



MiningWatch Canada

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May 8, 2015

Mr. Michael Gravelle
Minister, Northern Development and Mines
c/o Ontario's Mineral Development Strategy
Ministry of Northern Development and Mines
Level 6B, Willet Green Miller Centre
933 Ramsey Lake Road, Sudbury ON P3E 6B5
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Re: Renewal of Ontario's Mineral Development Strategy

Dear Mr. Gravelle,

MiningWatch Canada works across the country and internationally to promote public policy and mining practices that ensure the health of individuals, communities and ecosystems.ⁱ

We are writing to you today to share our concerns and recommendations in regard to the “Proposed Framework for Renewing Ontario's Mineral Development Strategy,” as proposed by the Ministry of Northern Development and Mines (MNDM) in its [Discussion Paper](#) released in March 2015.ⁱⁱ

While MiningWatch appreciates the necessity to renew Ontario's Mineral Development Strategy (MDS), the Proposed Framework is too narrow in scope and fails to address the broader social, environmental, and long-term economic aspects of mining. The MDS needs to provide a framework for a more balanced approach to mining in Ontario.

Since the last Ontario MDS in 2006ⁱⁱⁱ—nearly 10 years ago—thousands of Ontarians, First Nations, community groups, environmental organizations, workers' unions, property owners, cottage associations, municipalities, and others, have expressed deep concerns regarding mining policies, regulations, and practices in Ontario. Officials and representatives from First Nation communities went to jail for opposing mineral exploration on their traditional territories.^{iv} Dozens of municipalities passed resolutions to ban uranium mining and demanding changes to the Mining Act. Multiple briefs and letters were sent to the government suggesting key changes to bring the mining regime in Ontario into the 21st century.^v

While the “Modernization of the Mining Act” in 2009 and the passing of the Far North Act in 2010 provided for some steps forward (e.g. including stating the responsibility to consult Aboriginal governments, requiring some permits for mining exploration, instituting the principle of land use planning, etc.), those legislations did not bring about all the necessary changes for a more balanced approach to mining in Ontario.

The current proposal for a renewed Ontario Mineral Development Strategy also fails to take into account some of the key recommendations made by the Auditor General of Ontario (AGO 2005)^{vi}, the Environmental

Commissioner of Ontario (ECO 2007, 2013, 2014)^{vii}, the Drummond Commission report on the Reform of Ontario's Public Services in 2012, and other independent reviews on mining issues in Ontario.

Taxation and royalties issues, environmental assessment and public consultations, environmental monitoring and compliance, closure plans and financial assurance, abandoned mine sites clean-up, mining in inhabited and sensitive areas, air and water quality regulations, health effects, as well as First Nations' rights and interests are all issues that should be addressed in a renewed Mineral Development Strategy.

As stated recently in an [open letter](#) sent to the Auditor General of Ontario, MiningWatch is concerned about the current lack of a comprehensive "value for money," cost-benefit analysis for mining in Ontario.^{viii} While giving away hundreds of millions of dollars in direct and indirect subsidies to the mining industry, Ontario has one of the lowest royalty and effective corporate tax rate for mining in Canada –and possibly the world.

MiningWatch Canada is also concerned that severe environmental costs and liabilities are not accounted for in the ongoing review of the Mineral Development Strategy. Ontario has some of the worst toxic mining sites in North America, which potentially represent billions in clean-up costs. Current financial assurances for active mines are not providing the necessary security that Ontarians will not have pay the bill – not to mention the bill we already have to pay for abandoned mine sites. Ontario should disclose the full costs and liability associated with mining site clean-up in the province.

The current Mineral Development Strategy does not address either the significant liability that increasingly larger tailings management facilities represent, nor does it address the lessons learned from the recent Mount Polley disaster in British Columbia. The [Independent Engineering Panel](#) set up to look at the cause of the Mount Polley tailing spill made a number of recommendations about the management of tailings facilities^{ix}, including an end to the kind of water saturated tailings used in many Ontario mines.

Ontario is the only province or territory in Canada without a mandatory requirement for environmental impact assessment of large mines. This greatly increases the risk of accidents and unanticipated effects during operations and after closure. There is no comprehensive baseline study upon which to base an effects analysis, and the existing permitting system does not contemplate ecosystem, social, and cultural impacts. MiningWatch Canada recently finished ["The Big Hole" report](#), which makes a series of recommendations about how to address the current gap in environmental assessment for mining in Ontario.

