

Caution: This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the order. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction.

## **DRAFT ORDER MADE UNDER THE *ENVIRONMENTAL ASSESSMENT ACT***

### **Amending Order – Marathon Palladium Project**

***The French translation of this document may not accurately reflect the original English language version, and to the extent there is a discrepancy, the English version shall prevail.***

**WHEREAS** the *Environmental Assessment Act*, R.S.O. 1990, c. E.18 (“the Act”) applies to any enterprise or activity by Stillwater Canada Inc. and its successors and assigns as described in the agreement entered into by the Ontario Minister of the Environment, Conservation and Parks (the “Minister”) and Stillwater Canada Inc. under section 3.0.1 of the Act on March 8, 2011 (“the Project”);

**AND WHEREAS** the Project, which was determined to be subject to the *Canadian Environmental Assessment Act*, R.S.C. 1992, c. 37 (“CEAA”), was referred to a review panel under CEAA;

**AND WHEREAS** on August 8, 2011 the Minister and the federal Minister of the Environment entered into an agreement establishing a Joint Review Panel in respect of the Project;

**AND WHEREAS** the Minister issued an order under section 3.1 of the Act in respect of the Project, dated August 8, 2011 and attached hereto as Schedule 1 (“Harmonization Order”);

**AND WHEREAS** when CEAA was repealed the Project became subject to the *Canadian Environmental Assessment Act, 2012*, S.C. 2012, c. 19 (“CEAA 2012”);

**AND WHEREAS** in 2014 Stillwater Canada Inc. requested that the Joint Review Panel suspend the environmental assessment process, including the public hearing, until further notice;

**AND WHEREAS** CEAA 2012 was repealed and replaced with the *Impact Assessment Act*, S.C. 2019, c. 28 (“*Impact Assessment Act*”);

**AND WHEREAS** in 2019 Generation PGM Inc. and Stillwater Canada Inc. entered into a joint venture arrangement, pursuant to which Generation PGM Inc. acquired interest in the Project and is currently the designated operator with authority to represent the joint venture in respect of the Joint Review Panel;

**AND WHEREAS** in 2020 Generation PGM Inc. requested that the Joint Review Panel process commenced in 2011 be re-established;

**AND WHEREAS** the federal Minister of the Environment determined that a Joint Review Panel should be re-established pursuant to subsection 40 (1) of CEEA 2012;

**AND WHEREAS** pursuant to subsection 181 (1) of the *Impact Assessment Act*, the assessment by the Joint Review Panel commenced under CEEA 2012 is continued under CEEA 2012 as if that Act had not been repealed;

**AND WHEREAS** the Joint Review Panel Agreement has been amended to reflect the change in the proponent of the Project and administrative updates.

**AND WHEREAS** section 13 of Schedule 6 of the *COVID-19 Economic Recovery Act, 2020* came into force on July 21, 2020, amending several provisions of the Act.

**AND WHEREAS** on a day to be proclaimed Schedule 6 of the *COVID-19 Economic Recovery Act, 2020* will amend certain other provisions of the Act, including the repeal of Part II of the Act and replacement with Part II.3.

**AND WHEREAS** further to such amendments, the Project will be deemed to be a Part II.3 project.

**NOW THEREFORE**, under subsection 3.1 (2) of the Act, I order the following:

1. Effective the date on which this Amending Order is signed, the Harmonization Order is amended as follows:

(a) In clause 1 (a) of the Harmonization Order,

i. the definition of “Joint Review Panel” is deleted and replaced with the following:

“a body established by the federal Minister of Environment and Climate Change which meets the requirements of the *Canadian Environmental Assessment Act, 2012* and the Ontario *Environmental Assessment Act*, the members of which are appointed by the federal Minister of Environment and Climate Change, based on the recommendations of both the Agency, on behalf of Canada, and the Minister of the Environment, Conservation and Parks, on behalf of Ontario.”

ii. the definition of “Joint Review Panel’s Report” is deleted and replaced with the following:

“the report produced by the Joint Review Panel, which contains the Joint Panel's rationale, conclusions and recommendations to the provincial Minister of the Environment, Conservation and Parks and the federal Minister of Environment and Climate Change, with respect to the

environmental assessment of the Project. This report will serve as recommendations to both the provincial Minister of the Environment, Conservation and Parks and the federal Minister of Environment and Climate Change.”

