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**Re: Proposed Legislative Framework for Modernizing Environmental Approvals –  
EBR Number 010-9143**

Dear Ms. Williams:

The Ontario Mining Association (OMA) was established in 1920 to represent the mining industry in the province and is one of the longest serving trade organizations in the country. Our members are committed to operating in an environmentally responsible way, balancing the need to serve local communities by remaining competitive on global markets, with the need to protect and restore the natural environment to ensure a sustainable future for our province. The OMA has a long history of working in concert with the government, communities of interest and the public to achieve these vital and often challenging goals.

The OMA is a strong supporter of the Ontario Government's *Innovation Agenda* and appreciates efforts to enhance the province's global competitiveness through *Open for Business*. We are encouraged by the government's commitment to work toward the critical objective of "modernizing the provincial regulatory framework and moving to global practices, with the goal of continuous improvement". To the mining community, the proposed Framework for Modernizing Environmental Approvals (the Framework) signifies a welcome move toward enhancing the business climate in the province on a par with other leading jurisdictions, while improving the efficiency and efficacy of environmental protection measures and ensuring worker health and safety. Given the commendable guiding principles and goals set out in the Framework, the modernizing proposal has the potential to be a truly a win-win undertaking for Ontario.

The OMA appreciates the opportunity to comment on the Framework and would welcome further opportunities to work with the government to address regulatory and implementation details that will determine the overall success of the initiative.

## Who we are

Members of the Ontario Mining Association include operating mines, metallurgical plants, contractors, suppliers and engineering firms. Our members share a commitment to occupational health and safety, making mining one of the safest industries in Ontario. They are equally committed to environmental protection: assessing and managing environmental risks; preventing pollution; complying with and moving beyond legal compliance requirements; and continually improving environmental performance. OMA members are located throughout Ontario, driving wealth creation and regional development, while significantly contributing to the province's tax base and balance of trade.

Though the number fluctuates with various commodity price changes, mining in Ontario has revenues of over \$9 billion annually. The sector employs about 25,000 people directly, a total of about 100,000 directly and indirectly and the mineral sector cluster employs close to a total of 200,000 people in the province. In some parts of the province, especially in the Far North, mineral resource development is critical to creating sustainable economic opportunities. Mining is the largest private sector employer of Aboriginals in Canada. It is an industry which invests in its future – \$1.7 billion annually in construction, equipment, exploration and Research & Development – \$2,300 annually in safety training per employee, \$130 million in environmental protection and more.

Mining is an important engine for regional development. It is an industry which is active in all parts of the province. Diverse communities such as Windsor, Goderich, Perth, Midland, Sudbury, Timmins, Red Lake, Kirkland Lake, Marathon, North Bay and Attawapiskat all have mining as an important contributor to their local economies. Essentially 95% of the operational inputs to the Ontario mining process are Canadian (43% of the supplies and services purchased by a mine are within a one hour drive of that operation). When this is combined with the fact that over 80% of mineral output is exported to markets in the United States, Europe and Asia, the Ontario mining industry contributes immensely to improving Ontario's international balance of trade.

At the same time, mining companies function in a fiercely competitive and increasingly mobile global market. Recent turbulence in the economy has had a negative impact on our industry, but by introducing regulatory modernization measures the government is taking steps to ensure that Ontario is in an optimal position to take advantage of the next upswing in commodity prices. A basic foundation of mining success in Ontario – the thing that can set us apart and give us an advantage over some other jurisdictions with significant mineral potential – is certainty of the rule of law and regulatory efficiency and certainty. These need to be maintained and enhanced if we wish to continue to reap the benefits that responsible mining can bring to all Ontarians.

## Overview of OMA Engagement on Approval Reform

The mining industry has been asking for a risk-based approach to environmental approvals in Ontario for many years. Our support for a risk-based approach to all environmental approvals stems from a belief that it would benefit the environment and the competitiveness of Ontario industry. Indeed, the OMA has been engaged in an intensive dialogue with key regulatory agencies and has invested heavily in a collective effort to define priorities for achieving operational efficiencies and effectiveness, as they relate to environmental permitting and approvals associated with the mining industry.

The dialogue was initiated in November 2003, when the OMA proposed a one-day workshop to examine the potential for improving the efficiency and effectiveness of the current environmental permitting system in Ontario relating to mining activity. This inaugural workshop was held in March 2004 and provided a forum for regulatory agencies and industry to discuss challenges and opportunities related to the permitting and approval process.

In September 2005, the Ministry of Northern Development and Mines (MNDM) released Ontario's *Mineral Development Strategy (MDS)*. In line with the more general *Open for Business*, the goal of the *MDS* is to enhance global competitiveness, while fostering responsible mineral development to provide long-term and sustainable benefits for all Ontarians. Critical among the *MDS* key objectives is the need to focus on "promoting long-term sustainability and global competitiveness" of the mining sector. Under this critical objective, one of the management actions calls for work to be undertaken to focus on a more efficient permitting and approvals requirement process for mine development, while at the same time safeguarding the environment and worker health and safety.

Building on the recommendations that emerged during the March 2004 industry-hosted workshop, the first in a series of inter-ministerial workshops was held in December 2005. The recommendations that emerged from the workshops have informed subsequent government initiatives to improve service delivery and reduce the backlog of applications. Industry has wholeheartedly welcomed government actions such as the introduction of a one-window protocol for mining, as well as a series of new service delivery standards.

