

May 3, 2011

The Honourable Peter Kent
Minister of the Environment
Les Terrasses de la Chaudière
10 Wellington Street, 28th Floor
Gatineau, Quebec
K1A 0H3
Tel.: 819-997-1441
Fax: 819-953-0279
Email: Minister@ec.gc.ca

Via Email: Minister@ec.gc.ca

Dear Minister Kent:

Re: Cliffs Chromite Project in Ontario's "Ring of Fire" – Federal Environmental Assessment

Congratulations on your recent election victory. We look forward to working with you to achieve environmental protection objectives in Canada. CPAWS Wildlands League and MiningWatch Canada are seeking coordinated, comprehensive review of the above mentioned project. We believe that a Joint Review Panel, coordinated and harmonized with the province of Ontario, is appropriate given that the project involves the first North American operation of ferrochrome production, there is no experience in Canada with chromite mining, the project is at a scale and intensity that has not yet been seen in Ontario, and will involve massive, permanent changes to the Ontario's Far North sensitive ecosystems and to local communities.

Wildlands League represents over 6,000 members in Ontario and our mission is to protect wilderness through the establishment of protected areas and through the promotion of natural resource use that is sustainable for nature, communities, and the economy. We have extensive knowledge of land use in Ontario and a history of working with government, communities, scientists, the public, and resource industries on progressive conservation initiatives. We have specific experience with the impacts of industrial development on boreal forests and the wildlife that depend upon them. Further, with respect to our involvement with mining policy and environmental assessment in Ontario and we closely monitored and participated in the *Mining Act* Modernization process; and participated in four separate environmental assessment processes of the Victor Diamond Mine (by the province and federal governments). Currently we are closely following the development of regulations under the *Mining Act* and aiding in that process, and are monitoring impacts from early exploration activities, land use and environmental assessments in the area known as the Ring of Fire in northern Ontario.

MiningWatch Canada is Canada's national independent organization dedicated to promoting improved mining practices and policies for companies operating in Canada and Canadian companies overseas. For the last 6 years MiningWatch has coordinated the Ontario Mining Action Network which annually brings together provincial NGOs and First Nations to examine the current state of the industry in the province. We have been participants in a number of federal and provincial environmental assessment processes, and regularly receive participant funding through the *Canadian Environmental Assessment Act*. We have participated in the reviews of the Victor Diamond, Prosperity Gold Copper, Mt. Milligan Gold-Copper, Kiggavik Uranium and Marathon Copper-PGM mine projects. MiningWatch staff have expertise in social, biological and physical sciences and have extensive networks with other organizations, communities and First Nations that work on or are affected by mining. Through our work with Ontario NGOs and First Nations MiningWatch has taken a particular interest in the developments in the Ring of Fire as it is one of the most rapidly developing mining areas in Canada and has already been the source of considerable conflict.

We request that the project be tracked for Joint Review Panel. We believe a Review Panel is necessary to ensure both meaningful public participation and coordination of the assessment. Under the *Canadian Environmental Assessment Act*, you have the discretion to refer an assessment to a Review Panel when a project (with mitigation) "may cause significant adverse environmental effects" or "public concern warrants" (*Canadian Environmental Assessment Act*, section 28). We submit that both these conditions are present with the proposed project. We also request that additional participant funding be provided to ensure adequate First Nation engagement and meaningful public participation in the Panel hearings.

The above mentioned project is of the type that Parliament contemplated would be most appropriate for a Review Panel. The project involves the first North American operation of ferrochrome production. There is no experience in Canada with chromite mining and the project is at a scale and intensity that has not yet been seen in Ontario. Further it will involve massive permanent changes to the Far North's sensitive ecosystems and to local communities.

The **Cliffs Chromite Project** has four interrelated components: Mine, Ore Processing Facility, Integrated Transportation System, and the Ferrochrome Production Facility. In keeping with the Supreme Court's decision on *MiningWatch v. Canada*, the scope of the project for the environmental assessment should contemplate the totality of the proposed activities including the mine, infrastructure and processing facility.

The mine site will consist of **two open pit mines** (and plan to transition to underground mining later on in the project) and **Ore Processing Facility** that includes materials stockpiles and a tailings management area. In addition, the mine site will include on site road network, buildings and warehouses, low sulfur diesel electricity generating power plant, fuel, chemical and explosive storage facilities, accommodations complex, water supply and treatment facilities, waste management system and an airstrip. Ore that is not suitable for processing directly to the **Ferrochrome Production Facility** will be processed at the mine site to produce concentrate. The concentrate from the Ore Processing Facility and the higher grade ore (that did not require processing) will be transported to the Ferrochrome Production Facility or shipped for sale to worldwide markets.

