

THE OMA/OMNDM INITIATIVE

**A CASE STUDY IN ADDRESSING
LEGAL AND INSTITUTIONAL
BARRIERS TO COLLABORATION ON
ABANDONED MINE SITES**

by

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INTRODUCTION

- Purpose
- Background to initiative
- Participants
- Organization
- Land issues
- Financial issues
- Liability issues
- Project issues
- Status
- Conclusions

PURPOSE

The purpose of the OMA/OMNDM initiative is to develop a protocol/agreement whereby OMA and OMNDM can work together to deal with historical abandoned mine problems.

Such Activities can:

- 1) Enhance the rate of rehabilitation of abandoned mine hazards in Ontario, and;
- 2) Comprise an investment in image with respect to improving negative perspectives of the Mining Industry within the sustainable development equation.

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BACKGROUND

- April 2000, OMA Board passes resolution to contact MNDM to see how the OMA, and member companies, can be of assistance to help the government deal with historical abandoned mine problems. OMA write to MNDM expressing resolution.
- May 2000, MNDM Minister responds favourably to proposal and suggests several options including:
 - adoption of historic abandoned sites by OMA;
 - provision of expertise, equipment or other in-kind contributions;
 - completing rehabilitation of inactive sites by member owners;
 - encouraging non-member owners to rehabilitate inactive sites;
 - ensuring no further accrual of abandoned sites through progressive rehabilitation and provision of state-of-the-art closure plans.

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BACKGROUND (continued)

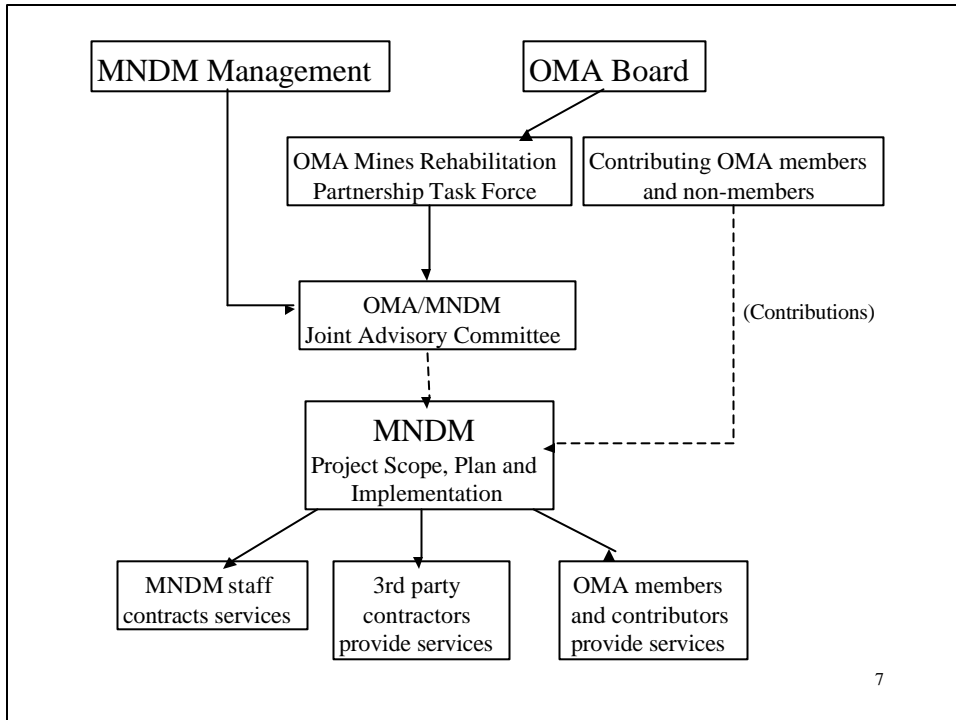
- July 2001, OMA requests Minister to participate in funding a partnership to rehabilitate abandoned mines.
- August 2001, Deputy Minister responds to OMA agreeing to provide funding for such a partnership.
- Much effort has been spent subsequently overcoming various issues/barriers related to the proposed agreement.
- OMA has also initiated discussions to obtain funding from the federal government as a potential third partner.

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PARTICIPANTS

- OMA Board of Directors - provide direction to OMA Mines Rehabilitation Task Force.
- MNDM management - provides direction and policy guidance to MNDM reps on Joint Advisory Committee.
- OMA/MNDM Joint Advisory Committee on Abandoned Mines.
- OMA and MNDM legal representation - legal issues and drafting.
- Canada Customs and Revenue Agency (CCRA) - taxation rulings.
- Ontario Ministry of Finance (MOF) - indemnification discussion and taxation rulings.

