Anil Arora
Assistant Deputy Minister
Natural Resources Canada
580 Booth St.
Ottawa, Ontario
K1A 0E4

May 9th, 2014

Dear Mr. Arora,

On behalf of the Resource Revenue Transparency Working Group (RRTWG), which includes the Mining Association of Canada, Prospectors & Developers Association of Canada, Publish What You Pay Canada and the Revenue Watch Institute, we welcome the progress that you have made towards the implementation of mandatory reporting requirements for Canadian mineral extractive sector companies. We are pleased to provide you with the following recommendations on the consultation paper circulated by Natural Resources Canada (NRCan) in March.

As you are aware, since its formation over two years ago, the RRTWG has sought to build a consensus-based framework for the implementation of mandatory payment reporting requirements. The public release of the RRTWG's framework ('the Framework') in January of this year was viewed by both the mining industry and civil society as a significant global milestone in the movement for greater transparency in the mineral sector. The Framework provides guidance that is useful for Government of Canada policymaking and was directly relevant to the consultation paper published this spring. We are pleased that the Government has proposed a reporting standard that includes many key elements of the RRTWG framework and welcome the commitment to require the public disclosure of project-level payments to all levels of government, both in Canada and abroad. It is important to note that the RRTWG framework provides policy recommendations for the development of mandatory payment disclosure standards for the mineral sector.

In general, the RRTWG would like to acknowledge that many aspects of the Government's discussion paper reflect and are faithful to our framework, and that we are broadly supportive of the

Government's proposed direction to date. There are, however, some critical aspects of the Government's proposed mandatory reporting requirements about which we have concerns. These are outlined below.

In the first instance, we would like to address key issues already contained in the RRTWG recommendations; secondly, we would like to address new issues raised by the government's discussion paper:

1. RRTWG Recommendations

Definition of 'project'

As you are aware, the RRTWG places a high level of importance on embedding equivalency with requirements in other jurisdictions, such as Europe and the US, into reporting requirements in Canada. In order to ensure equivalency, the RRTWG drafted a definition of 'project' that draws from the reporting requirements established by the European Union's Accounting and Transparency Directives and the Securities and Exchange Commission's (SEC) 2012 rules implementing Dodd Frank Section 1504. The RRTWG definition of project included in the Framework is consistent with both of these jurisdictions, creating the conditions necessary for equivalency. The definition outlined in the consultation paper does not align with the Framework, nor with that proposed in other jurisdictions. The RRTWG strongly recommends that NRCan provide further details about the definition of 'project' and that they rely upon the guidance provided in the Framework, as this will help to ensure international alignment.

Threshold

The RRTWG would like the Government to revisit the concept of a dual threshold. As you are aware, the RRTWG proposed that a threshold of $100,000 CAD apply to large companies and that the lower threshold of $10,000 CAD apply only to venture issuers.

Exemptions

The RRTWG welcomes the Government of Canada's commitment not to allow exemptions within the reporting framework. Reporting exemptions run counter to the spirit of improving transparency with enhanced company disclosures, and would result in uneven reporting and differential treatment of companies.

Equivalency

The RRTWG recommends that the government include a clear equivalency provision within Canadian legislation. A clear equivalency provision will not only simplify reporting for companies that must report in more than one jurisdiction, but will also generate consistent, comparable data. The Working Group recommends that equivalent regimes include the current requirements of Section 1504 of the U.S. Dodd-Frank Act and those established in the EU Transparency and Accounting

Directives. In the event that jurisdictions develop and adopt additional similar transparency disclosure requirements, or amend reporting requirements currently deemed equivalent, each would have to be evaluated on a case-by-case basis to determine whether they are sufficiently equivalent to the Canadian standard. The RRTWG recommends that the government consider basing equivalency on an assessment of the following criteria (as outlined in the Framework): scope of reporting, definition of control; payment categories; minimum payment threshold; project definition; exemptions; format of disclosure; regularity of reporting; and standard of verification.

As the government moves forward, the RRTWG welcomes further information regarding the Government of Canada's plans to establish equivalency.