By Cliffs own account, the remote nature of the proposed mine site, 350 km north of the province's road network presents a "major transportation challenge". Its **Integrated Transportation System** component is comprised of seasonal winter roads, an airstrip, a 260 km permanent all weather road between the site and existing provincial road network, a loadout facility at the mine site and a transload facility at Nakina. Large haul trucks will be employed. The transload facility will be where the ore and concentrate are transferred to railcars and transported to the Ferrochrome Processing Facility or for sale in world markets.

The refining of ore and concentrate into ferrochrome metal in enclosed electric arc furnaces is the final step in the project. The Ferrochrome Processing Facility, in the base case scenario, is located near Capreol in the Greater city of Sudbury.

We submit that these activities will necessitate permits under the *Fisheries Act* and the *Navigable Waters Protection Act*, and will therefore trigger a federal environmental assessment under the *Canadian Environmental Assessment Act*. In keeping with the spirit and intent of the *Canadian Environmental Assessment Act* (section 11), this environmental assessment should be done at the early stages of planning for the project and should be conducted through a joint panel review.

Regarding the potential for significant effects to mandate an environmental assessment by Review Panel, the proposed mine site is located in the globally significant peatlands of the Hudson Bay Lowlands and associated infrastructure will traverse the intact Boreal Forest of the Far North. The Far North Science Advisory Panel in a report¹ submitted to the Ontario Ministry of Natural Resources in April 2010 notes that "about a tenth of the globe's cooling benefit from peatlands comes from Ontario's Hudson Bay Lowlands" (p. 23). This carbon rich, intact ecosystem is also significant for its healthy clean watersheds. Two of the major river systems to be affected by this project, Attawapiskat and Albany, remain largely unaltered industrially by humans with the exception of the Victor Diamond Mine Project (on the Attawapiskat) and English River diversions (Albany). This project requires greater scrutiny because it is going to be impacting globally significant peatlands and watersheds, and nationally and provincially threatened species.

Public concern is also sufficient enough for the Federal government to mandate a review panel. There has been significant media coverage of the public's concerns and issues regarding the Ring of Fire (See Toronto Star, March 27, 2010 and Toronto Star editorial *Don't let mines preempt Natives* from March 10, 2010 as examples). The Premier of Ontario, Hon. Dalton McGuinty, aware of public sensitivities around this project promised to 'tread carefully' in his Throne Speech in 2010 and the 2010 Ontario Budget included a Ring of Fire Coordinator. Just this past January, Mining Watch Canada released its *Economic Analysis of the Ring of Fire Chromite Mining Play*. In it, MiningWatch Canada raises questions about key issues regarding Ring of Fire economics.

To date First Nations have had to resort to protests, blockades and court challenges to raise awareness about and pressure industry and governments to address their concerns about

¹ The Far North Science Advisory Panel. 2010. Science for a Changing Far North. The Report of the Far North Science Advisory Panel. A report submitted to the Ontario Ministry of Natural Resources. It can be downloaded at <http://www.mnr.gov.on.ca/en/Business/FarNorth/2ColumnSubPage/266512.html>.

exploration activities in the Ring of Fire area. Though not in and of itself sufficient to meet the federal and provincial duties to First Nations in the region, a Joint Review Panel would be a much more appropriate level of review to address impacts on Aboriginal rights.

Moreover, scientists have expressed concern with the scale and pace of development occurring in the Ring of Fire. Ontario's Far North Science Advisory Panel stated:

The Panel stresses that access routes and development activities must be planned from a broader regional perspective... The Ring of Fire and associated access corridors occupy at least 10% of the total land area of the Far North. Poorly planned access routes and transmission lines in particular have the potential to fragment habitat and create irreversible impacts on terrestrial and aquatic systems, including species abundance and distribution, carbon storage, and contamination of wild foods. The Panel therefore recommends that the Ring of Fire be immediately recognize as a Priority Management Area where a coordinated, government-wide sub-regional land use strategy should be developed as soon as possible (p. 99).

Consequently, we would applaud a decision by the Minister of Environment to meet Parliament's objectives under the *Canadian Environmental Assessment Act* by referring this project proposal to a Review Panel.

