

National Instrument 43-101: What Issuers Need to Know About Production Decisions Without a Feasibility Study or a Pre-Feasibility Study

Alexander Pizale, Gregory Hogan, Christopher Harasym

April 29, 2025

The decision to commence production at a mineral project is a pivotal milestone for any mining issuer. Typically, a production decision will be made with the support of a technical report prepared in accordance with National Instrument 43-101 – *Standards of Disclosure for Mineral Projects* (NI 43-101) that contains a mineral reserve estimate and meets the Canadian Institute of Mining, Metallurgy and Petroleum's CIM Definition Standards for Mineral Resources & Mineral Reserves (CIM Definition Standards) definition of a "preliminary feasibility study" (PFS) or a "feasibility study" (FS). This is because the development of an operation and the decision to commence production involves significant capital expenditures and a high degree of risk and uncertainty, and the support of a comprehensive PFS or FS helps mitigate this risk and uncertainty. To proceed to production without the comprehensive information that would be required for a PFS or an FS precludes the rigorous planning that most issuers undertake to reach such a stage. However, there are situations where a mining issuer may decide to proceed with production without a mineral reserve estimate supported by a PFS or an FS. Such situations will give rise to additional economic and technical risk and, accordingly, this commentary outlines key considerations that should be addressed by a mining issuer before proceeding on this basis.

Disclosure Considerations

Announcing the Production Decision

A news release announcing a production decision that is not supported by a PFS or an FS which includes established mineral reserves is at heightened risk of providing misleading disclosure, and therefore requires extra caution. Section 4.2(6) of the Companion Policy to NI 43-101 provides guidelines for this scenario, and indicates that a mining issuer should disclose that the production decision is not based on an FS of mineral reserves demonstrating economic and technical viability and should include adequate disclosure on the increased uncertainty and the specific economic and technical risks of failure associated with its production decision.

To warn the public, the news release should include a statement that the project does not have defined mineral reserves and that the mineral project has a much higher risk of economic or technical failure.

Further, disclosure regarding the production decision should include clear disclaimers that there is no guarantee that production will begin as anticipated, or at all, or that anticipated production costs and volumes will be achieved. Issuers should also identify risks specific to their mineral project and their production decision, which may include risks related to increased uncertainty as to the level of recovery, costs of production, lack of detailed engineering, and how those risks may impact the issuer's business. To the extent the production decision is based on a preliminary economic assessment that includes or is based on inferred mineral resources, mining issuers are required to include the disclosure set forth in section 2.3(3) of NI 43-101, including the disclaimer that *"the preliminary economic assessment is preliminary in nature, that it includes inferred mineral resources that are considered too speculative geologically to have the economic considerations applied to them that would enable them to be categorized as mineral reserves, and there is no certainty that the preliminary economic assessment will be realized."*

MD&A and Ongoing Disclosure Obligations

In addition to the disclosure requirements of NI 43-101, paragraph 1.4(e) of Form 51-102F1 – *Management's Discussion & Analysis* requires that mining issuers identify any significant milestone, including a production decision, and whether the milestone is based on a technical report. Mining issuers who make a production decision without a PFS or an FS are therefore also required to disclose in their MD&A that the production decision was not based on a technical report that contains established mineral reserves. Further, such issuers should consider how the risks associated with their production decision should be disclosed in other parts of their continuous disclosure record, particularly in the risk factors sections of their MD&A and annual information form, if one is filed.

Technical Report Considerations

NI 43-101 does not require an issuer to file a technical report to support a production decision. However, the decision to commence production, and ongoing continuous disclosure, will impact the issuer's future technical report obligations.

For example, once a production decision has been made, the issuer may face expectations from investors or other capital markets participants to disclose production forecasts or mineral reserves that cannot be supported by the current technical report for their mineral project. Mining issuers who are considering commencing production without completing a PFS or an FS should consider how they will communicate effectively with investors about their production expectations and forecasts once production is announced and should exercise caution in disclosing any technical information regarding production to ensure such technical information can be supported by a current technical report. Providing guidance without a PFS or an FS is often a very difficult task without stepping offside NI 43-101 and, accordingly, technical report triggers for ongoing disclosure will need to be considered closely.

While NI 43-101 allows issuers to rely on previously filed technical reports, issuers should carefully consider if production results constitute new material scientific or technical information concerning the subject property. Further, Form 43-101F1 – *Technical Report* (43-101F1) includes instructions that technical reports include disclosure on the material scientific and technical information concerning mineral exploration, development and production activities on a mineral property. If a mineral property has entered production after the date of the most recent technical report, that technical report may no longer meet the standard set out in 43-101F1.

When filing a new technical report for a mineral project that is in production, issuers should also consider if the new technical report should include the disclosure required for an “advanced property” as defined in NI 43-101. Regulators may take the view that the additional technical report items required for advanced properties should be included, particularly those related to mining methods, project infrastructure, market studies and contracts, and capital and operating costs, regardless of whether the mineral project meets the definition of an advanced property, to ensure such report is current and complete.

Conclusion

Production decisions in the absence of a PFS or an FS pose significant risks and challenges for mining issuers. The additional disclosure requirements are nuanced and different situations may result in different requirements. Issuers should always remember to consult qualified legal counsel to ensure they are not offside NI 43-101 or publishing disclosure that is misleading or insufficient.

[For more on National Instrument 43-101, find all our articles in this series here.](#)

Cassels has distinguished itself in the vanguard of the mining industry, offering the largest and most experienced dedicated mining group of any major Canadian law firm. Led by [Jen Hansen](#) and [Jennifer Traub](#), we are proud to be consistently ranked as Tier 1 for mining law by Chambers Canada. To learn more, visit cassels.com/mining.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.