

July 13, 2012

Investigations Staff  
Ontario Securities Commission  
20 Queen Street West  
Suite 1903  
Toronto, Ontario  
M5H 3S8

Dear Mesdames/Sirs:

**Re: Excellon Resources Inc. (EXN)**

We represent a Mexican organization, the Proyecto de Derechos Económicos Sociales y Culturales, A.C. (ProDESC), that is supporting a community in conflict with Excellon Resources.

Excellon is a junior mineral resource company listed on the Toronto Stock Exchange (GLR: TSX). It operates primarily in Durango and Zacatecas States in Mexico, producing silver, lead and zinc from high-grade manto deposits contained in the Platosa Property. ProDESC works with the Ejido La Sierrita community (Ejido), the landowners of the land on which the Excellon mine is located. The community alleges that Excellon has not performed several of its obligations under the land rental agreement that provides for essential access to the La Platosa mine, and has failed to negotiate in good faith. With no other viable options, the community blockaded the mine on July 8, 2012. The community claims that the breaches of the agreement justify rescission of the contract. Should this happen, Excellon will not have a legal right to conduct mining activities on the Ejido's land.

This is a request to investigate whether there have been breaches of the *Securities Act* disclosure requirements under section 75(1), which obligate companies to disclose material changes "forthwith".

The fact that the mine may lose access to the land on which the mine operates is a material change.<sup>1</sup> Excellon has not reported this fact. Instead, on the day after the blockade, on July 9, Excellon issued a press release announcing encouraging results from a drill hole close to the La

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<sup>1</sup> *Rex Diamond Mining Corp (Re)*, 2008 LNONOSC 631, 31 OSCB 8337

Platosa mine.<sup>2</sup> On July 11, Excellon issued its first press release on the blockade, indicating that there was an “illegal action” and suggesting that Mexican authorities would put an end to the blockade within “24 to 48 hours.”<sup>3</sup> In neither press release does Excellon mention that there is a serious threat to its continued operations resulting from a dispute with the owners of the land. Section 75 requires that the news release reveal “the nature and substance” of the material change. Here, while there may be a short-term loss of income owing to the blockade, the real issue is the long-term viability of the agreement to access the land. Whether or not the community members are removed from the mine site, if the contract is breached and rescinded, Excellon will lose its access to the Ejido’s lands.

### *Materiality*

Excellon’s March Management Discussion and Analysis (MD&A) report indicates that 100 percent of the ore processed in 2011 (59,405) was extracted from the La Platosa Mine.<sup>4</sup> Further, Excellon’s latest Annual Information Form (AIF) stated that:

The Company’s operations at the Platosa mine and the Miguel Auza mill in Mexico will account for all of the Company’s commercial production in 2012, and will continue to account for all of the Company’s commercial production until such time as any other potential mines on the Company’s properties are developed and placed into commercial production, or the Company makes an acquisition of a producing mine. Any adverse condition affecting mining or milling conditions at the Platosa mine or the Miguel Auza mill could be expected to have a material adverse effect on the Company’s financial performance and results of operations.<sup>5</sup>

### *Background*

The Ejido is composed of 127 shared landowners and holds approximately 6,436 hectares of land in Durango, of which 2,691 hectares is designated as common use land. Excellon began exploration in the municipality of Tlahualilo, Durango and in 2004, Excellon rented twenty-six hectares of common use land for \$300,000 pesos M.N. per hectare for a period of 30 years. On February 14, 2007, Excellon sought to lease an additional 1100 hectares of land. On April 6, 2008, after months of conflict, a blockade of the mine and subsequent negotiations, the Ejido and the company signed a lease agreement (the Agreement), which included a number of clauses relating to compensation, preferential hiring, the establishment of a water treatment plant and access to other lands belonging to the Ejido.<sup>6</sup> The Ejido entered into this lease agreement with

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<sup>2</sup> “Excellon intersects 55 metres of source-style mineralization 1.1 km northewst of Platosa Mine” <http://www.excellonresources.com/Home.aspx> (accessed July 11, 2012)

<sup>3</sup> “Excellon reports on illegal action and union vote at La Platosa”, <http://www.excellonresources.com/Home.aspx> (accessed July 11, 2012)

<sup>4</sup> Management Discussion and Analysis report, Excellon, March 29, 2012 at 4

<sup>5</sup> Annual Information Form, Excellon, March 29, 2012 at 22 and 23

<sup>6</sup> Appendix 1: “Contrato de ocupación temporal para el uso y disfrute de las tierras de uso común”, signed by La Sierrita and Minera Excellon de México, S.A. de C.V., April 6, 2008. This attachment is in Spanish. A translation will be provided shortly.

Excellon because it included several provisions requiring Excellon to mitigate the impact of mining operations and to help the community develop.

*A pattern of reluctance to negotiate and failure to disclose*

The community has attempted to meet with Excellon to resolve the outstanding contractual issues for almost a year. The Company has been aware that failure to resolve these matters could constitute grounds for rescission of the contract.