Venue

The RRTWG would also like to reiterate our support for close cooperation between provincial securities regulators and the federal government. As discussed in the Framework, provincial securities regulation is the preferred venue because there are existing mechanisms to establish equivalency and regulators have experience overseeing and managing disclosure. The RRTWG recommends that NRCan include an equivalency mechanism aligned with that discussed in the Framework for both reporting standards implemented in other jurisdictions and those developed by provincial securities regulators in Canada. This will allow private companies to report to the Government of Canada and publicly-traded companies to report through securities regulators with equivalent standards.

2. Additional Recommendations

The RRTWG is also pleased to provide additional advice on areas not addressed by the Framework, with respect to the inclusion of payments to Aboriginal entities, payments to foreign Indigenous entities, verification requirements, fines and penalties and the reporting process.

Payments to Aboriginal Entities

The consultation paper released by NRCan devotes significant attention to the inclusion of mandatory reporting standards for payments made to Aboriginal entities. As you are aware, the RRTWG made a deliberate decision not to address payments to Aboriginal entities in the Framework. We made this decision for several reasons: 1) such payments are not specifically referenced in the EU or US 2012 SEC rules; 2) we believed such an extension of the scope should only be developed in close collaboration with Aboriginal communities, a complex undertaking that would require considerable time and resources; and 3) defining Aboriginal entities and identifying the types of payments that would be included in public reporting is not straightforward. This issue intersects with the Crown's relationship with Aboriginal peoples and thus would more appropriately be led by governments and Aboriginal communities themselves. It should be noted that it took the RRTWG almost two years to build our framework, and the issues pertaining to Aboriginal entities, especially as described in the NRCan consultation paper, are likely to take a similar amount of time to work through, especially if there is a desire to do so in a collaborative and consultative way.

The RRTWG recommends that the Government follow a rigorous consultation process with Aboriginal communities before embarking on legislation that will affect these groups. By adopting a phased-in approach to the disclosure of payments to Aboriginal entities, the RRTWG believes the Government of Canada will be able to meet the milestones outlined in the consultation document for the disclosure of payment to governments, while allowing more time to address payments to Aboriginal entities. The RRTWG has a firm belief that appropriate consultation and research is the cornerstone of good policymaking; a rushed or hasty process could not only negatively impact relationships with Aboriginal communities but also produce a flawed policy.

In response to NRCan's question in the consultation paper regarding the types of Aboriginal entities covered by the disclosure regulations, the RRTWG would like to express concern about the possible inclusion of payments to Aboriginal-owned businesses for goods and services ancillary or preparatory to the commercial development of minerals. According to the 2012 SEC rules in the US, payments to government-owned companies that are preparatory or ancillary to the commercial development of resources are not covered by the reporting requirements.[1] It should be noted that the reporting framework developed by the RRTWG, in keeping with complementary international laws, focuses on the disclosure of payments to governments and government entities that manage public funds and are subject to public oversight and is not intended to cover the disclosure of payments between private entities for goods and services. It would be unfair to require the disclosure of payments to Aboriginal entities for goods and services, but not payments to their non-Aboriginal peers and could negatively impact the relationships between Aboriginal communities and companies.

Payments to foreign Indigenous entities

The RRTWG requests further clarification regarding the potential inclusion of payments to foreign Indigenous entities that is suggested in NRCan's consultation paper. The inclusion of payments to foreign Indigenous entities goes beyond the reporting standards introduced in other jurisdictions. Since the concept of an Aboriginal entity' and 'Indigenous entity" would be unique to Canadian disclosure requirements, this could put the Canadian government in the position of determining which communities and entities in other countries it considers to be Aboriginal or Indigenous for the purpose of judging reporting compliance of Canadian companies operating internationally.

Verification

To ensure proper verification of reports, the RRTWG recommends that the Government of Canada require that reports are accompanied by a certification statement that states that the information is correct to the best of their knowledge and is signed by a director or officer of the company in their professional capacity. The RRTWG asserts that this method of verification will provide NRCan, investors and the public with the assurance required.

