

**NATIONAL ORPHANED/ABANDONED MINES
INITIATIVE**

GUIDELINES FOR LEGISLATIVE REVIEW

submitted to the

**61st Annual Mines Ministers' Conference
Iqaluit, Nunavut
July 20, 2004**

NATIONAL ORPHANED/ABANDONED MINES INITIATIVE GUIDELINES FOR LEGISLATIVE REVIEW

INTRODUCTION

At their annual meeting in Halifax in 2003, Mines Ministers endorsed recommendations put forward by the National Orphaned/Abandoned Mines Initiative (NOAMI) and asked the advisory committee and task groups to immediately undertake the following action:

Complete guidelines for jurisdictional legislative reviews with respect to collaboration, liability and funding to ensure that approaches across jurisdictions are consistent, certain, transparent, coordinated and efficient.

To address this issue, the Guidelines for Legislative Review (GLR) Task Group was struck, consisting of various members of the NOAMI Advisory Committee and its task groups. The GLR Task Group's principal objective was to develop a series of guidelines to facilitate a focused review of the legislative/regulatory/policy framework as it applies to orphaned/abandoned mines across Canada (additional information about NOAMI and the GLR Task Group is provided in Appendix C; see also www.abandoned-mines.org).

Intent

The purpose of this review is to provide an accurate synopsis of the current regulatory and policy environment and to assist in the development of a consistent, transparent, coordinated and efficient legislative and policy framework for the management of orphaned/abandoned mine sites in Canada.

Jurisdictions are to report back to NOAMI on their review. NOAMI will synthesize responses, including an assessment of gaps, limitations, barriers and opportunities, and develop a best practices guide to legislative/regulatory/policy approaches for the management of orphaned/abandoned mines across Canada.

Contacts

If you have further questions or require assistance please contact the NOAMI secretariat:

- Gilles Tremblay, tel. (613) 992-0968; e-mail: gtrembla@nrca.gc.ca
- Charlene Hogan, tel. (613) 996-7855; e-mail: chogan@nrca.gc.ca

REVIEW PROCESS

These guidelines will be used by the jurisdictions to evaluate their own policies with respect to collaboration, liability and funding. They are intended to assist jurisdictions in completing a review of legislation (acts and regulations) and related policies and practices (such as permitting, licensing and approval processes) that relate to:

- Contaminated sites;
- Operating mine sites; and
- Orphaned/abandoned mine sites.

The guidelines are set up in the form of a checklist with associated questions. The role of NOAMI is to provide guidance on the issues to consider, and not to complete the review. This checklist is being distributed to the various jurisdictions with the request that they conduct an inventory of and evaluate their own legislation and policies currently in place with respect to liability, funding and collaboration. Jurisdictions are to report back to NOAMI by **January 31, 2005**, on their review and identify actions they have taken. Submissions should be sent to the NOAMI secretariat using the contacts identified above.

The review process, as outlined below, has been developed to address both the broad latitude of legislation and polices and the wide spectrum of regulatory agencies that regulate contaminated sites, operating mines, and orphaned/abandoned mine sites in Canada. This includes:

- I. Identification of lead federal/provincial/territorial (F/P/T) agencies and allowing them to determine other appropriate regulatory agencies within their respective jurisdictions.
- II. Completion of the legislation matrix table (Appendix A) to identify the appropriate legislation and provisions of interest.
- III. Response to a series of general questions (Appendix B) to assist in providing the level of detail necessary to evaluate the legislation and provisions.

It is important that all agencies that regulate any aspect of contaminated sites, operating mines and orphaned/abandoned mine sites participate in this review. The context of “regulate” refers not only to specific legislation and regulations, but also to any policies and processes that manage these sites. Agencies include government departments, Crown corporations and other agencies either within or outside of government. In addition to existing legislation, amendments and draft legislation currently being considered should also be included in the review.

I. Lead Agencies

The lead agencies for the legislation review will be the F/P/T agencies/departments responsible for mines. These agencies/departments will assume the lead role for:

- Identifying other agencies within their respective jurisdictions responsible for regulating various aspects of contaminated sites, operating mines, and orphaned/abandoned mine sites;
- Participating in the review by providing a response for their respective legislation; and
- Collecting the review responses for their jurisdiction and providing them to NOAMI.