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LAND ISSUES

ABANDONED MINES ARE PRESENT:

- On lands which are 100% Crown held - surface and mining rights;
- On lands which have Crown mineral rights and private surface rights;
- On lands with owners who have no financial ability or are unwilling to rehabilitate;
- On land with confused ownership;
- On lands which OMA members may have a direct or indirect interest, e.g. exploration option agreement.

LAND ISSUES (continued)

PRINCIPLES

- Projects should be meaningful from an environmental or public safety perspective.
- Projects should not take place on lands where OMA members might benefit.
- OMA members should be rehabilitating any inactive sites which they currently own.

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LAND ISSUES (continued)

DECISION

It was concluded that the Joint Advisory Committee would initially propose to work only on abandoned mines located entirely on Crown lands to:

- 1) Simplify administration and permitting *barriers*; and,
- 2) Clarify existing and future liability, e.g. liability 100% Crown owned at time of project initiation.

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FINANCIAL ADMINISTRATION

- Initially MNDM considered sending its' share of the project funds to the OMA - OMA declined to administer the funds for various reasons, e.g. lack of capacity and taxation issues;
- MNDM will administer the funds which will be provided by OMA, MNDM and any other party.

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FINANCIAL ISSUES

Initially OMA members were desirous of two factors:

1. Contributions could be in the form of cash, on-site services or technical expertise; and
2. Financial contributions would be tax deductible as “gifts to the Crown” - subject to tax rulings by CCRA and OMOF.

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GIFTS TO THE CROWN and TAX DEDUCTIBILITY

- Tax deductions may be sought under the *Mining Tax Act* (Ontario); the *Corporations Tax Act*; the *Income Tax Act* (Ontario) and the *Income Tax Act* (Canada).
- Donors normally request a tax deductibility ruling on a case by case basis, however:
 - A preliminary ruling indicates that voluntary cash donations may be deductible providing that:
 - a) Donor will not receive any refund;
 - b) No return or benefit would be available to the donor, e.g. preference for contractual work-name recognition for contributions, e.g. site signage or press releases would not necessarily negate a possible tax benefit; and
 - c) Tax limitations on gifting will reduce ability of giftor to participate directly in projects being funded.

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GIFTS TO THE CROWN and TAX DEDUCTIBILITY (continued)

- In-kind gifts require special treatment such as contractual relations between the doner and the Crown.
- In-kind gifts have special tax requirements, including gifting-back of fees paid for such services or expertise

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INDEMNIFICATION

- OMA, gifting members or associates wish to be indemnified from any liabilities which might flow from projects funded through this proposed agreement.
- MNDM concurs with this intent.
- As projects will be restricted to hazards owned by the Crown on Crown land where existing liability is 100% Crown owned.
- MNDM (Crown) will indemnify giftors and participants on advisory committee from third party liabilities provided that gifter/advisor not act in bad faith, willful misconduct, gross negligence or fraud.
- Indemnity can include indemnification from legal liability from other jurisdictions, e.g. potential for charges pursuant to *Fisheries Act*.

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PROJECT ISSUES

To be fully engaged in this project, OMA representative believe that intellectual involvement in co-funded projects is necessary, e.g. project selection, remedial options selection etc.

Such engagement appears to be limited in scope by:

- Taxation ruling - giftors cannot have control over use of gift.
- Indemnification - level of involvement must not affect indemnification issue.
- Ownership.

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CURRENT STATUS

At the time of this workshop it appears that most legal and institutional barriers to reaching agreement have either been overcome or compromise has been reached. Thus it is hoped that completion of an agreement is imminent.

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CONCLUSIONS

- Patience is a must when dealing with legal and institutional barriers.
- Agreements between private companies and government for funding of mine site rehabilitation are possible.
- CCRA tax rulings initiated for this project provide guidance to others contemplating such an effort. Provincial/territorial overlays are also required on a case by case basis.
- The role of private donors and the extent to which they can participate in the selection of rehabilitation sites and processes will be limited if tax deductions for the donation are intended.

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CONCLUSIONS (continued)

- Donation of cash will be easier to address than donation of in-kind goods and services.
- NOAMI should encourage Government agencies to work on templates for indemnification agreements for volunteers having direct or indirect input to rehabilitation.
- The partners hope that successful execution of this agreement can provide a model for others to follow.