

# ONTARIO MINING ACTION NETWORK

## For responsible and better-regulated mining in Ontario

The Ontario Mining Action Network (OMAN) was launched in Sudbury, Ontario on December 5, 2004 at the conclusion of a two-day workshop on mining in Ontario. Representatives from First Nation communities, labour organizations, environmental groups and mining-affected communities from Southern and Northern Ontario identified a number of obstacles to more responsible and better regulated mining in the province and agreed to use the strength of a network to address these issues in their communities and at the government/policy level.

February 2005

## KEY CONCERNS

### *Reclamation and Rehabilitation Funding*

Under current Ontario legislation, mining companies are required to submit a closure plan which outlines steps the company will take to decontaminate and restore the mine site to its former use or condition. However, the companies are not required to post realizable securities such as cash or bonds to cover closure costs for a mine. Instead, large companies that meet a “corporate financial test” are able to “self-assure” for the life of the mine or half the life of the mine, depending on their credit rating. Smaller companies can negotiate a royalty on production to meet their reclamation funding responsibilities. Since extensive environmental damage can occur during the exploration and start-up phase before anything is produced, if the company goes bankrupt before it starts production or early in the life of the mine, the cost for clean-up would fall to the government (i.e. tax-payers’ money).



Falconbridge Mine Site

Mining companies going bankrupt and walking away from any follow-up responsibility has resulted in a legacy of

over 6,000 orphaned and abandoned mines and/or exploration sites in Ontario.

#### Changes needed:

To ensure that funds are available to fully decontaminate and restore mining sites to their former use or condition, the *Mining Act* must be amended to require mining companies to post realizable securities (for examples, cash or bonds) to cover closure costs, at the point of submitting their comprehensive closure plan. The major environmental costs of closure and remediation must fall to the mine companies – and be internalized within their operating costs. This provision existed under Part VII of the *Mining Act (1990)* but was removed in 1996. Self-assurance must not be an option for covering closure costs.

To ensure that the polluter pays and that funds are available to rehabilitate abandoned and existing mines, a Comprehensive Rehabilitation and Reclamation Fund should be established to which existing mine operations would contribute funds, based on a percentage or amount determined by production output. A formula would need to be developed to determine contributions to the fund.

The scope of closure plans should be expanded to include the social and cultural “remediation” that is required when a mine closes down. Plans need to be in place to consider community economic diversification before the mine actually closes; workers need to be supported through skills development, health impacts need to be addressed and paid for.

The Ministry of the Environment assumed responsibility for the Deloro Mine site in 1979 as the remediator of last resort when the site owner failed to comply with the ministry’s order to stop pollution. The province has spent more than \$20.5 million to date and expects to spend an additional \$30-40 million more of capital investment to complete the clean up.<sup>1</sup>

### *Meaningful Consultation with First Nations and other Surface Holders prior to onset of mining activities*

The Ontario Mining Act provides a statutory right to stake mining claims on Crown mineral rights and to conduct assessment work on the mining claims even if the surface

rights are privately owned or are lands of Aboriginal use or interest. Section 78 of the *Mining Act* requires that the holder of a mining claim notify the surface rights owner of

their intention to perform assessment work on that claim. This notice is only given once, prior to the commencement of assessment work. Under current Ontario legislation, prior consent to stake or prior notification of the owner of the affected land is not required.<sup>2</sup> However, there is a legal obligation for government to consult with and accommodate First Nation interests, as has been recently reaffirmed in the Canadian Supreme Court ruling on the Taku River Tlingit First Nation.

An essential part of the Crown's s. 35 duty requires governments to consult Aboriginal people and accommodate their interests, before claims are resolved... In such cases, governments must do what is necessary to maintain the honour of the Crown and achieve reconciliation with respect to the interests at stake. This will require balancing societal and Aboriginal interests when making decisions affecting Aboriginal claims.<sup>3</sup>

Ontario law requires that prior to starting advanced exploration, the mining company must hold a public information session to ensure that "as many members as possible of the public affected by the project may receive information regarding it"<sup>4</sup>. The company must submit any written comments it has received to the Director of Mine Rehabilitation. There is no indication how these comments will be considered in approving exploration and mining activities to begin. The Closure Plan, required under the *Mining Act*, must include a description of "consultations car-

#### *What is Consultation?*

Consultation is a two-way participatory process whereby mining-affected communities and First Nations can actively influence decisions on mining development. A strong consultation recognizes the right to informed prior consent and includes joint goal-setting, is culturally appropriate and is tailored to the local context, incorporates traditional ecological knowledge, involves education and capacity-building, and incorporates mutually agreed upon processes for dispute resolution and disengagement.<sup>6</sup>

ried with all aboriginal peoples affected by the project, including a description of their comments and responses, if any, to the closure plan<sup>5</sup>. Again, there is no indication how the comments and responses will be considered in the Closure Plan and the decision to proceed with mining activity.