Agencies that have been identified by the lead agencies should apply these guidelines and complete the Legislation Matrix Table and respond to the Questions on Provisions. In addition, these agencies should identify any other potential agencies to the lead agency.

II. Legislation Matrix Table

The Legislation Matrix Table (Appendix A) provides for the identification of appropriate legislation along the horizontal axis (A to N). Additional columns may be added or a second table may be used if required. The respondent should identify the title of the legislation and/or policy instrument and, for each of the pertinent provisions insert the appropriate code as provided in the legend. Provisions have been identified on the vertical axis (1 to 9) and are briefly described below. As an example, matrix responses for two Manitoba statutes are provided in Appendix A.

1. Licence/Permit

This provision addresses licences, permits, certificates, orders, or any form of approval issued for contaminated sites, operating mines and orphaned/abandoned mine sites.

2. Assessment

Assessment includes environmental and financial, and also closure and decommissioning plans.

3. Monitoring

Provisions for environmental and financial monitoring as well as site inspection.

4. Liability

Provisions for attribution/limitation of liability.

5. Emergency Response

Provisions for responding to sites where there are immediate public health and safety concerns.

6. Financial Instruments

Financial instruments include performance bonds, cost sharing, levies, fees, liens and any forms of security.

7. Application/Exemption

Who does the legislation apply to and are there any specific exemptions?

8. Designation of Orphaned/Abandoned Sites

Provisions for designation of orphaned/abandoned sites.

9. Community Involvement

Provisions for involving community groups in mine-site remediation.

III. Questions on Provisions

A series of general questions (Appendix B) has been developed to solicit responses that will provide a sufficient level of information to describe the legislation as it relates to the specific provision. Respondents are encouraged to broadly interpret the questions in a manner that provides their regulatory perspective as it relates to the provision.

APPENDIX A

LEGISLATION MATRIX TABLE

JURISDICTION : Manitoba (EXAMPLE ONLY)
 Legislation Framework

Provisions/Legislation	A	B	C	D	E	F	G	H	I	J	K	L	M	N
1. Licence/permit	C	O												
2. Assessment	C	P												
3. Monitoring	C	P												
4. Liability	C	O												
5. Emergency response	C	Y												
6. Financial instruments	C	O												
7 Application/exemption	C	N												
8. Designation of O/A sites	C	P												
9. Community involvement	C	N												

Legend

- O/A = Orphaned/Abandoned Mines
- Y = Yes applies to O/A mine sites
- P = Policy in place that applies to O/A mine sites
- A = Considering development or amendment of statutes as they apply to O/A mine sites
- O = Yes, only applies to operating mine sites
- C = Yes, only applies to contaminated sites
- N = Not applicable

Legislation

Title of Legislation

A	<i>Manitoba Contaminated Sites Remediation Act</i>
B	<i>Manitoba Mines and Minerals Act</i>
C	
D	
E	
F	
G	
H	
I	

APPENDIX B

QUESTIONS ON PROVISIONS

Reference Materials:

NOAMI web site: www.abandoned-mines.org

The following documents are available from the web site:

- Potential Funding Approaches for Orphaned/Abandoned Mines in Canada, 2003
- Barriers to Collaboration: Orphaned/Abandoned Mines in Canada, 2002
- Lessons Learned on Community Involvement in the Remediation of Orphaned/Abandoned Mines: Case Studies and Analysis (2003)
- Proceedings of Workshop on Legal and Institutional Barrier to Collaboration Relating to Orphaned/Abandoned Mines - Ottawa, Ontario (February 24-25, 2003)
- Proceedings of Winnipeg Workshop, July 2001

QUESTIONS ON PROVISIONS

1. Licence/Permit/Certificate of Approval/Orders

- Is the licence/permit a standard template or are specific conditions applied on a site-specific basis?
- Is there a duration to the licence/permit and, if so, is the licence/permit renewable?
- Can a licence/permit be transferred?
- Is a licence/permit (or certificate) required prior to rehabilitating the abandoned mine site? If so, list the departments or agencies involved in the permit/licence (or certificate) being reviewed and issued.
- Are federal/provincial/territorial/Aboriginal agencies or organizations involved in the permit review/issuance? If so, list which ones and briefly describe the applicable legislation.
- Site Plans
 - Do you have provisions for site planning, including remediation, closure, decommissioning and follow-up?
 - Do you have provisions for exit tickets? What are they?

