entirely up to the proponent as to which process they select to acquire the right to the aggregate.

The issuance of a licence/aggregate permit is not dependent upon an individual acquiring the mining rights under the *Mining Act*. However, there are advantages to staking the land, as it provides protection from competing interests while an application under the ARA is being prepared and/or would allow exploration activities to be undertaken (subject to the provisions of the *Mining Act*). Furthermore, a permittee/licensee is not required to pay a royalty fee under the ARA on leased or patented mining rights.

The *Mining Act* authorizes a claim or leaseholder to prospect for minerals but does not allow them to go into production for aggregate (i.e. holder of an unpatented mining claim does not own the land and has no title until a lease is granted); this activity requires the issuance of an aggregate permit. The issuance of a lease conveys an exclusive right to the minerals but does not guarantee that MNR will issue an aggregate permit.

Regardless of the process selected, it is a question of timing (i.e. first-come priority basis) as to which instrument (application or approval under the ARA vs. mining claim or lease under the *Mining Act*) takes precedence. An existing authorization would take priority over any subsequent approvals or applications.

Quarry Application under the ARA

To minimize potential conflicts between the ARA and the *Mining Act*, District/Area office staff should adopt the following practice. Upon receiving a quarry application under the ARA, the MNR shall time and date stamp the application and the Aggregate Inspector will assess it for completeness (see A.R. 4.01.01). The Aggregate Inspector, upon determining that the application is complete, shall immediately notify the Provincial Mining Recorder, who will identify the application on their mining claim maps.

A quick review and notification is essential to minimize conflicts. The staked claim may not be recorded for a period of up to 31 days, and therefore, until this period has lapsed, a review of the claim map is not a guarantee that the aggregate is still available.

Claim maps may be viewed and images downloaded through the "CLAIMaps Internet Application" available through the Mines and Minerals Division of the MNM website (see email address under Additional Sources of Information below). The map information is normally updated every night but there is a disclaimer that the MNM cannot and does not warrant the accuracy, completeness, timeliness, merchantability or fitness for a particular purpose of any information available through this service.

Should there be a dispute between competing parties, by documenting the time and date, MNM and MNR will be able to establish who (i.e. aggregate permit applicant or claim holder) has the right to the aggregate.

Where there is an existing mining claim or mining lease, an aggregate permit (for a quarry) may only be issued to the holder of the mining claim or lease. However, MNR must not place a condition on the aggregate permit/licence that requires the permit to be transferred or revoked should the claim or lease be transferred to another party under the *Mining Act* (non-discretionary decision when a mining claim or lease is transferred).

Where there is an existing mining claim or mining lease, an aggregate permit (for a pit) may be issued to any person/registered company and is not restricted to the mining claim/lease holder.

Where there is an existing aggregate permit (i.e. for a quarry), the mining claim may be staked (if open for staking) and recorded, but the right to aggregate on any land that is affected by an aggregate permit is excluded from the claim.

If the permit/licence is surrendered or revoked by MNR, the right to the aggregate reverts to the mining claim holder. A new permit/licence will not be issued to any person/company other than the recorded holder.

Transfer of an Aggregate Permit/Mining Claim

MNR staff must be cognizant of their obligations under the ARA and/or when it is appropriate to take, or refrain from taking, action. Table 1 summarizes MNR's recommended course of action where a mining claim and aggregate permit co-exist and one instrument is to be transferred.

Table 1

Scenarios	Mining Claim Pre-Exists	Aggregate Permit Pre-Exists**
Request to Transfer** Aggregate Permit (Not to the claim holder)	MNR should deny the request based on “public interest”	MNR may transfer the permit
Transfer Mining Claim* (Not to the permit holder)	No MNR action required	No MNR action required

* Transfer of a mining claim under the *Mining Act* is non-discretionary.

** Within a designated area of the Province, the transferee (licensee) must demonstrate that they have the right to extract prior to MNR transferring the licence or in the case of a mining claim being transferred, the Aggregate Inspector should contact the licensee to obtain confirmation, in writing, that they still retain the right to extract.