#### **Changes needed:**

Surface rights owners and First Nations must be consulted before the start of any mining activity on their land. Surface rights owners and First Nations must be asked permission before claims are staked. Mining-affected communities must have greater opportunity to review closure plans and have the right to accept or reject mining activity proceeding on their land.

Mining-affected communities have limited resources and capacity to respond to mining-related activity in their communities. To ensure effective consultation with mining-affected communities and First Nations, the communities need access to funds to undertake research and monitor compliance with regulations and legislation.

A substantial filing fee should be charged in order to have a claim considered for staking. A percentage of the fee would be granted to community-based organizations/First Nations groups to facilitate their participation in consultation processes.



Falconbridge Tailings Pond

*Prior Informed Consent* is the right of a community to be informed about mining operations on a full and timely basis and to approve an operation prior to commencement. This includes participation in setting the terms and conditions addressing the economic, social, and environmental impacts of all phases of mining and post-mining operations.<sup>7</sup>

## **Standards, Monitoring and Compliance**

Mining activity in Ontario is regulated under several ministries which have established standards, guidelines and monitoring mechanisms. Mining-affected communities and First Nations are concerned that some standards and guidelines are not adequate to protect our health and environment and need to be improved or expanded. We are also concerned that there is insufficient capacity within government ministries to effectively monitor and ensure compliance with existing regulations and guidelines.

#### **Specifically, we request:**

- An increase in staff capacity at the Ministry of Northern Development and Mines (NMDM) to monitor closure plans. More mine inspectors are needed to en-

sure that closure plans are being properly implemented and guidelines for determining metal leaching and acid mine drainage potential are being properly applied.

- An increase in monitoring, enforcement and compliance reporting from the Ministry of the Environment, Ministry of Northern Development and Mines and the Ministry of Natural Resource on such issues as compliance with the Metal Mining Regulations, water taking permits, inspection reports. This will require increased funding and staffing capacity within the responsible ministries.



*Ontario Mining Workshop – Sudbury, December 2004*

Left to right:

Earl Commanda, Serpent River First Nation

Elaine MacDonald, Sierra Legal Defence Fund

Homer Séguin, Steelworkers (retired)

Joan Kuyek, MiningWatch Canada

- The re-establishment of the Ontario Occupational Disease Panel. This centre for the study of occupational disease was closed in 1995 under the Harris government. During its 11-year existence, it produced ground-breaking research, including studies on the high rates of lung cancer in miners.
- The reinstatement of worker representation on the Board of Directors of the Workplace Safety and Insurance Board (WSIB).
- The development of enforceable standards for the emission of toxic substances and carcinogens and for SO<sub>2</sub> emissions.
- Improved mine effluent standards.
- New reporting mechanisms for the collection of baseline data for Environmental Assessments, whereby the client for data collection is the Environmental Assessment Agency, rather than the proponent (i.e. the mining company).

*We are but a mere strand in the web of creation – changes to laws, policies and regulations should focus on the right of all creation to exist and not just be “human focused”.*

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<sup>1</sup> Press Release, November 12, 2004 (<http://www.ene.gov.on.ca/envision/news/2004/111201mb.htm>)

<sup>2</sup> Facts About Mining in Ontario ([http://www.mndm.gov.on.ca/MNDM/MINES/LANDS/bulbrd/surface\\_rights/mrvssr\\_e.asp](http://www.mndm.gov.on.ca/MNDM/MINES/LANDS/bulbrd/surface_rights/mrvssr_e.asp))

<sup>3</sup> *A Guide to the Supreme Court of Canada's decision in Taku River Tlingit First Nation vs. B.C.* Prepared by Pape & Salter barristers and solicitors, 2004.

<sup>4</sup> Mining Act – O.Reg. 240/00 (8.1)

<sup>5</sup> Mining Act – O.Reg. 240/00 Schedule 2

<sup>6</sup> *Meaningful Consultation and Participation in the Mining Sector? A Review of the Consultation and Participation of Indigenous Peoples within the International Mining Sector*, Gail Whiteman and Katy Mamen, North-South Institute. 2002.

([http://www.nsi-ins.ca/ensi/pdf/lit\\_rev/lit\\_rev\\_ex\\_sum\\_eng.pdf](http://www.nsi-ins.ca/ensi/pdf/lit_rev/lit_rev_ex_sum_eng.pdf))

<sup>7</sup> *Prior Informed Consent and Mining: Promoting the Sustainable Development of Local Communities*, Susan Bass, Environmental Law Institute, 2004.