2. Assessment

- Are there specific requirements for assessment and, if so, what type of assessment?
- Is there a legal definition for characterizing sites? Is there a distinction between Crown sites and non-Crown sites?
- Do assessments include both environmental and human health/social impacts?
- Are there standards for these assessments?
- Who is responsible for conducting the assessments (government officials, etc.)? Are the assessments conducted by government officials, consultants acting on behalf of the government or the owners? Is the government agency or territory conducting assessments doing so in its own jurisdiction?
- Is funding available for detailed site assessment?
- Is there a process that involves a joint review process that is inclusive of the municipal/Aboriginal government level?

3. Monitoring

- Which departments in your government deal with orphaned/abandoned mine sites in terms of monitoring, maintenance and management of the sites, and regulatory/environmental assessment of the sites?
- Are there specific requirements for monitoring and, if so, for what type of monitoring?
- Do standards or guidelines exist for reclamation or remediation of lands and watercourses?
- Are the monitoring requirements legislated?
- Are there other agencies involved in the review/implementation of the monitoring programs?
- Who is responsible for inspecting the rehabilitated mine hazards and ensuring that the monitoring programs are successfully implemented?
- Is the information shared and is it available?

4. Liability Allocation and Limits

- How is liability assessed, who does it, what's the process?
- Does liability include retroactive, joint and several, or absolute provisions for assigning responsibility?
- Are environmental indemnifications ever granted to individuals or companies for sites?
- Is there a mechanism for allocating or dividing the liability associated with rehabilitation of a mine site?
- How are clean-up costs funded by the government?
- Is there any legislation limiting liability for organizations involved in voluntary reclamation (NGO, community groups, for-profit organizations and companies)?
- Are there agreements between governments and companies that are (or are not) legislation-based that limit liability for new companies wishing to access an orphaned or abandoned site for the purpose of exploration or mining?

5. Emergency Response

- Are there provisions for emergency response by government for operating, closed or orphaned sites?
- What are they?

6. Financial Instruments

(Licence Fees, Performance Bonds, Recovery of Public Funds, Levy or Fees, Dedicated Revenue Streams)

Performance Bonds

- How is the amount of security required to cover environmental liability calculated? Is full security required?
- What forms of security are acceptable?
- Is security required for all sites?

Recovery of Public Funds

- Do provisions exist for placing liens on properties where the Crown has expended funds?
- Is there a mechanism in place for the Crown to rehabilitate mine sites and recover the associated costs?

Levy or Fees

- Does a schedule of fees exist for technical reviews, issuance of approvals, etc., related to program function or service delivery? (Fee for service)

Other

- Who is financially responsible for the assessments with respect to closure plans and decommissioning plans?
- Are there any examples or precedents where cost sharing/partnerships have been made for the purposes of rehabilitating an abandoned mine hazard?

7. Application/Exemption

- Does this statute apply to only certain individuals or individual organizations, or are there specific exemptions?
- Does this statute identify individuals?
- Are there limitation dates provided in the statute?

8. Designation of Orphaned/Abandoned Sites

- What criteria exist for determining or identifying orphaned or abandoned sites?
- Does an inventory of orphaned or abandoned sites exist?
- How are sites prioritized?

9. Community Involvement

- Is there a provision for community groups/NGOs/municipalities/Aboriginal governments to become involved in the rehabilitation of orphaned/abandoned sites? If so, what is the process?
- Is there a database in place for the public to access information on orphaned/abandoned mines? How is information shared?

APPENDIX C NATIONAL ORPHANED/ABANDONED MINES INITIATIVE

BACKGROUND

The legacy of orphaned/abandoned mines (O/AMs), with their associated environmental liability, human health concerns and the financial costs of clean-up, is a serious issue facing Canada.