- (b) Clause 1 (b) of the Harmonization Order is deleted and replaced with the following clauses:

“(b) Subsections 5 (3) and 5 (4) are varied by replacing the references to “an undertaking” with “the Project” and by deleting the references to “the Tribunal”, with any necessary modifications.

“(b.1) Subsection 5 (5) is varied by replacing “an undertaking” with “the Project”.”

(b.2) Subsection 11.4 (1) is varied by replacing the reference to “an application” with “the Joint Review Panel’s Report”, by replacing the reference to “an undertaking” with “the Project” and by deleting the reference to “the Tribunal”, with any necessary modifications.

(b.3) Subsection 11.4 (3.1) is varied by replacing the references to “the undertaking” with “the Project” and by deleting the reference to “the Tribunal”, with any necessary modifications.

(b.4) Subsection 11.4 (4) is varied by deleting the reference to “the Tribunal”, with any necessary modifications.

- (c) In clause 1 (d) of the Harmonization Order, the following is added after the reference in 9. (1) (b) to “(iv) Such changes in the Project the Minister considers necessary,”:

“(iv.1) A process to be followed in respect of any changes to the Project that the proponent may wish to make after the approval is given, which process may include granting authority to the Director or Minister to,

(A) require the proponent to engage in additional consultation, and to provide additional information, in respect of proposed changes, and

(B) give approval, attach conditions to the approval or refuse to give approval to proceed with the changes,

(iv.2) That the process referred to in subclause (iv.1) is only available for specified changes or classes of changes to the Project,”

(d) In clause 1 (d) of the Harmonization Order, the following is added after 9. (1) (c):

“9. (1.1) A process mentioned in subclause (1) (b) (iv.1) may be set out in an approval or incorporated by reference into an approval.”

(e) Condition 2 of the Harmonization Order is amended by,

- i. deleting the reference to “subsections 11.4 (1), (4) and (5),”; and
  - ii. deleting the reference to “sections 36, 37, 37.2 and 38” and replacing it with “sections 36, 37, 37.2, 38 and 38.1”.
2. Effective the date specified in condition 4 below, the Harmonization Order is further amended by deleting condition 1 and replacing it with the following:
1. The following requirements of the Act have been varied in order to facilitate the effective operation of the requirements of both jurisdictions, and shall apply to the Project:

(a) Section 1 of the Act is varied by,

- i. deleting the definition of “Tribunal” and replacing it with the following:

“Joint Review Panel” means a body established by the federal Minister of Environment and Climate Change which meets the requirements of the *Canadian Environmental Assessment Act, 2012* and the Ontario *Environmental Assessment Act*, the members of which are appointed by the federal Minister of Environment and Climate Change, based on the recommendations of both the Agency, on behalf of Canada, and the Minister of the Environment, Conservation and Parks, on behalf of Ontario.

- ii. adding the following definition:

“Joint Review Panel’s Report” means the report produced by the Joint Review Panel, which contains the Joint Panel’s rationale, conclusions and recommendations to the provincial Minister of the

Environment, Conservation and Parks and the federal Minister of the Environment, with respect to the environmental assessment of the project. This report will serve as recommendations to both the provincial Minister of the Environment, Conservation and Parks and the federal Minister of the Environment.

