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**Re: Proposed Amendments to Ontario Regulation 455/09 and Policy Options for Enhanced Planning (EBR Number: 010-9349)  
Technical Amendment made to Ontario Regulation 455/09 (EBR Number 010-9139)**

Dear Ms. Millescamps:

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.

OMA members understand that the principal goals of the Toxics Reduction Act and Regulations are the reduction of toxic substances created or used in manufacturing processes and better access to information for Ontarians about toxic substances; OMA members are supportive of these declared goals. However, as repeatedly stated throughout the consultation process on the Toxics Reduction Act and Regulations, the OMA has a number of fundamental concerns associated with this legislation. Without reiterating the points detailed in previous submissions (please see an example attached, dated October 30, 2009), we would like to reaffirm our members' continued belief that the implementation of the Toxics Reduction Act will be an onerous and costly exercise for mining companies with no readily foreseeable benefit to further protecting the environment or providing easily interpretable information to Ontarians. On the contrary, we fear that measures associated with the Toxics Reduction Act will result in confusion amongst Ontarians about the toxicity of everyday items fabricated out of metals, which have been designated as toxic substances.

The main concern over implementation of the Toxics Reduction Act relates to the vastly increased and onerous reporting requirements, the majority of which appear to provide

dubious benefit in helping the Ministry meet its stated goals. This is because the legislation requires reporting for substances that are part of the natural ore and/or constitute the end-products of mining, and for which proposed reductions can only be zero. Adding to its ineffectiveness in positively impacting the environmental performance of the mining industry, the legislation is designed to drive reduction in use/production, rather than the more critical reduction of air and water emissions. Indeed, the demands associated with the administrative requirements of the Toxics Reduction Act will undoubtedly result in redirecting valuable resources, both within the industry and the government, from emission reduction measures that would positively impact the health of Ontarians.

OMA members previously raised over twenty concerns relating to toxic substance accounting, the format and applicability of reduction plans, confidentiality of proprietary business information and the piecemeal approach for creating the new legislation. The following comments relate directly to the currently proposed amendments to Ontario Regulation 455/09 and Policy Options for Enhanced Planning, and include recommendations for how the regulatory proposal can be improved to help MOE better achieve its stated goals, while keeping the regulatory burden on the mining industry proportional to the benefits the regulation will deliver. It is also in keeping with the aims of Ontario Government's *Innovation Agenda* and efforts to enhance the province's global competitiveness through *Open for Business*.

### **Certified Toxic Substance Reduction Planner**

Section 4(3) of the Toxics Reduction Act requires certification by a person with the qualifications prescribed in the regulation. Although the Act does give the power to define licensing in the regulation, it does not make said licensing mandatory. It is the recommendation of OMA members that the Ministry refrain from requiring a licensing of the Certified Toxics Substance Reduction Planner for any individual who is only preparing plans for his/her company, and only prescribe the appropriate qualifications in the regulation. Licensing should be required only for third parties preparing plans for clients.

Furthermore, when prescribing the qualifications, the Ministry should take into consideration that the experience requirements currently set out for licensing are too time-intensive, making them particularly burdensome for smaller companies, which may only have one or two people working in the environmental field. OMA members concur that, rather the length of experience, it is the qualitative practical experience in the industry, including familiarity with the processes and equipment used, that will prove especially valuable to a Certified Toxics Substance Reduction Planner. Therefore, we would suggest that practical experience in the range of two to four years, in addition to the Ministry-provided and financed course, would provide a sufficient basis for qualifying a Certified Toxics Substance Reduction Planner. Furthermore, any professional engineer in Ontario should be certified as a Toxics Substance Reduction Planner following a one day workshop to cover the requirements of the regulation.

In terms of the functions of the Certified Toxics Substance Reduction Planner, an initial reading seems to suggest that the proposed new sections 18.1 and 18.2 are at odds and contain elements of redundancy. Section 18.1 requires that the facility owner and operator prepare a draft of the toxics reduction plan and ensure that it contains all of the required information, while section 18.2 requires the owner and operator to ensure that a Certified Toxics Substance Reduction Planner provides written recommendations on the draft regarding all of the items noted. During the consultation sessions attended by our members, Ministry of Environment representatives explained that it is not the Ministry's intent to

require someone other than the Certified Toxics Substance Reduction Planner to prepare the toxics reduction plan. Indeed, the Ministry provided verbal confirmation that the Certified Toxics Substance Reduction Planner not only could prepare the draft plan, but should be on the preparation team to fully understand the plan. Therefore, if the Certified Toxics Substance Reduction Planner prepares a draft plan that meets all the requirements of the Regulation and Act, as set out in section 18.1, section 18.2 seems to be entirely redundant, as are, by extension, sections 18.3 and 18.4.

Furthermore, section 18.2 appears to be onerous in the extreme. It stipulates that, having prepared a toxics reduction plan, the Certified Toxics Substance Reduction Planner must provide recommendations for improvement in every aspect of the plan, as well as written justification, if it is his/her position that no recommendations are necessary in a particular area. In a typical mining operation, referencing Table A, there are as many as 15 toxic substances in the ore or concentrate feeds and an additional 5 to 10 in byproducts produced and reagents used. Consequently, between 15 and 25 toxics reduction plans will need to be prepared by each NPRI numbered facility; one integrated mining complex has three individual NPRI numbered facilities and will be expected to prepare 60 plans. Given that, for the most part, the toxic substances are part of the naturally occurring feeds and/or constitute the end-product of the mining operation, the number of proposed actions will likely be limited. Therefore, the prescriptive approach to the work of the Certified Toxics Substance Reduction Planner will result in a time-intensive and costly effort that is largely superfluous.

