

Action Plan 2001 Status Report

Introduction

The Status Reports contained hereunder reflect the actions taken on the major issues affecting the mining industry in Canada, under the direction of the provincial, territorial and federal ministers of Mines at the Mines Ministers' Conference 2001.

The reports were prepared either by working groups established by the Intergovernmental Working Group on the Mineral Industry (IGWG) or by officials responsible for a specific issue.

Therefore, the views contained in the reports do not necessarily reflect those of IGWG as a whole.

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Orphaned and Abandoned Mine-Site Rehabilitation

Ministers agreed on the importance of implementing, over the short term, a large-scale program for rehabilitating orphaned and abandoned mine sites.

Ministers were encouraged by the interest and leadership shown by industry in this regard, and acknowledged that the scope of the task at hand will require the participation of all stakeholders, both private and public.

Therefore, Ministers asked that a multi-stakeholder advisory committee be established to study various issues and initiatives pertaining to the development of partnerships in the implementation of remediation programs across Canada. While recognizing that each jurisdiction will develop its own implementation strategy, the advisory committee will report on options for funding models and mechanisms including the financial participation of industry and federal, provincial and territorial governments, legislative barriers to collaboration, and appropriate community involvement in decision-making. Ministers requested a report on these issues at their next Conference.

BACKGROUND

At the 2001 Mines Ministers' Conference in Québec City, Ministers agreed on the importance of a large-scale program for rehabilitating orphaned/abandoned mine sites. They asked that a multi-stakeholder advisory committee on orphaned/abandoned mines be established to study various issues and initiatives pertaining to the development of partnerships in the implementation of remediation programs across Canada.

STATUS

The Orphaned/Abandoned Mines Advisory Committee is a cooperative partnership of the Canadian mining industry, federal/provincial/territorial governments, environmental non-government organizations and First Nations (committee membership attached). Work of the committee is jointly funded by industry and government organizations.

The first meeting of the Advisory Committee was held in Toronto in March 2002. At that time three task groups were formed to address the following key areas (individual task group reports attached):

Information Gathering

To develop capacity for a national inventory of active, closed and orphaned/abandoned mine sites based on compatible inventories in each province and territory, including an acceptable system for categorization and priority ranking. To include agreed-upon definitions and terminology as applied to orphaned/abandoned mine sites;

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Progress to Date:

- Meta-data regarding information on active, closed and orphaned/abandoned mines, including advanced exploration sites, has been collated from seven provinces, one territory and one federal agency.
- Costs associated with rehabilitating abandoned mines cannot be accurately estimated at this time. Improved statistical and technical information is required to quantify liabilities and identify priorities.

Next Steps:

- The task group will establish a process to collate information, agree upon definitions, and establish a framework for data collection and prioritization.

Community Involvement

To develop a plan to foster community involvement in decision-making about closure and reclamation standards, and to ensure that targeted end-use and reclamation standards are acceptable to local communities;

Progress to Date:

- Case studies have been completed on three abandoned mines: the Giant mine in the Northwest Territories; the Deloro mine in Ontario; the Mount Washington mine in British Columbia; and on one non-mining contaminated site, the Sydney Tar Ponds in Nova Scotia;
- A summary of lessons learned has been prepared that highlights critical issues and barriers to and recommendations for meaningful community involvement.

Next Steps:

- Publication of lessons learned as a set of guiding principles for community engagement;
- Development of a best practices guide for community involvement.

Barriers to Collaboration

To evaluate the efficacy of various approaches, including "Good Samaritan" legislation, permit blocking, non-compliance registries, and allocative liability versus joint and several liability;

Progress to Date:

- A preliminary review of legislation has been completed to

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identify regulatory and institutional barriers, liability disincentives and collaborative opportunities. The study included Canadian and provincial legislation as well as selected U.S. federal and state legislation and limited legislation from the United Kingdom and Australia.

- Key findings include:
 - The current legislative and regulatory regime in Canada is at best patchwork, at worst indifferent to the problem;
 - There is no existing or proposed federal or provincial law regarding "Good Samaritan" legislation;
 - There are a number of liability disincentives to carrying out voluntary work with a few limited exceptions (e.g., variance authority);
 - There are examples of collaborative initiatives that have been undertaken without legislative reform;
 - Federal and provincial/territorial governments must work together to establish regulatory certainty for the management of orphaned/abandoned mine sites.