- (b) Subsections 17.2 (4) and (5) of the Act are varied by deleting the reference to “the Tribunal”, with any necessary modifications.
- (c) Section 17.15 of the Act is varied by deleting subsections (1) to (5) and replacing them with the following:

17.15 (1) The Minister, with the approval of the Lieutenant Governor in Council, may:

- (a) Give approval to proceed with the Part II.3 project in accordance with the Joint Review Panel’s Report;
- (b) Give approval to proceed with the Part II.3 project subject to such conditions as the Minister considers necessary and in particular requiring or specifying:
  - (i) The methods and phasing of the carrying out of the Part II.3 project,
  - (ii) The works or actions to prevent, mitigate or remedy effects of the Part II.3 project on the environment,
  - (iii) Such research, investigations, studies and monitoring programs related to the Part II.3 project and reports thereof, as the Minister considers necessary,
  - (iv) Such changes in the Part II.3 project as the Minister considers necessary,
  - (v) A process to be followed in respect of any changes to the project that the proponent may wish to make after the approval is given, which process may include granting authority to the Director or Minister to,
    - (A) require the proponent to engage in additional consultation, and to provide additional information, in respect of proposed changes, and

- (B) give approval, attach conditions to the approval or refuse to give approval to proceed with the changes,
- (vi) That the process referred to in subclause (v) is only available for specified changes or classes of changes to the project,
- (vii) That the proponent enter into one or more agreements related to the Part II.3 project with any person with respect to such matters as the Minister considers necessary,
- (viii) That the proponent complies with all or any of the provisions of the Joint Review Panel's Report that may be incorporated by reference in the approval,
- (ix) The period of time during which the Part II.3 project or any part thereof shall be commenced or carried out; or
- (c) refuse to give approval to proceed with the Part II.3 project.
- (2) A process mentioned in subclause (1) (b) (v) may be set out in an approval or incorporated by reference into an approval.
- (3) The Minister shall consider the following matters when making the decision:
  - (a) The purpose of the Act;
  - (b) The Joint Review Panel's Report; and
  - (c) Such other matters as the Minister considers relevant to his or her decision.
- (4) The Minister shall notify the proponent of his or her decision and shall give the proponent written reasons for it.
- (5) The Minister shall also provide a copy of the decision to the federal Minister of Environment and Climate Change and shall provide notice to participants of the Joint Review Panel process that the decision is available and published on the Canadian Impact Assessment Registry, being the registry established under section 104 of the *Impact Assessment Act*.
- (d) Subsection 17.24 (1) of the Act is varied by:

- (i) deleting the reference to “an application” and replacing it with “the Joint Review Panel’s Report”; and
  - (ii) deleting the reference to “the Tribunal”, with any necessary modifications.
- (e) Subsections 17.24 (4) and 17.24 (5) of the Act are varied by deleting the references to “the Tribunal”, with any necessary modifications.
- (f) Section 34, clause 35 (b) and section 37.1 of the Act are varied by deleting references to “the Tribunal” and replacing them with “the Joint Review Panel”, with any necessary modifications.
3. Effective the date specified in condition 4 below, condition 2 of the Harmonization Order is further amended by deleting the reference to “sections 12 and 12.2” and replacing it with “subsection 17.2 (6), section 17.27” and by deleting the reference to “38 and 38.1” and replacing it with “38, 38.1 and 38.3”.
4. The effective date of conditions 2 and 3 of this Amending Order is any such date that section 29 of Schedule 6 of the *COVID-19 Economic Recovery Act, 2020*, S.O. 2020, c. 18 may be proclaimed in force by the Lieutenant Governor.

The reasons for this Order are as follows:

- 1. To reflect amendments to the *Environmental Assessment Act* as a result of Schedule 6 of the *COVID-19 Economic Recovery Act, 2020*, S.O. 2020, c. 18.
- 2. To reflect an amendment to the *Environmental Assessment Act* as a result of Schedule 6 of the *More Homes, More Choice Act, 2019*, S.O. 2019, c. 9.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 2022 at TORONTO.

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David Piccini  
Minister of the Environment, Conservation and Parks