*The OMA recommends that the Ministry eliminate redundancy and simplify the reporting requirements outlined in the regulation, ensuring that the demands on the mining industry are reasonable and proportional to the level of environmental and health benefits that the regulation aims to deliver. Assessments should only be required for those pollution prevention planning options that will actually be implemented.*

## **Enhanced Planning**

Section 23(3) of the regulation requires that a notice regarding the summary of the plan be given to all employees on the day it is made available to the public. In this regard, the Ministry has proposed three enhanced planning options, all requiring some form of mandatory employee involvement in the preparation of the plan. However, there are a number of reasons why this type of prescriptive approach will be inappropriate for individual businesses, including lack relevant technical expertise among employees, prohibitive cost and time requirements, confidentiality of cost/technical info, etc.

*The OMA believes that, aside from informing employees at the beginning of the toxics reduction process, it should be up to the individual business to plan the most appropriate extent and form of further engagement.*

## **Technical Amendments to O. Reg 455/09: Dioxins, Furans and Hexachlorobenzene**

The Ministry has stated that it would like to make the Regulation consistent with the federal National Pollutant Release Inventory (NPRI). However, for dioxins, furans and hexachlorobenzene, there is the proposed addition of NPRI-level quantification determination based on the defining statement, “use, creation and contained in product”. Currently the NPRI rules require facilities to provide information about dioxins, furans and hexachlorobenzene, regardless of the amount emitted at the facilities. Most OMA member companies have significant difficulty measuring for these compounds, stack concentrations

being right around detection limits. To provide the quantification determination called for in the proposal will require costly sampling and assaying throughout the process streams, just to prove that these compounds are below the levels of quantification set out in the NPRI notice. Here again, the concern is that a major effort is being called for something that will offer dubious benefit for the environment, as the focus of the Toxics Reduction Act is not emissions.

In this regard, the version of O. Reg. 455/09 posted December 4, 2009 offered a more sensible approach, given that section 7(1)(b) specified that, only when there is a release to the environment (release, disposal, or transfer for recycling) would there be a public and government expectation for planning, reporting and publicly summarizing reduction efforts. The OMA believes that this stipulation provided fairer and more effective regulation. It also brought the regulation closer to harmonization with NPRI, since the newly included definitions of release, disposal, and transfer for recycling matched NPRI definitions, and NPRI focuses on reporting these. The decision to delete both the NPRI definitions of release, disposal and transfer for recycling, as well as section 7(1)(b), as part of the technical amendments constitutes a substantive change to the detriment of the overall regulation.

*As stated in previous submissions, OMA members support reasonable driving measures to reduce the release of toxics in emissions from mining and mineral processing operations. We believe that a reversal of the decision to delete section 7(1)(b) would be a welcome move toward greater alignment with the central provisions of NPRI. Indeed, we would appreciate further consultation on additional changes that would shift the focus of the regulation from internal process streams to emissions. In addition, we would welcome the opportunity to work with the government on reviewing and modifying the list of substances captured under Toxics Reduction Act, as did Massachusetts<sup>1</sup> and other model jurisdictions.*

## **Conclusion**

The mining industry has a long history of being a solution provider in Ontario. It generates prosperity, provides jobs and fosters development in all parts of the province. Products derived from mining are essential to building the greener lifestyles of tomorrow.

Mining itself is changing the way it operates, seeking to continually improve its performance on all fronts, including the environment and sustainability. There are a number of social drivers that are influencing this, including an ever-increasing worldwide focus on corporate social responsibility and the need to gain a social license to operate, as well as growing recognition of the pressures and opportunities inherent in “greening” mining operations.

The mining industry, and OMA members in particular, are committed to closing the gap between expectations of environmental performance from society and the actual performance. However, this is a gradual process interlinked with business realities. Mining operates in a fiercely competitive global marketplace where legislative uncertainty compounds uncertainty brought on by an economic downturn. As recent events have shown, we cannot escape the influence of global economics. However, we can work together to design smart regulations that protect the environment and make Ontario

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<sup>1</sup> The Toxic Use Reduction Act (TURA) adopted by Massachusetts in 1989 delisted metal alloys in 1995 and delisted copper and silver in 1999. <http://www.mass.gov/dep/toxics/laws/metals.htm>

attractive to business, as per government's *Innovation Agenda* and *Open for Business*. The OMA is committed to collaborating with the government and communities of interest to identify opportunities that can provide greatest yield and most favourable cost-to-benefit ratio with respect to these dual considerations.

On behalf of its members, OMA would like to thank MOE for considering their feedback on the Proposed Amendments to Ontario Regulation 455/09 and Policy Options for Enhanced Planning. Our members look forward to having further opportunities to discuss the contents of this submission with MOE, so that they can work constructively with the Ministry of Environment to achieve its desired outcomes for the environment and for all Ontarians.

Sincerely,

A handwritten signature in black ink, appearing to read "Adrianna Stech".

Adrianna Stech  
Manager of Environment and Sustainability

cc: Dalton McGuinty, Premier  
John Gerretsen, Minister of Environment  
Michael Gravelle, Minister of Northern Development, Mines and Forestry  
Tim Hudak, Leader, Official Opposition  
Andrea Horwath, Leader, New Democratic Party of Ontario  
Toby Barrett, PC Critic, Environment  
Peter Tabuns, NDP Critic, Environment