[1] https://www.sec.gov/divisions/corpfin/guidance/resourceextraction-faq.htm

The RRTWG recommendation for verification stands in contrast to that proposed in the NRCan consultation paper, which suggests that companies would need to "ensure that the information they provide be verified by a third party, according to recognized accounting standards." Requiring companies to audit this data would require a level of assurance that is excessive in relation to other corporate information returns adding unnecessary, significant cost and administrative burden for compliance. Relevant points of comparison include corporate data submissions to Statistics Canada and the filing of corporate tax returns to the Canadian Revenue Agency which require certification consistent with what is recommended above.

Fines and Penalties

The NRCan consultation paper asks for recommendations regarding the inclusion of penalties for non-reporting. In the context of the RRTWG's recommendation to establish this reporting requirement through provincial securities regulators, the RRTWG recommended that fines and penalties be consistent with those already established within the securities regulatory regime. In this spirit, the RRTWG recommends that NRCan establish fines and penalties that: 1) are effective, proportionate and dissuasive; 2) are based on already established reporting requirements used for other purposes within Canada; and 3) take into consideration fines and penalties in other jurisdictions.

Within the many regulatory reporting requirements already established by the Government of Canada, there is a reporting requirement under the National Pollutant Release Inventory (NPRI) administered by Environment Canada under the jurisdiction of the *Canadian Environmental Protection Act*. The NPRI establishes fines for non-compliance with the reporting requirements that apply to both individuals and corporate entities. The RRTWG recommends that NRCan examine the possibility of drawing upon the NPRI as a benchmark to help establish appropriate fines for non-reporting and delayed reporting.

The RRTWG also recommends that NRCan examine the fines and penalties established by the UK government in relation to the transposition of the Transparency and Accounting Directives as the basis for establishing reasonable fines. Under the Accounting Directive there are fines for both non-reporting and delayed reporting, including a daily penalty.

Reporting Process

The RRTWG recommends that companies be required to file reports electronically with the Open Government portal, which, in collaboration with NRCan, will create a centralized and easily accessible record of these reports. Further, the RRTWG recommends that reports be filed in open and machine-readable format, both of which are essential to ensure that the data aligns with the G8's Open Data Charter, which the Government of Canada committed to implement in 2013.[2]

[2] http://data.gc.ca/eng/g8-open-data-charter-canadas-action-plan

With respect to the development of a reporting template, the RRTWG recommends that the Government of Canada examine different formats of reporting that conforms with the principles in the G8 Open Data Charter, such as XBRL. The RRTWG recommends that NRCan coordinate its work to develop a template with other jurisdictions implementing mandatory payment reporting standards.

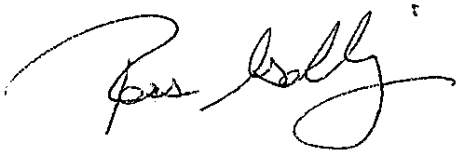
Conclusion

The RRTWG commends the Government of Canada for continuing to move forward in fulfilling the commitment made by the Prime Minister at the G8 Leaders Summit in June 2013. As you are aware, the RRTWG continues to advocate for implementation of reporting requirements at the provincial level and we strongly encourage the inclusion of equivalency mechanisms to recognize reporting regimes created within provincial securities regulations as a means to satisfy any federal requirements.

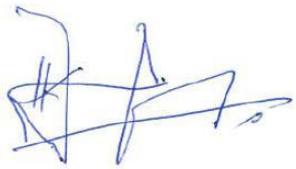
Thank you for the opportunity to provide additional recommendations beyond those included in the Framework. We would be happy to meet with you in person should you have any questions about any of the recommendations in this letter.

Sincerely,

Claire Woodside
Director, Publish What You Pay Canada



Ross Gallinger
Executive Director, Prospectors & Developers Association of Canada



Daniel Kaufmann
President, Revenue Watch Institute-Natural Resource Charter

Pierre Gratton
President and CEO, Mining Association of Canada