While the 2009 *Mining Act* revisions included recognition of Aboriginal and treaty rights, it does not recognize a requirement for Aboriginal consent to claim staking, mineral exploration, and development. A number of recent court decisions make clear that the Ontario's mining regime is still failing in its fiduciary responsibility to First Nations, and forcing the Province into costly and unnecessarily conflictual relationships^x. Ontario's mining regime should be up-held to ensure the fulfilment of Canada's commitment to the [United Nations Declaration](#) on the Rights of Indigenous Peoples^{xi}, as well as the recent Chiefs of Ontario's [Notice of Assertion](#) on aboriginal sovereignty^{xii}.

RECOMMENDATIONS

In light of the above, MiningWatch Canada has five main recommendations for a renewed Mineral Development Strategy in Ontario:

- 1. Conduct a comprehensive cost-benefits analysis of mining in Ontario**, including a review of the mining royalty and taxation regime, direct and indirect subsidies to the industry, mining site clean-up costs and liability, as well as unaccounted social, cultural and environmental costs;
- 2. Ensure a "Zero Public Liability" financial assurance regime for mining site clean-up, spills, and accidents**, including financial bonds provided before the opening of a new mine, as well as a

“Perpetual Care Fund” financed by industry contributions building overtime for the rehabilitation, maintenance, and perpetual care of abandoned mine sites; Ontario should also fully integrate the recommendations from the recent Independent Engineering Panel’s report on the Mount Polley disaster spill to further decrease short and long term liability of mining tailings facilities in the province^{xiii};

3. **Establish mandatory environmental & social impact assessments (ESIA) and public consultations for all new mines in Ontario**, including provisions allowing for ESIA’s of exploration projects in sensitive areas, as well as for strategic ESIA’s to address development impacts at a regional level (e.g. Ring of Fire), or for impacts of a particular industry (e.g. uranium mines);
4. **Establish an effective environmental monitoring, compliance and enforcement regime**, both by strengthening existing regulatory agencies (expertise, funding, etc.) and by requiring the industry to support and finance independent monitoring committees;
5. **Ensure the full protection and respect of First Nations’ treaty and inherent rights to lands and resources**, including the right to self-determination and to free, prior and informed consent (FPIC), in fulfilment of Canada’s commitment to the United Nations Declaration on the Rights of Indigenous Peoples.

All of these recommendations are being implemented, in one form or another, in other jurisdictions in Canada or internationally^{xiv}. For example, the Quebec Auditor General conducted an initial cost-benefit analysis of mining in 2009^{xv}, which led to a review of mining royalties, taxation, and regulations in the following years. Quebec recently strengthened its financial assurance regime and now requires a 100% financial bond for site remediation, 50% payable before the mine opens, and 50% within the first three years of operation; existing mines had one year of transition to comply with the new regulation. Since 2014, Quebec also requires a comprehensive environmental impact assessment and public consultations for all new metal mines extracting more than 2000 tonnes of ore per day, all new rare earths mines, and all other types of mines above 500 tonnes of ore per day. Indigenous peoples’ rights to land use planning and consent prior to resources development, as well as stronger environmental monitoring, compliance, and enforcement mechanisms are also being implemented already in some areas of Canada and internationally.^{xvi}

Ontario’s renewed Mineral Development Strategy should integrate existing best practices to ensure greater protection of individuals, communities and ecosystems, as well as to reduce community conflicts and provide for a more balanced approach to mining in Ontario. The attached documents set out in more details some of our concerns and recommendations,

Sincerely yours,

Ugo Lapointe
Canada Program Coordinator
MiningWatch Canada

cc. Premier of Ontario
Minister of Environment and Climate Change
Auditor General of Ontario
Environmental Commissioner of Ontario

Enclosed: MiningWatch’s [letter](#) sent to the Auditor General of Ontario (April 2015)
MiningWatch’s [report](#) “The Big Hole: Environmental Assessment and Mining in Ontario”
(Dec. 2014)

