NORTHWATCH

May 17, 2025

Ministry of Energy and Mines, Sector and Intergovernmental Policy Branch
99 Wellesley St W
Toronto, ON M7A 1W3

ERO number 025-0409

Sent by email MiningActAmendments@ontario.ca

Re. Proposed amendments to the Mining Act 1990, Electricity Act 1998, and Ontario Energy Board Act 1998, to protect Ontario's Economy and Build a More Prosperous Ontario

On April 17 2025 the Ministry of Energy and Mines, Sector and Intergovernmental Policy Branch posted notice #025-0409 on Ontario Electronic Registry, giving notice of a 30-day comment period on a proposal titled "*Proposed amendments to the Mining Act 1990, Electricity Act 1998, and Ontario Energy Board Act 1998, to protect Ontario's Economy and Build a More Prosperous Ontario*".

According to the ERO posting, the purpose of the proposed changes to the *Mining Act, 1990* is to "*protect the strategic national mineral supply chain and to streamline the permitting process for designated mining projects*" while proposed changes to the Electricity Act, 1998 and Ontario Energy Board Act, 1998 would "*aim to limit foreign participation in the energy sector*".

ERO posting #025-0409 is one of a suite of postings related to Bill 5, the proposed *Protect Ontario by Unleashing Our Economy Act, 2025*. The comment period for each of these postings was limited to 30 days, and only two days have been scheduled for public hearings of the Standing Committee on the Interior, which means many who have requested to appear before the committee will be denied (including Northwatch, who applied on April 30th but at time of writing on May 17th had received only an auto-acknowledgement of our application). Bill 5 and its ten schedules, if enacted, will have far reaching environmental and social impacts. If the government – and this Ministry – are confident of their proposed course of action, they would be prepared to engage in a public discourse with Indigenous people and the public. To do so would require extending the comment period on the Environmental Registry and adding several additional hearing days, including hearing days in northern Ontario communities.

ERO posting 025-0409 summarized proposed changes to the *Mining Act, 1990*, to the *Electricity Act, 1998* and to the *Ontario Energy Board Act, 1998*.

One Project, One Process

According to the summary on the ERO, the proposal would "*enshrine in legislation a new process for the coordination of permitting for designated mine projects, moving from a state where mining proponents engage with multiple permitting ministries and Indigenous communities on each activity separately and in isolation, towards an integrated and coordinated approach where the whole project would be considered by ministries in parallel with dedicated project management support*".

In principle, we do not object to the concept of a "one-window" review process, where various permits required for an operation are reviewed concurrently and in an integrated and interactive fashion. For example, if a facility requires permits to discharge to air and to discharge to water, those permits could be reviewed concurrently. This would create some efficiencies for the proponent, the government bodies, and the public and Indigenous people engaged in the comment and review processes.

This is an approach that Northwatch has recommended in the past, when we have observed that projects were described quite differently in different permit applications. For example, a number of years ago the effluent discharge permit for the Montcalm mine described the project quite differently in the operating stages than the closure plan application did a number of months later.

This problematic result could be avoided with a coordinated review process where the proponent presents a project which is well thought out and has reached an operational design stage prior to applying for operating permits (we make the distinction here between operating permits and mineral exploration permits, which of necessity are in the early stages of the process of developing a project).

This one-window approach could be further improved upon by taking applying the principle of environmental assessment where engagement with the public and Indigenous people begins early in the project design, well in advance of the permit application stage. There is nothing to prevent proponents from taking this approach independent of government direction to do so, but if the provincial government is sincerely interested in making the review and permitting processes more efficient and more effective with shorter timelines for the formal review stage, they should consider applying a framework where early engagement by the proponents migrates from optional to required.

Unfortunately, it seems that the *One Project, One Process* being proposed is actually a "different project, different process" scheme, with only some projects being reviewed through this one-window approach, and those projects being designated at the discretion of the Minister.

Under this scheme the Minister of Energy and Mines would have the authority to establish a Mine Authorization and Permitting Delivery Team for mine projects designated by the Minister; that "team" would then work with proponents on a case-by-case basis to design an "integrated authorization and permitting plan, and to coordinate the application, review, and decision-making

processes among ministries to expedite the application, review and decision making processes for the permits and authorizations specified in the plan".

The ERO posting claims that there "are no anticipated environmental impacts resulting from the proposed changes to the *Mining Act, 1990"* and that if passed "requirements as outlined under the *Mining Act* framework, which includes the Mine Rehabilitation Code" and those "set out by the other permitting ministries" would still be met.

What is glaringly absent from the ERO posting is any discussion of public comment rights, and how the requirements for Indigenous engagement in the decision-making will be respected in this approach.