Approvals Chart (Table 2)

It is often difficult for staff to determine whether the *Mining Act* or the ARA applies or what is the appropriate approval instrument and process due to the interrelationship between the *Mining Act* and the ARA. In an attempt to reduce this confusion, the various scenarios have been summarized in Table 2 (attached). Factors that must be considered include, the status of the surface and mining rights (i.e. Crown, leased or patented), whether extraction is for material defined as “aggregate” under the ARA or not, surface vs. underground extraction, consolidated aggregate vs. sand and gravel, and designated vs. non-designated areas of the province.

For example, if extraction is for metallic or non-aggregate materials, or underground, the operation is regulated under the *Mining Act* (rows A - C). Production may only occur on leased or patented mining rights (even numbered columns).

Where extraction is for aggregate from the general surface of the ground, the following scenarios are possible:

- a) the mining rights are the Crown (including staked), leased or patented, and surface rights are patented within an area designated by regulation under subsection 5(2) of the ARA (D5 and D6 - quarry, E5 and E6 – pit), a licence or wayside permit is required;
- b) the surface rights are Crown (including leased surface rights) (rows D and E, columns 1 - 4 and 7 - 10) or bedrock on Crown Mining rights where the surface rights are patented (D11), an aggregate permit is required;
- c) In a non-designated area, patented surface rights and leased or patented mining rights (D12) – not regulated by either the *Mining Act* or ARA; For MTO contracts, a Letter of Approval is required.
- d) In a non-designated area, patented surface rights - sand and gravel is not regulated unless reserved to the Crown, in which case, an aggregate permit is required. If unregulated under the ARA, for MTO contracts a Letter of Approval is required.

Additional Sources of Information

For a copy of the *Mining Act* or ARA, access website: www.e-laws.gov.on.ca

For information regarding the status of mining lands, MNDM policies and procedures, and Mines and Minerals Division of MNDM, access website at:

http://www.mndm.gov.on.ca/MNDM/MINES/default_e.asp

Glossary of Terms

Mining
Act 1

“Minerals” means “all naturally occurring metallic and non-metallic minerals, including natural gas, petroleum, coal, salt, quarry and pit material, gold, silver and all rare and precious minerals and metals, but does not include sand, gravel and peat.”

“Mining claim” means “a parcel of land, including land under water that has been staked and recorded in accordance with this Act and the regulations.”

“Mining rights” means “the right to minerals on, in or under any land.”

“Surface rights” means “every right in land other than the mining rights.”

“Patented” means a grant from the Crown in fee simple or for a less estate made under the Great Seal, and includes leasehold patents and freehold patents, but in sections 4, 27, 84, 87 to 95, 176, 179, 182 and 189 the meaning is limited to freehold patents.”

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s. 2(2)

“Advanced exploration” includes: the following types of work: exploration carried out underground involving the construction of mine workings; extraction of material in excess of 1,000 tonnes; stripping in excess of 10,000 sq. metres or displacement of 10,000 cu. metres; if within 100 metres of water, stripping an area in excess of 2,500 sq. metres or displacement of 2,500 cu. metres.

“Claim holder” means the person(s) or company(s) in whose name the unpatented mining claim is recorded (same as recorded holder). The person/company who is responsible for meeting the requirements of the *Mining Act* to keep the mining claim in good standing.

“Designated” means private land (i.e. patented surface rights) in parts of Ontario that are designated by regulation under subsection 5(2) of the ARA.

“Fee Simple” means an estate of absolute inheritance “without limitation or condition”. The person owns the land, whereas a lessee must meet certain requirements as set out, by the Crown, in the lease.

“Lease” means a leasehold patent. A conveyance or grant of possession of land for a set length of time. There is usually a requirement to pay rent. The Minister’s consent for transfer and renewal of mining leases; and also for getting a mortgage on a lease.

“Leasehold” means land held under a lease.

“Licence” means a licence for a pit or quarry issued under the ARA.