Next Steps:

- Publication of the report on regulatory barriers to collaboration;
- A workshop to further explore findings of the report and identify preferred options for consideration by federal and provincial/territorial governments.

RECOMMENDATIONS

Mines Ministers continue to support the ongoing work of the Orphaned/Abandoned Mines Advisory Committee.

Through the work of its Task Groups the committee will:

- address issues related to regulatory and institutional barriers and report back to Mines Ministers in 2003 with specific recommendations;
- develop a set of guiding principles and a best practices guide to foster meaningful community involvement to be presented to Mines Ministers in 2003;
- develop a framework for data management and prioritization and report back to Mines Ministers in 2003;
- establish a task group to review funding approaches and identify preferred options.

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COMMITTEE MEMBERSHIP

The Orphaned/Abandoned Mines Advisory Committee is a cooperative partnership of the Canadian mining industry, federal/provincial/territorial governments, environmental non-government organizations, and First Nations. Members include:

Christine Kaszycki (Chair) - Manitoba Industry, Trade and Mines
Gilles Tremblay (Secretariat) - CANMET, Natural Resources Canada (NRCan)
Joanna Ankersmit - Indian and Northern Affairs Canada (INAC)
Louis Bienvenu - Québec, Ministère des Ressources naturelles
Scott Clausen - Minerals and Metals Sector (NRCan)
Dick Cowan - Ontario Ministry of Northern Development and Mines
William David - Assembly of First Nations
Wayne Fraser - Hudson Bay Mining & Smelting Co., Ltd.
Elizabeth Gardiner - The Mining Association of Canada
Gerald Harper - Prospectors and Developers Association of Canada
Robert Holmes - Yukon, INAC
Lisa Keller - Environment Canada
Joan Kuyek - MiningWatch Canada
Brennain Lloyd - Northwatch
Patrick Reid - Ontario Mining Association
Gregg Stewart - British Columbia Energy and Mines
Darren Taylor - Trondek Hwechin First Nation, Council of Yukon First Nations

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Orphaned and Abandoned Mine-Site Rehabilitation APPENDIX 2

TASK GROUP ON INFORMATION GATHERING

INTRODUCTION

A principal objective of the Information Gathering Task Group is to develop capacity for a national inventory of active, closed and orphaned/abandoned mine sites based on compatible inventories in each province and territory, including an acceptable system for categorization and priority ranking. Also, to include agreed-upon definitions and terminology as applied to orphaned/abandoned mine sites.

Abandoned mines exist within all mining jurisdictions in Canada. These sites, however, are not well documented with respect to both their numbers or their associated physical/environmental impacts and liabilities. Further research and compilation of information on abandoned mines is necessary to enable effective, sustainable, cost-efficient planning and rehabilitation. Such information is also necessary to ensure transparency of decision-making and access to information by governments, civil society, industry and other stakeholders. To efficiently address both public health and safety, and environmental concerns associated with abandoned mines, a number of issues must be accounted for in an information-gathering process (see below). This information is critical to enable sound decision-making and reclamation.

Costs associated with rehabilitating abandoned mines cannot be accurately estimated at this time. Improved statistical and technical information would help quantify liabilities and direct resources toward identifiable priorities.

STATUS

The Information Gathering Task Group sent a letter of request to federal, territorial and provincial government departments on June 10, 2002, with the goal of receiving the following information on active, closed and orphaned mines, including advanced exploration sites in each of their respective jurisdictions:

- Terminology and definitions currently applied to abandoned mines;
- System used to store information;
- Data structure of the system used;
- Types of information available;
- Current programs being undertaken;
- The extent to which sites are prioritized and ranked according to various criteria; and
- The form of financial assurance used regarding mine-site reclamation liability.

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Information was received from seven provinces, one territory and one federal agency. The information was reviewed by the Secretariat and a brief summary follows on selected items. Several inventory studies have been completed on both provincial and national scales. Provinces have reported the following number of abandoned mine sites: Ontario, 6000; British Columbia, 1900; and Manitoba, 290. One national study reported that the country has over 10 000 sites.

The system of choice to store data for many jurisdictions is a simple spreadsheet format (e.g., Microsoft Access) that is designed to incorporate geological, geochemical, geotechnical and administrative information for each site. Some are using GIS-type software while others are planning on future integration with this type of system. Most jurisdictions reported that the database is currently a "project in works" as it is still being tested, amended and updated.