The ERO posting does - following the discussion of "One Project, One Process" - indicate that the changes would include establishing regulation-making authority for the Lieutenant Governor in Council (LGIC) to prescribe service standards to be met by any ministry under any Act for permits and authorizations specified in the plan (to be coordinated by the Mine Authorization and Permitting Delivery Team).

Northwatch supports there being service standards in all aspects of government and public operations, including for waiting times in hospitals, response times to access to information requests, etc.

However, the important detail omitted from the ERO posting but included in Schedule 5 is that "*in the event of a failure to meet the service standards referred to in clause (a), the proponent is entitled to the refund of any fees that the proponent was required to pay under an Act for a permit or authorization in respect of which the service standards were prescribed*."

The mineral sector already underpays the people of Ontario – including and particularly the Indigenous people of Ontario – for the mineral resource they extract and for the public commons they pollute. That proponents would now be entitled to reimbursement for fees for permits or authorization because a service standard has not been met is unacceptable. If the Government is concerned about and committed to ensuring that service standards are met then the appropriate course of action is to ensure that staffing levels are adequate and that workloads are manageable. Having the people of Ontario – including the taxpayers of Ontario – further subsidize this industry by waiving the modest fees charged for permits or authorizations is unacceptable.

<u>Protecting the Strategic National Mineral Supply Chain</u>

Under the heading "Protecting the Strategic National Mineral Supply Chain" in the ERO posting, there is passing mention of **"***Amending the purpose of the Mining Act, 1990 to refer to the protection of Ontario's economy*". By Northwatch's assessment this is a significant change, which should have been highlighted in the Registry posting, given its significance, and given the registry's public notice function.

SCHEDULE 5 sets out that "Section 2 of the (Mining) Act is amended by striking out "*mineral resources, in a manner consistent*" and substituting "*mineral resources to a degree that is consistent with the protection of Ontario's economy and in a manner consistent*". The purpose section of the Mining Act would then read:

> ***2*** *The purpose of this Act is to encourage prospecting, registration of mining claims and exploration for the development of mineral resources, to a degree that is consistent with the protection of Ontario's economy and in a manner consistent with the recognition and affirmation of existing Aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult, and to minimize the impact of these activities on public health and safety and the environment. 2009, c. 21, s. 2; 2017, c. 6, Sched. 2, s. 2.*

This change to the purpose section of the Act is problematic, in part because of its ambiguity and in part because of possible interpretation or misinterpretation that could result from that ambiguity.

One interpretation could be that mineral development could be constrained by a determination of what protects Ontario's economy. For example, too many non-Canadian entities holding claims, developing mineral resources, or owning or operating mines or mineral processing facilities could be deemed to be putting Ontario's economy at risk (due to foreign control, foreign interests) and therefore limits placed on those entities and their ability to occupy mining lands (in any level of tenure). Northwatch would potentially support these limits.

Another interpretation could be that the "protection of Ontario's economy" – in itself an objective without measures or criteria – would have some degree of paramountcy over the duty to consult or to minimize the impact of mining activities on public health and safety and the environment. Northwatch would absolutely oppose such an interpretation, or such a change to the Mining Act purpose section that could be interpreted in that manner.

In general, this change to the Purpose section – if it has any value – is of rhetorical value alone. As such, it should be dropped.

This same section of the ERO posting describes changes to provide the Minister with the authority to suspend or shut down all or some functions of the Mining Lands Administration System (MLAS) "where desirable to protect the strategic national mineral supply chain".

We appreciate and support a new ability to suspend restrict, or terminate MLAS accounts and prospector's licenses for wrong-doing, and we would support measures that would reduce the ability of foreign entities or large single corporate entities to acquire large land holdings, even in the form of mining claims and certainly in the form of more secure tenure. However, like other sections of the proposed changes to the Mining Act and Bill 5 more generally, these measures are undefined or poorly defined, and – like other measures in Bill 5 – create a regime which is less predictable and less fair than the current regime.

To continue this discussion, the Government of Ontario must first clearly define:

- What would be the basis of the risk assessment? For example, would it be based on operating performance, financial means, ownership and country of ownership of the entity being assessed, or some other measure?
- How is the "strategic national mineral supply chain" defined? For example, does it include mineral processing, metal production, manufacturing using mineral or metal products? Is it related to minerals for renewable energy generation, battery storage, or weapons production?
- How is it the role of a provincial ministry to protect the strategic national mineral supply chain? What is the reach of this role outside the Province of Ontario?

