

Impact-Causing Exploration Work: Do You Need An ATI ?



On January 23, 2024, the Québec government made amendments to the *Regulation respecting mineral substances other than petroleum, natural gas and brine*, which has been renamed the *Mining Regulation* (the “Regulation”).¹ These changes will come into force on May 6, 2024, and are intended to implement certain amendments to the *Mining Act* (the “Act”) ²announced in April 2022.

The amendments introduce a new authorization process aimed at “impact-causing exploration work.” From now on, any mining company wishing to carry out this type of work will have to submit an application for an authorization for impact-causing exploration work (or “ATI”) to the Ministère des Ressources naturelles et des Forêts (Ministry of Natural Resources and Forests or “Ministry”).

Until this change, the mere holding of a claim granted under the Act automatically authorized a large proportion of mining exploration activities as well as the extraction of 50 metric tons or less of mineral substances for bulk sampling, regardless of the impact.

As of May 6, 2024, amendments to section 69 of the Act will come into force providing the need to obtain an ATI prior to carrying out impact-causing exploration work. These amendments are part of the Québec government’s initiative to encourage the “harmonious development of mining activities” and

“coexistence of use” in Québec.³ The stated purpose of the ATI is to create a transparent process that addresses the concerns of local municipalities and nearby Indigenous communities affected by mineral exploration activities.

What Work Requires an ATI?

The Regulation sets out a list of activities that constitute impact-causing exploration work:⁴

<ul style="list-style-type: none">• work carried out using hydraulic machinery or explosives, in particular:<ul style="list-style-type: none">- excavating in overburden;- rock stripping;- bulk sampling;- drill-holes in overburden or in rock;- seismic refraction geophysical surveys;	<ul style="list-style-type: none">• work carried out using a hydraulic pump for gold mining purposes.
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What Work Does *Not* Require an ATI?

The Regulation does not provide for any exemptions. However, the Ministry has published a [*Promoter’s Guide for Authorization of Impact-Causing Exploration Work*](#) (the “Guide”) to assist promoters in preparing an ATI application, which sets out work for which an ATI is not required.⁵ Some examples include:

- any exploration activity carried out without the use of hydraulic machinery or explosives and, in the case of gold mining, without the use of a hydraulic pump (e.g., line cutting, manual rock stripping using a shovel or water pump, geological surveys, surface and drilled geophysical surveys, and manual sampling of rock and soil);

- any exploration on land subject to a lease to mine (e.g., a mining lease) or a mining concession.

How to Obtain an ATI Authorization?

To obtain an ATI, promoters must submit certain information to the Ministry using the required form. In particular, ATI applicants must provide a detailed description of the work and the “zone of interest” on which the work will be carried out.⁶ Zone of interest means identifying the land on which impact-causing exploration work will be carried out. Accurately delimiting the zone of interest covered by the ATI application is essential since any change to a zone of interest will require the filing of a new ATI application.

The Regulation also requires ATI applicants consult with local municipalities and Indigenous communities, and to submit a report on the exchanges with these communities.

Identifying Stakeholders to Be Consulted

To find out which local municipality is concerned, the promoter can consult the interactive map on the Ministry’s GESTIM site. The promoter may contact the Ministry directly to determine which Indigenous community or communities are affected by the ATI. In Eeyou Istchee James Bay territory, promoters are asked to contact the Eeyou Istchee James Bay Regional Government for projects located on Category III lands.

Consultation Process

The Regulation does not impose a specific process for carrying out this consultation. The Guide recommends in-person public meetings where a detailed description of the proposed work is presented. It is also recommended to keep public consultations with local municipalities separate from consultations held with Indigenous communities. In practice, a number of

consultation activities can be expected to take place through written discussions between the promoter and relevant stakeholders. The Ministry therefore gives promoters some latitude in determining how these consultations will be carried out.

Report on the Exchanges with the Local Municipalities and the Indigenous Communities

It is, however, imperative that promoters submit a report on the discussions, which “report on the exchanges with the local municipalities and the Indigenous communities” summarizes the questions, requests and comments raised by the communities concerned and the answers provided by the promoter. The Guide provides guidance to promoters in presenting the information gathered during the consultation process.

To help process requests for comments from municipalities and communities, Québec mining associations recommend that ATI applicants inform the Ministry by email when they have forwarded their file to a municipality or Indigenous community. This will enable the Ministry to ensure that the given municipality or community is well-informed about the ATI application process, that it can follow up on the file, and that the report can be transmitted within a reasonable time frame.

It should be noted that this report will be made public by the Ministry.

At the time of issuing the ATI, the Ministry may, if it deems it necessary, impose conditions and obligations applicable to the exploration work to be performed pursuant to the ATI.⁷

Validity Period of an ATI

An ATI is valid for a period of 2 years, which may be renewed for a period of 12 months if certain conditions set out in the

Regulation are met.⁸ These conditions include the obligation to hold a new consultation with local municipalities and Indigenous communities and to provide a new report.⁹

The coming into force of the ATI is occurring in a context where concerns are being raised by various citizen groups opposing mining exploration activities in the tourist regions of southern Québec. It is also occurring in the context of the dispute between the Mitchikanibikok Inik First Nation and the Québec government, in which the First Nation is claiming that the *Mining Act* is unconstitutional because it allows claims to be registered without consulting the concerned Indigenous peoples beforehand. As such, the ATI is presented by the Québec government as but one of many factors that foster the social acceptability of mining projects by taking into account the concerns of local municipalities and nearby Indigenous communities.

Unfortunately, it is expected that ATIs will impose additional procedural and financial burdens on mining exploration companies whose resources are already limited, not to mention the anticipated delays in issuing the ATIs, which may hinder exploration campaigns, since the periods within which to complete these campaigns are often very short and dependent on weather conditions. Just days prior to the ATI coming into force, the *Québec Mineral Exploration Association* reported that, for activities on the territory of communities that are signatories to the *James Bay and Northern Quebec Agreement*, it takes the Ministry about 20 days to process applications once all required documents have been received. In southern Québec, however, the consultation period for Indigenous communities is at least 30 days, while the response period for municipalities and regional county municipalities is 10 days. Processing an ATI application takes the Ministry approximately 35 to 50 days.

Not all communities (local or Indigenous) will be equally

prepared to adapt to these regulatory changes. As a result, delays and responses may vary greatly from one community to another, which will affect when the report on the exchanges with the local municipalities and the Indigenous communities is submitted to the Ministry and, therefore, when the ATI application is processed. As a result, ATI applicants might face rather significant delays in processing their applications.

Will ATIs really contribute to the social acceptability of projects, as stated by the Ministry, while fostering a predictable framework conducive to mine development investment? Or is this actually a case of regulatory duplication that will only delay the exploration activities of mining companies without any real benefit to stakeholders? We'll find out soon enough!

Footnotes

1. CQLR c M-13.1, r 2.
2. CQLR c M-13.1.
3. Guide, p. 2.
4. Regulation, s 11.
5. Guide, Appendix 2, pp 16–17.
6. > Regulation, s 12.
7. Act, s 69.1.
8. Act, s 69.2; Regulation, s 13.
9. Guide, p 3.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

Authors: [Frank Mariage](#), [Emilie Bundock](#), [Julien Cossette](#)

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