One jurisdiction reported that the system was converted from Microsoft Access to an Oracle database because of greater scalability and improved performance. They plan to have the data available to the public via the Internet in its present format.

A key area identified is the need for flexibility in the system to allow for inclusion of additional information as it becomes available. For instance, many of the data include physical features and hazards but lack chemical monitoring data.

The definition of an "abandoned" site varies between jurisdictions, which could account for the differences in number of sites reported (see above). The most common definition is where a proponent has ceased or suspended indefinitely advanced exploration, mining, or mine production on the site without rehabilitating the site. They have also been classified as a site for which there is no lease holder, permit or current operator. The term "orphaned" mine has been used to describe sites without an identifiable owner. Some jurisdictions do not differentiate between orphaned and abandoned. The term "historic" is used in one jurisdiction instead of orphaned/abandoned.

RECOMMENDATIONS

Suggested recommendations include:

- that the Task Group work together to establish a process to collate the information from each jurisdiction; and
- that the 2002 Mines Ministers recommend that both the federal and provincial/territorial governments recognize the opportunity to take action and establish a national inventory of mines sites and agreed-upon definitions for orphaned/abandoned mines.

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Orphaned and Abandoned Mine-Site Rehabilitation APPENDIX 3

PROGRESS REPORT FOR THE COMMUNITY INVOLVEMENT TASK GROUP

INTRODUCTION

Community involvement in abandoned and orphaned mines was the focus for one of three multi-stakeholder task group subcommittees established after the 2001 Mines Ministers' Conference (MMC). The objective of the community involvement subcommittee is to "develop a plan to foster community involvement in decision-making about closure and reclamation, and to ensure that targeted end-use and reclamation standards are acceptable to local communities."

STATUS

A scoping study was contracted to CCSG Associates to characterize key issues related to community involvement in abandoned mines, and to identify potential case studies for future examination. This study was completed in May 2002 and was used by the Task Group to develop and plan the next phase of study. Three abandoned mines (the Giant mine in the Northwest Territories, the Deloro mine in Ontario, and the Mount Washington mine in British Columbia) and one non-mining contaminated site (the Sydney Tar Ponds in Nova Scotia) were selected for further examination by way of research and a questionnaire. A second report prepared by CCSG (July 2002) evaluated the lessons learned on community involvement and made recommendations based on the results of the survey. Report findings were based on personal interviews with key contacts in order to reflect a diversity of perspectives. Although the case studies may possess more complicated issues than many other abandoned properties, they each illustrate the breadth and importance of effective community involvement in decision-making regarding abandoned and orphaned mines.

The key findings of the consultant's report (attached as Lessons Learned) served as the basis for the following recommendations. These recommendations will be further developed as part of the Orphaned and Abandoned Mines Initiative's 2002-2003 work plan.

RECOMMENDATIONS

1. That the importance of, and need for, community involvement and engagement be embraced in policy, programs, projects and initiatives related to problematic abandoned and orphaned mines.
2. That initiatives related to abandoned and orphaned mine rehabilitation facilitate

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community trust by enabling meaningful and influential input into decision-making.

3. That efforts to address the rehabilitation of abandoned and orphaned mines encourage community members to become and remain involved.
4. That a number of different communications tools and strategies be used to disseminate/gather information and educate all community members.
5. That efforts be made to convey technical information associated with abandoned and orphaned mines in a format that is easy to understand for those that do not have a technical background.
6. That social, health, training and other capacity-building efforts be undertaken to increase community participation in abandoned and orphaned mine rehabilitation.
7. That the nature of a community's involvement and the expectations of different stakeholders be well defined from the earliest stages of an engagement process.
8. That community engagement processes practice participant equity, fairness and efficiency and use impartial facilitators to ensure effective, sustainable participation and the resolution of conflict.

NEXT STEPS

- Each of these recommendations should be considered and/or incorporated in this upcoming year's work plan. As a starting point, this will include:
 - Publication of the Lessons Learned to form a set of guiding principles for community engagement.
 - Development of a "best practices guide" for community involvement, to guide and inform policy development and project management.

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ATTACHMENT TO APPENDIX 3: LESSONS LEARNED

The study on Community Involvement in Abandoned and Contaminated Mine Sites revealed a number of lessons on community involvement that were common to both the Canadian and U.S. case studies examined. The following is a selection of key lessons:

BENEFITS OF COMMUNITY INVOLVEMENT

- Community involvement in the remediation of an abandoned mine site leads to decisions that are more acceptable to a community. In some cases, community involvement also leads to lower remediation costs.