Section 3 of Schedule 5 sets out that Section 4.1 of the Act is to be amended by adding the following subsection:

> *Order to suspend mining lands administration system*
> *(8) Despite the Statutory Powers Procedure Act, the Minister may, without prior notice or hearing, make an order suspending the operation of some or all functions of the mining lands administration system, if, in the Minister's opinion, the order is desirable for the protection of the strategic national mineral supply chain.*

Suspending all functions of the Mining Lands Administration System seems like an extreme measure, and certainly the enactment of this measure would further contribute to an environment of uncertainty and lack of predictability. More moderate measures, such as blocking certain accounts or users might more readily justified, whereas suspending all functions of the MLAS will raise questions around fairness and transparency. Fundamentally, what is missing from the presentation in the ERO proposal, the technical notes and Schedule 5 is a rationale for this measure. The statement that this suspending of all or some functions of the MLAS could occur "*if, in the Minister's opinion, the order is desirable for the protection of the strategic national mineral supply chain"* is not a rationale.

What facts or information would be required to form or support such an opinion, and – again – what would make it desirable and how is it Ontario's role to protect the "strategic national mineral supply chain".

Limiting Foreign Jurisdictions' Participation in Ontario's Energy Sector

Northwatch strongly supports the proposal to limit the participation of foreign entities in Ontario's electricity sector including as it relates to foreign equipment, systems, services, facilities or technologies and in particular to the nuclear sector.

The ERO posting explains that such an approach "would allow the government to achieve its commitment to keep the province's energy supply safe and secure by limiting the involvement of foreign antagonists in Ontario's electricity sector as deemed appropriate by the government. In addition, this proposal would enable a mechanism to respond to future trade restrictions imposed by other countries which target the Canadian/Ontario economy."

MEM's proposal would – according to the ERO posting - allow the government to achieve its commitment to keep the province's energy supply safe and secure by limiting participation or components from companies or entities from specific countries (or foreign state-owned enterprises) in Ontario's energy sector (i.e., to protect against risks of malware, manipulation, tampering, extortion, surveillance, rate payer harms and other prospective threats directly or by extension from a foreign state-owned enterprise).

This is a measure that the Government of Ontario should also pursue collaboratively with the federal government, to ensure that the Government of Ontario can enforce these limits in instances where there is a federal decision-maker, either as regulator or responsible authority or agency.

The energy sector in Ontario includes – on the supply side – oil, gas, solar, wind, biomass, hydro and nuclear. Generally speaking, the energy supply chain includes fuel, energy production, and management of the waste products from that energy production, which will vary by energy source.

There are several instances where these measures to limit the role of foreign entities should be applied immediately, including:

- Ontario Power Generation's intended procurement of four boiling water reactors for US-based GE-Hitachi reactors; the Government should direct OPG to cancel these contracts
- Ontario Power Generation controlled Nuclear Waste Management Organization has recently announced contract of design and engineering services with five vendors, three of which are foreign entities, including Kiewit Corporation, based in Omaha, Nebraska; Thyssen Mining Construction, owned by Thyssen Schachtbau International B.V. based in Germany; and Kinetrics, owned by BWX Technologies Inc. based in the U.S.
- Atomic Energy of Canada Limited, under a government-owned contract-operated arrangement, contracts with foreign owned nuclear services companies, including Texas based American nuclear services company Jacobs and Fluor Corporation, also headquartered in Texas

Ontario should move immediately to extract Ontario Power Generation and its service provider subsidiary Nuclear Waste Management Organization from these arrangements, consistent with MEM's to limit participation or components from companies or entities from specific countries (or foreign state-owned enterprises) in Ontario's energy sector.

In closing, we urge the Government of Ontario to take the following steps with respect to the proposals summarized in ERO posting #025-0409:

- Develop a one-window approach to mine reviews and permitting by applying the principle of environmental assessment where engagement with the public and Indigenous people begins early in the project design and where review processes and permitting are coordinated among provincial, federal and Indigenous governments and authorities
- Ensure that the principles of public participation and the practice of requiring the free, free prior and informed consent of Indigenous people are reflected in any and all changes made to the named Acts
- Leave the Purpose section of the Act unchanged
- Withdraw all sections of the proposals which are based on expanded discretionary powers being granted the minister, and any and all measure that will reduce transparency, predictability and public participation
- Clarify the meaning, interpretation and intent of key elements of the proposals, including phrases such as “to protect the strategic national mineral supply chain”, the “risk assessments” to the “national mineral supply chain” that would be undertaken, etc.
- Remove or modify the proposal to authorize suspending all functions of the Mining Lands Administration System, particularly in the absence of clear criteria and rationale and a process in which decisions are transparent and traceable
- Move forward rapidly to limit the participation of foreign companies and jurisdictions in Ontario’s electricity sector including as it relates to foreign equipment, systems, services, facilities or technologies for the nuclear sector

Thank you for your consideration.

Brennain Lloyd
Northwatch Project Coordinator