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## Comments on the AER's Draft Regulations for Rock-Hosted Mineral Mining

By: Drew Yewchuk

**Regulatory Documents Commented on:** [AER Bulletin 2023-36: Invitation for Feedback on Proposed New Requirements for Rock-Hosted Mineral Resource Development](#); [Draft Directive 0XX: Rock-Hosted Mineral Resource Development](#)

Despite the Alberta Energy Regulator (AER)'s poor reputation and [history](#) of [scandals](#), the Alberta government expanded the role of the AER to include a broader role in regulating mining operations. In March 2023 changes to the *Responsible Energy Development Act*, [SA 2012, c R-17.3](#) gave the AER new powers to regulate [almost all types of mining](#) under the *Mineral Resource Development Act*, [SA 2021, c M-16.8](#). In my view, expanding the mandate and role of the AER is a mistake given their [institutional failures](#) and the public's justified [low confidence](#) in the AER.

But the AER's role is expanding anyways, and they are taking comments on their [draft regulatory directive for Rock-Hosted Mineral Resource Development](#) until **Nov 30<sup>th</sup>, 2023 at 17:00**. As this new role for the AER gets underway, I encourage Albertans to ask the AER not to regulate new mining projects the same way they have regulated the other industries they are responsible for. Without pressure from the people in Alberta who interact with the AER's regulatory approval processes, the AER will apply their existing approach to new mining projects, creating a new wave of poorly regulated industrial mining projects for Alberta.

Below are the submissions I will be sending to the AER.

### Part 2, Liability Management

The draft says the Rock-Hosted mine liability management requirements are in development and a separate public comment period will take place "at a future date". (Although the AER website does include a [brief description of an approach](#) to financial security.)

The liability management system for Rock-Hosted Mineral mines should be unified, as far as possible, with the forthcoming replacement for the Mine Financial Security Program, but the vague "at a future date" is troubling. The liability management system is a critical piece of the regulatory approach that needs to be settled in advance of applications for new projects being submitted, or project proponents will argue, and possibly litigate, about the fairness of a new system being foisted on them. Reform of the defective Mine Financial Security Program for oilsands and coal mines has been [put off](#) for years, [the issue cannot wait](#). Given that the province [paused renewable energy project approvals](#) partially to develop an approach for asset retirement obligations, it would make no sense to begin processing applications for Rock-Hosted mining without completing liability management requirements.

### **Part 3, Participant Involvement**

‘Participant’ is a bizarre euphemism for those who may be negatively impacted by a project and who oppose the project or want modifications to it, most often nearby landowners. The term ‘participant’ initially referred to parties who participated in an AER hearing, regardless of the position they took. The AER’s gradual shift to calling the parties adversely impacted by a project and who oppose it ‘participants’ inside a “participant involvement area” (at 12) is a ridiculous use of corporate positivity speak by a regulator. When a landowner concerned about proposed mining adjacent to their land receives an information package from a corporate representative that refers to them as a ‘participant’ they are going to be aggravated. ‘Participants’ should be renamed to reflect reality. I suggest ‘affected persons’ or ‘impacted parties’ or ‘interested parties’.

More substantively, the draft applies the AER’s approach of having project proponents handle most ‘participant’ involvement. Project proponent and owners are not a reliable source of information about their own projects, and they have a clear incentive to misunderstand, understate, and mis-record the concerns of persons impacted by their proposed project. Delegating this to corporations is inappropriate and ineffective. It is the job of a public regulatory body to mediate between project proponents and the public and the AER should stop delegating their work onto industry.

### **Part 5, Exploration Disposition Requirements**

First, the AER should specify that persons carrying out exploration activities under the Metallic and Industrial Minerals Exploration Regulation, [Alta Reg 213/1998](#) (MIMER) will be required to post financial security for the cost of remediation and reclamation in advance of conducting exploration work. The AER [did not collect financial security for coal exploration in the eastern slopes](#) and might be caught without the financial security to pay for cleanup. It would be foolish to repeat this error.

Second, the AER should recognize that mineral exploration can [impact Indigenous rights, as has been shown in recent B.C. litigation](#). The Directive should incorporate a requirement to obtain the consent, or at least engage in meaningful consultation with, impacted Indigenous rights holders before permitting mineral exploration rather than waiting for this issue to be litigated.

### **Part 6, MRDA Application Classification**

The categories of “routine”, “operational”, and “nonroutine” are in use in [Manual 020: Coal Development](#). In general, a routine process requires no public notice and sometimes no application prior to being undertaken. This draft directive uses the terms “routine”, “nonroutine”, and “operational”. Operational is defined as:

Operational: Applications for changes to approved activities that may affect resource conservation or involve significant modifications but are not expected to affect stakeholders or alter the environment and socioeconomic conditions assessed in the original application are categorized as operational. (at 24)

I know from records obtained through the *Freedom of Information and Protection of Privacy Act*, [RSA 2000, c F-25](#) process that industry has been seeking this sort of change to make “significant

modifications” to mining operations without any public notice or regulatory processes. I have participated in environmental impact assessments, and mining operators take the position that nothing they do ever affects stakeholders or alters the environment and socioeconomic conditions. The “operational” category defeats regulatory oversight and public involvement in significant decisions on mining operations. It should be removed.

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