BARRIERS TO COMMUNITY INVOLVEMENT

- People living near abandoned mines may be hesitant to trust a government that has failed to prevent environmental contamination. As a result, a lack of community trust in government and/or other responsible parties can become a major barrier to participation in a government-led process.
- Communities want to have "meaningful" input into decisions related to the remediation of abandoned mines. They may not participate in a process if there is no opportunity for two-way dialogue or no possibility to influence the decisions.
- There may be social, economic, political, economic, historical, cultural and health-related barriers that affect the willingness or ability of a community member to participate in a process related to mine-site remediation.
- Disillusionment with processes that do not adequately reflect community composition or that fail to resolve conflicts in a respectable manner may also diminish participation and prevent community members from becoming involved.

OVERCOMING BARRIERS TO COMMUNITY INVOLVEMENT

- Building trust between community members, government and others will likely be necessary if community involvement processes are going to be successful. Trust may be built when community members see that some of their priorities and concerns are being addressed within a process.
- Communities are not homogeneous entities. As a result, it is likely that a number of communications tools and strategies should be used to disseminate and gather

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information, and educate community members. Extra effort should be made to ensure that the information is distributed beyond "those most willing to hear it" and that input is received from more community members than "those who are easiest to hear from."

- Some of the information related to the remediation of contaminated sites is extremely technical. Consequently, efforts should be made to convey this information in an easy-to-understand format. Otherwise, large segments of the community will not have the knowledge to understand the issues and will be unable to fully participate in discussions related to remediation.
- In many of the case studies examined for this report, a lack of capacity to decipher and utilize technical reports and data was seen as a barrier to meaningful participation in discussions concerning the remediation of abandoned mines. Funding should be made available to assist community groups in hiring technical advisors to help them better understand scientific data. This will enable the community members to make more-informed decisions and recommendations on remediation options.
- Capacity-building efforts that increase community participation in remediation can both empower community members and better enable them to understand the challenges faced during the remediation process.
- Health and social capacity-building efforts may be necessary alongside technical capacity building. Wellness centres, literacy programs, programs with youth, health support initiatives and re-training programs can help to improve the ability of community members to fully participate in decisions that affect them.

LESSONS RELATED TO FORMAL COMMUNITY INVOLVEMENT PROCESSES

- The nature of a community's involvement in a process should be made explicitly clear to participants up front. This is necessary to reveal differences in expectations over the level of influence that community members may have on remediation decisions. Failure to do so may result in community frustration and increased distrust in the process if their expectations are not met.
- Community involvement mechanisms should include broad representation of the community and a diversity of views.
- Early involvement in planning and decision-making can help take citizens out of a reactive position and may offer them a more meaningful opportunity for engagement in discussions of options, tradeoffs and consequences.

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- Actions to prevent high rates of participant turnover should be implemented. These actions could include conflict resolution mechanisms, financial support for community members' expenses, baby sitting services, technical assistance to community members, paid staff to do administrative work that volunteers cannot accomplish, and defined end points for committees.
- Agency accountability within a public participation process is essential. The credibility of the process may be undermined when agencies do not respond (or fail to respond in a timely manner) to the public's input, suggestions or recommendations.
- A lack of fairness in the process (e.g., unequal time allowed for different viewpoints to be heard) can diminish the credibility of a process.
- It is important that conflicts be resolved in a timely manner that is both respectful and fair. Effective facilitation of meetings can be critical to working through the conflicts that will likely arise when a diversity of individuals work together in a process.

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Orphaned and Abandoned Mine-Site Rehabilitation APPENDIX 4

TASK GROUP ON LEGISLATIVE BARRIERS TO COLLABORATION

INTRODUCTION

The report of the 2001 Mines Ministers Conference recommended that a multi-stakeholder Orphaned/Abandoned (O/A) Mines Advisory Committee be struck to study various issues and initiatives relating to the development of partnerships in the implementation of remediation programs across Canada. Subsequently, this advisory committee developed a three-pronged program for 2002 including the establishment of three Task Groups to address three key issues including "Legislative Barriers to Collaboration." This progress report describes activities to date of the Task Group on Legislative Barriers to Collaboration. Members of this Task Group include: Elizabeth Gardiner, Chair (The Mining Association of Canada), Barbara Mossop (Ontario Mining Association), Dick Cowan (Ontario Ministry of Northern Development and Mines), Brennain Lloyd (Northwatch), Edwin Yee (Manitoba Department of Conservation), Robert Holmes (INAC-Yukon), William David (Assembly of First Nations), Wayne Fraser (Hudson Bay Mining & Smelting), Fred Privett (INAC-Yukon) and Charlene Hogan (O/A Mines Secretariat-NRCan).