NOTES & REFERENCES

- ⁱ <http://www.miningwatch.ca/home>
- ⁱⁱ http://www.mndm.gov.on.ca/sites/default/files/mds_discussion_paper_2015_en.pdf
- ⁱⁱⁱ http://www.mndm.gov.on.ca/sites/default/files/2006_mineral_development_strategy_english_-_2014_oada_compliant_version.pdf
- ^{iv} Peerla, David, *No Means No*, Cognitariat Publishing, 2012, <http://www.miningwatch.ca/sites/www.miningwatch.ca/files/No%20Means%20No.pdf>
- ^v See, for examples: <http://www.miningwatch.ca/modernizing-mining-ontario>
- ^{vi} http://www.auditor.on.ca/en/reports_en/en05/309en05.pdf, Chapter 3
- ^{vii} http://www.eco.on.ca/uploads/Reports%20-%20Annual/2006_07/2007ar.pdf, http://www.eco.on.ca/uploads/Reports-Annual/2012_13/13ar.pdf, <http://www.eco.on.ca/uploads/Reports-Annual/2013-14/2014%20ar.pdf>
- ^{viii} <http://www.miningwatch.ca/article/ontario-urgently-needs-comprehensive-value-money-cost-benefit-analysis-mining>
- ^{ix} <https://www.mountpolleyreviewpanel.ca/final-report>
- ^x E.g. *Ross River Dena Council v. Government of Yukon*, Dec. 2012 YKCA 14 <http://www.canlii.org/en/yk/ykca/doc/2012/2012ykca14/2012ykca14.html>, *Grassy Narrows First Nation v. Ontario (Natural Resources)*, 2014 SCC 48, [2014] 2 S.C.R. 447 <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14274/index.do>, *Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44 (the *William* case) <http://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14246/index.do>
- ^{xi} http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf, <http://www.aadnc-aandc.gc.ca/eng/1309374239861/1309374546142>
- ^{xii} http://www.chiefs-of-ontario.org/sites/default/files/news_files/MA-07-28-2014-ASSERTION-FINAL.pdf, http://www.chiefs-of-ontario.org/sites/default/files/news_files/NOTICE-1.pdf
- ^{xiii} <https://www.mountpolleyreviewpanel.ca/final-report>
- ^{xiv} See, for examples: Fair Mining Collaborative in British Columbia (<http://www.fairmining.ca/fair-mining-code/>), Ecojustice's and other organizations' recommendation reports on mining act reforms in Quebec and Ontario (<http://www.quebecmeilleuremine.org/sites/default/files/RapportEcojustice&Coalition.pdf>, <http://www.ecojustice.ca/wp-content/uploads/2014/11/Balancing-Needs-Minimizing-Conflict-2008.pdf>), as well as the Coalition Quebec Meilleure Mine summary of the 2013 mining reform in Quebec (http://www.quebecmeilleuremine.org/sites/default/files/2014-01-ReformeMiniere-TableauResume_0.pdf).
- ^{xv} See 2009 report here: http://www.vqq.gouv.qc.ca/fr/fr_publications/fr_rapport-annuel/fr_2008-2009-T2/fr_Rapport2008-2009-TII-Chap02.pdf; and follow-up 2013 report: http://www.vqq.gouv.qc.ca/fr/fr_publications/fr_rapport-annuel/fr_2012-2013-CDD/fr_Rapport2012-2013-CDD-Chap07.pdf
- ^{xvi} For examples, First Nations and Inuit consent is specifically required in some areas of Canada, in parts of Eeyou Istchee and Nunavik territories in northern Quebec, as well as in some areas of Nunavut, Northwest Territories, etc. There are also examples of well financed, independent, environmental monitoring committees for some mines in Canada, including the Ekati Environmental Monitoring Committee for the Ekati diamond mine in the Northwest Territories: <http://www.monitoringagency.net/AboutUs/WhoWeAre/tabid/60/Default.aspx>; for other examples in Canada, USA, and the world, see: K. Allen and S.Paruk. *Independent Environmental Oversight: A report for the Giant Mine Remediation Environmental Assessment*. Faculty of Law, University of British-Columbia, 2011, 100 pages, www.reviewboard.ca/upload/project_document/EA0809-001_Independent_Environmental_Oversight_Report_1328898833.PDF; see also O'Faircheallaigh, C. *Environmental Agreements in Canada : Aboriginal Participation, EIA Follow-Up, and Environmental Management of Major Projects*. Calgary : Canadian Institute of Resources Law, 2006, 225 p.