“Patent” means a grant from the Crown in fee simple, also referred to as freehold patents. The patent cannot be terminated by the Ministry of Northern Development and Mines, except for voluntary surrender or non payment of mining lands taxes. A leasehold patent and a fee simple patent are not the same.

“Unpatented” when referring to land or mining rights, means land or mining rights for which a patent, lease, licence of occupation or any other form of Crown grant is not in effect.

“Unpatented Mining Claim” means Crown land, which has been staked and recorded (with the appropriate Mining Recorder). The holder of the claim has the right to search the staked land for minerals, but does not have title to the land. After meeting the requirements of the Mining Act, the claim holder has the right to apply for and receive title to the mining claim in the form of a lease.

Approvals Required for Mineral Production

MTO, Mining Act and Aggregate Resources Act Approvals - May 2004

			Designated Areas						Non-Designated Areas						
			Crown Surface Rights		Leased Surface Rights		Patented Surface Rights		Crown Surface Rights		Leased Surface Rights		Patented Surface Rights		
			Crown Mining Rights (including staked claims)	Leased or Patented Mining Rights	Crown Mining Rights (including staked claims)	Leased or Patented Mining Rights	Crown Mining Rights (including staked claims)	Leased or Patented Mining Rights	Crown Mining Rights (including staked claims)	Leased or Patented Mining Rights	Crown Mining Rights (including staked claims)	Leased or Patented Mining Rights	Crown Mining Rights (including staked claims)	Leased or Patented Mining Rights	
Mining Act	Metallic & Non - Aggregate Minerals	Underground	Not Allowed	Mining Act Part VII	Not Allowed	Mining Act Part VII	Not Allowed	Mining Act Part VII	Not Allowed	Mining Act Part VII	Not Allowed	Mining Act Part VII	Not Allowed	Mining Act Part VII	A
		Surface	Not Allowed	Mining Act Part VII	Not Allowed	Mining Act Part VII	Not Allowed	Mining Act Part VII	Not Allowed	Mining Act Part VII	Not Allowed	Mining Act Part VII	Not Allowed	Mining Act Part VII	B
ARA	Aggregate Excluding Sand, Gravel	Underground	Not Allowed	Mining Act Part VII	Not Allowed	Mining Act Part VII	Not Allowed	Mining Act Part VII	Not Allowed	Mining Act Part VII	Not Allowed	Mining Act Part VII	Not Allowed	Mining Act Part VII	C
		Surface	Aggregate Permit	Aggregate Permit	Aggregate Permit	Aggregate Permit	Wayside Permit or Licence	Wayside Permit or Licence	Aggregate Permit	Aggregate Permit	Aggregate Permit	Aggregate Permit	Aggregate Permit	Not Regulated**	D
	Sand, Gravel	Surface	Aggregate Permit	Aggregate Permit	Aggregate Permit	Aggregate Permit	Wayside Permit or Licence	Wayside Permit or Licence	Aggregate Permit	Aggregate Permit	Aggregate Permit	Aggregate Permit	*	*	E
			1	2	3	4	5	6	7	8	9	10	11	12	

"Aggregate" as defined by the Aggregate Resources Act includes gravel, sand, clay, earth, shale, stone, limestone, dolostone, sandstone, marble, granite and rock; but does not include metallic ores, asbestos, graphite, kyanite, mica, nepheline syenite, talc, wollastonite, andalusite, barite, coal, diamond, gypsum, kaolin, lepidolite, magnesite, petalite, phosphate rock, salt, sillimanite and spodumene.

* An aggregate permit would be required if sand and gravel had been reserved to the Crown. In non-designated areas, where there is no reservation to the crown, production of sand and gravel is unregulated under the Aggregate Resources Act and a Letter of Approval is required.
 ** Similarly, excavation of bedrock (i.e. aggregate) from patented surface rights on leased or patented mining rights is unregulated under the Aggregate Resources Act and a Letter of Approval is required.

The above chart is valid for all minerals as defined by the Mining Act except for natural gas and petroleum. It includes all naturally occurring metallic and non-metallic minerals and general quarry and pit material except sand, gravel and peat.