

Working with National Instrument 43-101

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National Instrument 43-101 – Standards of Disclosure for Mineral Projects (NI 43-101) became law in February 2001. Unfortunately, the instrument was implemented during one of the worst down turns for the mining industry so not surprising many companies paid little attention to it. Now that the mining industry is experiencing an unprecedented resurgence, companies are realizing the real impact of working within the confines of NI 43-101. The intent of this article is to help clients understand some of the key questions that are often encountered by mining companies working in the NI 43-101 environment.

Who is the Qualified Person?

One of the key aspects of NI 43-101 is the concept of the Qualified Person (QP). The instrument stipulates that all disclosure of scientific or technical information must be based on information prepared by or under the supervision of a QP and the QP must be named in all written disclosure. The QP need not always be independent of the company (Issuer) but he/she must be a member of a professional association and have experience relevant to the subject matter of the mineral project. There are several circumstances where the QP must be independent of the company such as first time disclosure of mineral resources, mineral reserves or disclosure of Preliminary Economic Assessment (PEA) (several other circumstances require an independent QP, refer to section 5.3 of NI 43-101 for complete listing). When selecting a consulting firm, Issuers should assure that the firm can supply individuals that will fulfill the QP requirement as defined in the Instrument. It is the responsibility of the Issuer to assure that the individuals signing the reports are QPs.

Who is the QP when several consultants are selected to carry out different sections of a large scale study?

Several larger studies such as Pre-feasibility or Feasibility studies are often shared between several consulting firms. In these circumstances, issuers should be cognisant of the fact that at the end of the study, an NI 43-101 report will be required by the regulatory authorities and each section of the report will require a certificate signed by QPs and several QPs may be required. Issuers should plan ahead and identify the appropriate individuals within each consulting firm that will be the QPs for the specific parts of their study early at the beginning of the assignment.

What is the implication of having the mineral resource estimate prepared by one consultant and the PEA or Feasibility Study carried out by a different consultant?

Companies often have mineral resource estimates prepared by geological consultants that do not have the resources available to them to prepare a PEA or Feasibility Study. The issuer then has to engage a separate consulting firm to carry out the PEA or Feasibility Study. The implication here is that the firm responsible for preparing the PEA or Feasibility Study will have to either re-estimate the mineral resource or the consultant responsible for estimating the resource will have to provide a QP certificate for the NI 43-101 report triggered as a result of the PEA or Feasibility Study. NI 43-101 does not permit the inclusion of previously prepared mineral resource estimates in a new NI 43-101 unless it is accompanied by a QP certificate, either from the original QP who prepared the estimate or from a new QP taking responsibility for the mineral resource estimate quoted in the new report. Similarly, a PEA or Feasibility Study can't be prepared on a mineral resource estimate that pre-dates the implementation on NI 43-101. Issuers should keep in mind that even when a certificate is provided by other consultants for work previously prepared, the consulting firm building on work prepared by others still has the obligation to verify that the previous work was prepared according to industry standards and that some time may be required to verify the work even if the work is being signed by others.

What about Certificates and Consents of Qualified Persons?

All NI 43-101 reports must include a certificate of each Qualified Person responsible for preparing or supervising each portion of the technical report. The certificate must be dated, signed and sealed. However, the certificate in the report being filed with the regulatory authorities for posting on SEDAR need only be marked with “signed by” and “sealed” next to the QP’s name for the regulatory authorities to consider that the document has been signed and sealed by the QP. The original signed and sealed certificate is not required to be filed on SEDAR. Similarly, when filing a NI 43-101, the issuer must file a Consent of Qualified Person stating that the QP consents to the filing of the technical report. Where excerpts of the technical reports are included in other required filings as listed in Section 4.2 of NI 43-101, the QP must also state that he/she has read the written disclosure being filed and that disclosure document fairly and accurately represents the information in the technical report that supports the disclosure. Issuers are reminded that it is their responsibility to provide the certificates and consent letters to the regulatory authorities and some planning may be required to assure that all the required certificates are available before disclosing the information to the public.

How about preparing a non NI 43-101 report for internal use?

Companies sometimes have the need to determine if a project is worth additional expenditures and it is necessary to evaluate the overall potential of a project before having enough information to prepare an NI 43-101 resource estimate. In these situations, an internal report (not for public disclosure) is often preferred. Because this report is not prepared in compliance with NI 43-101, it must not be disclosed to the public and must remain with the board and senior management of the company. The results of “internal studies” must not be disclosed or shared with anyone outside of the company for which it has been prepared. For this reason, issuers should inquire about the cost of preparing an NI 43-101 compliant report as well as the cost of the non compliant report when meeting with the consulting firm.

NI 43-101 has introduced another level of regulatory procedures for exploration and mining companies but overall the benefits to the industry so far have been positive. Without a doubt, the instrument looks difficult to navigate to those unfamiliar with it, however, the instrument is here to stay and the law must be followed. For this reason, it is important for issuers to select consultants that are familiar with the intricacies of the instrument. Wardrop is a full service consulting company with excellent expertise in NI 43-101 and we have prepared numerous NI 43-101 compliant reports for a wide variety of mining projects. We would be happy to provide any assistance to any of our existing or potential clients.