We also request that the Minister of Environment seek an agreement with Ontario to establish a Joint Review Panel (*Canadian Environmental Assessment Act*, section 40). From an Ontario perspective, we expect there to be at least three Class Environmental Assessments and one Individual Environmental Assessment under various ministries for its provincial environmental assessment approval process. Subjecting the proposed project to a single, rigorous environmental assessment project will reduce delays and duplication of effort that would result from the multiple environmental assessment processes at both the federal and provincial levels. Such coordination between Canada and Ontario on the environmental assessment for this project is necessary to ensure that aspects of it are not overlooked and opportunities for mitigation are not missed. A Joint Review Panel will also facilitate a consolidated review of all aspects of the proposed project including the assessment of cumulative effects and the application of a precautionary, science-based approach, as well as providing for more complete consultation and analysis regarding the potential impacts. There is precedent for establishing a harmonized Joint Review Panel to meet the requirements of federal and provincial environmental assessment in Ontario. The Ontario government is currently consulting on a proposed harmonization order under the Ontario *Environmental Assessment Act*, as well as a draft harmonization agreement, which includes a draft terms of reference, with the federal government to establish a joint review panel process for the proposed Marathon Platinum Group Metals and Copper Mine Project (*Environmental Bill of Rights* Registry Number 011-2773, comment period March 25, 2011 to May 9, 2011).

We appreciate and commend the designation of the Marathon Project to a Joint Panel Review. We would note that there are a number of issues with the developments in the Ring of Fire area that make it at least as likely to have significant effects as the proposed Marathon Mine which would also warrant a joint panel review. Relative to the Marathon project, the Ring of Fire is a much larger project with a larger scale mine and substantially more new infrastructure required. It is occurring in a region that has limited industrial development at present and the potentially affected communities have little experience with the mining industry.

Overall therefore, we request that the Minister of Environment exercise his power under the *Canadian Environmental Assessment Act* to refer the Cliffs Chromite Project to a Review Panel for consideration and seek to harmonize with Ontario's environmental assessment through an agreement for a Joint Review Panel.

It is also requested that if the Minister refers the project to a Review Panel that additional participant funding be provided to ensure adequate First Nation and stakeholder engagement and meaningful public participation in the Panel hearings. The Ring of Fire area overlaps with the traditional use areas of at least five First Nations. Additional communities will be impacted by the infrastructure, the transload facility and the proposed ferrochrome production facility and all downstream communities from the project will be impacted by management decisions made in the Ring of Fire. This includes but is not limited to Fort Albany, Kasechewan, Constance Lake and Attawapiskat. From our perspective, given the number of First Nations to be impacted by this project, the scale and intensity of proposed activities and the irreversibility of the impacts, this project requires greater scrutiny that would be provided through a Review Panel. In our experience, First Nations generally do not have adequate resources and access to experts to properly engage in these types of environmental assessments to meet the needs of its members, therefore we strongly urge the government to refer the project to a Review Panel and ensure participant funding to be provided for all affected First Nations and to ensure meaningful public consultation.

The reality is this proposed project is being advanced in the context of rapid regional developments including parallel proposals by Noront Resources and KWG/Canada Chrome. It is our understanding that Noront Resources is seeking environmental assessment approval for its Eagle's Nest Project and that KWG/Canada Chrome is actively pursuing a railway for the region. This is only our current understanding of the proposed developments. Much more is on the horizon. One industry analyst is predicting there will be five, six or seven open pit mines in total in the region². Given the scale and intensity of the numerous projects contemplated this very specific region of Ontario, the global significance of the ecosystems and the fact that the projects' cumulative effects will include irreversible impacts to aquatic and terrestrial ecosystems, we recommend that this region would benefit from a strategic regional environmental assessment. We would like to discuss this option with you or your staff at your earliest convenience.

In sum, the public is seeking increased accountability, transparency, and clarity from the federal and provincial governments on the unprecedented potential mining operations and related activities in Ontario's "Ring of Fire". We strongly request that an independent Joint Review Panel for the above mentioned proposed project be established. We also request that adequate participant funding be provided to all affected First Nations and to ensure meaningful public consultation. We are available to discuss our requests and look forward to hearing your response.

² http://www.radio-canada.ca/regions/ontario/dossiers/detail.asp?Pk_Dossiers_regionaux=498&Pk_Dossiers_regionaux_page=993&VCh=20110429

Sincerely,



Anna Baggio
Director, Conservation Land Use Planning
CPAWS Wildlands League



Ramsey Hart
Canada Program Coordinator
MiningWatch Canada

cc: Canadian Environmental Assessment Agency (Fax: 613-957-0862)
Director of Environmental Affairs - Ferroalloys, Jason Agenes, Cliffs Natural
Resources (via email Jason.Agenes@cliffsNR.com)
Ontario Ministers of Environment, Natural Resources and Northern Development
Mines and Forests