STATUS

The Task Group met numerous times via telecom. The principal activity was to develop terms of reference for a consultants background study, tender the study, review interim and final reports from the study, and prepare recommendations for consideration by the Advisory Committee. An RFP was sent to six individuals/firms on June 24th with proposals to be submitted by June 28th; three proposals were received and the project was awarded to Joseph P. Castrilli, B.A., LL.B., LL.M. on June 28th. An interim report was received on July 16th and a draft final report on July 24th. Consensus of the Task Group is that Mr. Castrilli did an excellent job within the time constraints imposed. Mr. Castrilli reviewed Canadian and provincial legislation, selected U.S. federal and state legislation, and limited legislation from the United Kingdom and Australia to identify regulatory and institutional barriers, liability disincentives and collaborative opportunities.

KEY FINDINGS OF REPORT

Regulatory and Institutional Barriers

Potential regulatory and institutional barriers to forming partnerships to deal with abandoned mine features include:

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- regulations under numerous federal or provincial acts;
- approvals, licensing, permits and plans requirements;
- lack of focus on abandoned sites versus closure of operating sites; and
- absence of statutory authority for encouraging voluntary initiatives.

Potential Liability Disincentives to Partnerships

Numerous liability disincentives to voluntary partnerships for rehabilitation of abandoned mines include:

- quasi-criminal liability resulting in prosecutions;
- joint and several civil liability under various legislation, such as the *Fisheries Act*;
- administrative orders imposing liability for failure to comply, etc.; and
- ministerial orders, court injunctions, etc.

Collaborative Opportunities for Partnerships

Several potential opportunities exist for developing collaborative efforts to deal with abandoned mines including:

- exemptions from personal liability, e.g., secured lenders, receivers, etc.;
- partial exemptions for activities such as re-mining;
- provision of authority for variances, "escape valves," from approvals or regulations;
- authority for provision of site rehabilitation agreement; and
- Good Samaritan legislation.

CONCLUSIONS AND RECOMMENDATIONS OF REPORT

The report made several conclusions and recommendations with respect to voluntary abatement, remediation or reclamation of abandoned mines, which are briefly summarized below:

Conclusions

- overall, the current legislative and regulatory regime in Canada is at best a patch-work, at worst indifferent to the problem;
- in general there is no existing or proposed federal or provincial law regarding the subject of Good Samaritan legislation;
- federal and provincial environmental and mining laws in Canada contain a number of regulation, permit and approval requirements that likely would have to be complied with by volunteers proposing to work on abandoned sites;
- there are a number of liability disincentives to carrying out voluntary work, although there are a few limited exceptions;
- there are examples of collaborative initiatives that have been undertaken without legislative reform;
- opportunities such as variance authority exist in some jurisdictions; and
- both the federal and provincial/territorial legislatures will have to speak directly to the

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problem if progress is to be made.

Recommendations

Following is an abbreviated list of options identified in the report that may be pursued to improve the situation:

- amend existing or enact new legislation, which encourages volunteers by setting out protections afforded, identifying who is protected, and identifying the types of projects covered;
- provide for exemption of volunteers from being "responsible persons";
- establish an abandoned mine reclamation "Good Samaritan" permit program that provides for limitation of liability if specified conditions are met; and
- create exemptions from remediation liability at abandoned sites if specified conditions are met and indemnifications provided.

TASK GROUP RECOMMENDATIONS

Suggested Task Group recommendations:

- that, if voluntary collaboration to rehabilitate abandoned sites is to occur, then legal instruments must be developed to protect the volunteers except where they are negligent, create problems as a result of willful misconduct, etc.;
- that the 2002 Mines Ministers' Conference recommend that both federal and provincial/territorial governments recognize the opportunities that are being missed and take action to find remedies;
- that federal and provincial/territorial governments work together to establish regulatory certainty for the management of orphaned/abandoned mine sites; and
- that IGWG sponsor a workshop by March 31, 2003, to further explore the work of the Castrilli Report and to identify preferred options to develop for consideration by both federal and provincial/territorial governments (Mr. J. Castrilli may be a good choice for facilitator).