Nonetheless, subsequent industry-government workshops zeroed in on the risk-based approach as a means to building upon the initial service delivery improvements to create a truly modern environmental approvals process in Ontario. Under such a system, low risk certificate of approval applications would be granted in a more efficient manner leading to increased certainty for companies wishing to make facility improvements or to build new facilities in Ontario. Higher risk applications would then receive more attention from the Ministry of Environment (MOE), ensuring MOE's valuable resources would be used wisely.

With this notion in mind, OMA worked with a number of regulators, including MOE, on a MNDM-led effort to develop an appropriate risk ranking methodology, to complete a risk analysis for the full mining cycle activities and to develop a preliminary roadmap for using the risk analysis results in improving the efficiency of the mining cycle permits and approvals process. The result of this effort-intensive process is contained in the attached report, *Development of a Risk-based Permits and Approvals Process in the Ontario Minerals Sector*.

We believe that the report contains valuable data that dovetail with the risk evaluation considerations set out in the Framework. The OMA would be pleased to work with the MOE and other government agencies to apply these data in a pilot project, which would make it possible to evaluate elements of the proposed approach and to practically address some of the open-ended regulatory options stemming from the Framework.

### **The Current Proposal**

The OMA is supportive of most of the defining features of the Framework, most notably the proposed simplified process for low-risk, less complex activities or those that have standard requirements, coupled with an improved process for the remaining activities. As mentioned above, we believe that this approach will result in a reduced regulatory burden on industry, while

freeing up MOE resources to focus on facilities and activities that are unique, complex or pose a potential risk to human health and the environment.

In terms of the simpler activities, we believe that the ministry has selected the right approach in proposing a registration procedure, with approvals granted in very short order on demonstration of a complete application. We believe that it is appropriate to place the onus on proponents to provide a complete application, especially since the ministry is making available a growing number of model “ACME” applications.

We also applaud the inclusion of an option for site-wide, multi-media approvals (land, air, water), with a site potentially being defined to include multiple facilities. At the same time, we feel it is vital that the ministry retain the operational flexibility that characterizes current comprehensive certificates of approval (CofA). Indeed, we would encourage the ministry to make further systemic improvements, refraining from making the “right to operate” a feature of permit expiry. Under the current CofA process, a company loses operational flexibility, so that additional changes cannot be made until the ministry reviews the application for amendment. Given that the review timeframe is currently far from certain and delays in the processing of applications have been known to occur, a company’s ability to operate can be placed at risk, leading to undue disruption based on workload timing issues. We would suggest, therefore, that under a modernized approvals system all provisions of a permit remain valid pending the routine review, which will now be completed within a set period of time. In that regard, the OMA is very appreciative of the ministry’s introduction of an expedited on-line process and the service guarantee for turnaround of complete applications.

The latter point brings to the fore the type of question that is inevitable in the process of reviewing a broad enabling legislative framework. Namely, what kind of timelines would apply to the ministry’s service guarantee? Although it is unlikely to be addressed until the regulation-making stage, the issue of timelines is by no means a trivial one for industry.

There are other areas of uncertainty that give rise to more significant concerns. For instance, the Framework indicates that all existing CofAs will become invalid after some undefined period of time. This is perhaps equally worrisome to industry and the ministry, as – depending on the timelines involved – reapplication would constitute an overwhelming amount of work for both parties. This would hold true even for facilities with existing CofAs for equipment that falls under the low risk category, as they would need to follow the registration process in an undefined timeframe. To prevent overburdening industry and ministry resources, we would suggest that the timelines be staggered and extended over a minimum 5 – 10 year period. This is particularly critical given the requirement for a review of the approval within an, again, unspecified timeframe.

Given that a key goal of the Framework is to reduce administrative burden on industry, we are somewhat concerned about the addition of a public information website. Although we sympathize with the need to improve public transparency, we would like to have the opportunity to work with the ministry and other stakeholders to ensure that this requirement does not result in merely shifting administrative burden to a new area. In addition, we would like to receive clarification on the issue of a possible financial assurance requirement associated with approvals – something that the mining industry is already providing under mandatory closure plans.

Members of the OMA have noted that there are currently no specific criteria set out to determine what type of CofA is appropriate, nor is there a definition of the operational requirements that would be imposed on registered activities. We feel that these and other

similar issues could be worked out through a pilot project based on the findings of the report *Development of a Risk-based Permits and Approvals Process in the Ontario Minerals Sector*, as well as additional consultation.

## Conclusion

Again, the OMA would like to emphasize our support of the concept of risk-based approvals and our commitment to meeting the requirements of environmental protection. We believe that some of the uncertainties inherent in an enabling legislative framework could be worked out through a pilot project. The OMA would appreciate the opportunity to engage with the ministry on such a project, applying the comprehensive risk analysis work reported on in the attached document, *Development of a Risk-based Permits and Approvals Process in the Ontario Minerals Sector*.

Thank you for the opportunity to review the proposed Legislative Framework for Modernizing Environmental Approvals and provide our comments. OMA looks forward to being involved in further consultations on this proposal.

Sincerely,



Adrianna Stech  
Manager of Environment and Sustainability

cc Hon. John Gerretsen, Minister of the Environment for Ontario  
Hon. Michael Gravelle, Minister of Northern Development, Mines and Forestry