In 1999 and 2000, a number of stakeholders put forth requests to the Mines Ministers to establish a joint industry-government working group, assisted by other stakeholders, to review the issue of orphaned/abandoned mines. The Ministers supported this initiative and requested that a multi-stakeholder workshop be organized to identify key issues and priorities.

The Workshop on Orphaned/Abandoned Mines, held June 2001 in Winnipeg, reviewed the issues for O/AMs and identified processes to move forward. Five major themes were discussed:

- Building a National Inventory;
- Community Perspectives;
- Setting Standards and Rational Expectations;
- Ownership and Liability Issues; and
- Identification of Funding Models.

Participants developed consensus, guiding principles and recommendations that were presented at the Mines Ministers' Conference in September 2001.

Canadian Mines Ministers signalled their commitment to address this serious environmental issue and requested that an Orphaned/Abandoned Mines Advisory Committee be set up to study various issues and initiatives relating to the implementation of remediation programs across Canada. Accordingly, the National Orphaned/Abandoned Mines Initiative (NOAMI) was established as a cooperative program that is guided by an Advisory Committee consisting of the mining industry, federal/provincial/territorial governments, environmental non-government organizations and First Nations. The advisory committee's role is to assess key issues and put forward recommendations concerning collaborative approaches and partnerships towards the development of remediation programs.

A work plan was developed, based on the principal objectives of the Advisory Committee. The work plan is updated annually, based on the recommendations of the Mines Ministers as put forth in their Action Plan. Task groups were formed by the Advisory Committee to address the key program areas: information gathering, community involvement, legislative barriers to collaboration, and funding approaches. An ongoing commitment of NOAMI is to foster technology transfer, and information on activities is disseminated through a number of routes.

Program Status

Information Gathering. There is a need to develop capacity for a national inventory of orphaned and abandoned mine sites based on compatible federal/provincial/territorial inventories. Standardized "national" definitions are required for this task. A review of

existing jurisdictional information to establish common parameters for a national system is under way.

Community Involvement. Case studies related to community involvement were completed for three Canadian mine sites. The “lessons learned” from these studies were developed into a series of guidelines and published in the pamphlet “Best Practices in Community Involvement.” While this program area has completed its objectives, NOAMI will continue to examine ways to foster meaningful community involvement and engagement in abandoned mine remediation.

Legislative Barriers to Collaboration. A review was undertaken to examine regulatory or institution barriers, liability disincentives and collaborative opportunities relating to remediation of O/AMs. The report findings provided background for a multi-stakeholder workshop held in Ottawa in 2003 that assessed the key barriers and developed approaches to overcome them. These recommendations were further developed for the action framework.

Funding Approaches. A report was prepared that outlined a variety of funding approaches to be considered for the clean-up or management of liabilities related to O/AMs. Individuals with expertise in this area were surveyed, and the report incorporated their views as well as those of the authors. Advantages and disadvantages of each approach were evaluated and preferred options were recommended. No single funding approach will constitute a complete solution; a combination of a number of approaches will likely be required. Mechanisms to further discuss and develop funding approaches are under way.

Information Transfer. All reports, newsletters, pamphlets and workshop proceedings are posted on the NOAMI web site at www.abandoned-mines.org. Activity updates are periodically distributed to the NOAMI Network.

Guidelines for Legislative Review (GLR) Task Group

The GLR Task Group was formed to develop a series of guidelines to facilitate a focused review of the legislative/regulatory/policy framework as it applies to orphaned/abandoned mines across Canada. It is composed of various members of the NOAMI Advisory Committee and its task groups as listed below:

Edwin Yee (Project Leader) – Province of Manitoba
 Dick Cowan – Province of Ontario
 Elizabeth Gardiner – Mining Association of Canada
 Christine Kaszycki – Province of Manitoba
 Joan Kuyek – MiningWatch Canada
 Chief Glenn Nolan – Assembly of First Nations
 Barbara Mossop – Ontario Mining Association
 Fred Privett – Government of Yukon
 Patrick Reid – Ontario Mining Association
 Dawn Spires – Province of Ontario
 Gregg Stewart – Province of British Columbia
 Charlene Hogan (Secretariat) – Natural Resources Canada