In the fall of 2011, in order to address Excellon's non-compliance with the Agreement, the community sought a dialogue to discuss potential changes in the Agreement where the company had failed to perform as promised.<sup>7</sup> Representatives of the Ejido spoke in person with Excellon CEO Jeremy Wyeth during his visit to the mine in August of 2011. The two sides sat down to negotiate on January 30, 2012 but the company representatives left the table in under an hour, refusing to discuss their failure to comply with the contract. At this meeting, the Ejido leadership clearly stated that the company's continual non-compliance with the terms of the Agreement would result in a rescission of the contract.<sup>8</sup>

The AIF dated March 29, 2012 states that the company's lack of ownership of surface rights and potential loss of access to lands, as well as the dependence on the Platosa mine, are a general risk.<sup>9</sup> However, the AIF does not disclose the breakdown of the negotiations with the Ejido and the fact that the Ejido informed the representatives of Excellon at the January 30, 2012 negotiations that the company's violations of the Agreement are grounds for rescission of the contract. Excellon's vague, general disclosure of risk owing to loss of access to lands is insufficient where there is an identifiable, specific material risk that the company will lose its access to land vital to its mining operations.

Excellon agreed to meet again in June after members of the community went to the Annual General meeting of Excellon in Toronto in May, 2012 and filed a complaint with the OECD National Contact Point. Representatives of the company attended meetings on June 12 and June 27, but they did not find a resolution for the breaches to the agreement. A further meeting was planned for July 6, 2012, but company officials cancelled the meeting on July 4, 2012.<sup>10</sup> The Company's failure to meet with the Ejido in good faith has resulted in a peaceful protest of the mine on July 9, that has resulted in the suspension of operations in the La Platosa facility.

This pattern of unwillingness to enter into a dialogue and lack of transparency was noted in the October 2011 report of the federal government's Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor.<sup>11</sup> In April 2011, the CSR Counsellor was asked by ProDESC

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<sup>7</sup> Appendix 2: Affidavit of Daniel Pacheco, July 11, 2012

<sup>8</sup> *ibid*

<sup>9</sup> Annual Information Form, *supra*, note 5 at 24

<sup>10</sup> Affidavit, *supra*, note 7

<sup>11</sup> Appendix 3: Office of the Extractive Sector Corporate Social Responsibility (CSR) Counsellor, *Closing Report: Request for Review File #2011-01-MEX* ([http://www.international.gc.ca/csr\\_counsellor-conseiller\\_rse/index.aspx?view=d](http://www.international.gc.ca/csr_counsellor-conseiller_rse/index.aspx?view=d))

and members of a union to approach Excellon to resolve outstanding labour issues. Her report is telling. She pointed out several instances where the information she was given by Excellon was incorrect. For example, she was told that one of the unions vying for certification was “illegal”, but she found no evidence of its illegality. She was also told that complaints were the result of “one or two disgruntled individuals”, but she found that, in fact, there were legitimate “project-affected people” who had expressed a desire to improve relations with the company: “At no time, did any of the people we spoke with express unreasonable demands of the Office or the company.”<sup>12</sup> After going to the mine site at the insistence of Excellon, the Counsellor contacted the company twelve times to set up a follow up meeting, but was unsuccessful. Then, on September 19, 2011, the company sent her an email suddenly withdrawing from the process.

### *Alleged violations and non-performance of the agreement*

1. Excellon violated the Agreement by exploring outside of the designated 1100 hectares of communal land.

Excellon provided notice of its intent to explore beyond the 1100 hectares of leased land on March 15, 2011, however, in breach of clause 6 of the Agreement, the company did not wait for approval from the Ejido General Assembly prior to conducting the exploration. Between March 22 and March 24, 2011, community members witnessed several vehicles pass through fragile desert terrain, destroying vegetation to establish the test sites, which were each approximately 50 meters in diameter. Once a testing site was established, vehicles continually passed over roads cleared of vegetation to deliver the water necessary for perforation and exploration activities.<sup>13</sup>

In August 2011, representatives of the corporation admitted that they had failed to seek the General Assembly’s consent and proposed that the Ejido allow exploration on an additional 30 hectares of land. The leadership refused to give consent, citing reasons of Excellon’s non-compliance with the Agreement.<sup>14</sup> The company has admitted that it violated the Agreement in 2012. For example, in a meeting on June 27, 2012, the company representative Eduardo Ramírez Rosell and La Platosa General Manager Pablo Gurrola admitted to violating this term of the agreement and acknowledged the risk of rescission of the contract.<sup>15</sup>

As noted above in the Agreement, a violation of the clause respecting exploration is grounds for rescission of the entire contract.

2. To date, Excellon has not fulfilled its obligation to build a water treatment plant

Of particular concern to the Ejido is Excellon’s failure to treat the water expelled in the mining process. Under Clause 4(G) of the Agreement, Excellon is required to construct and install a water treatment plant to treat water extracted from the mine so that it is suitable for agricultural

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<sup>12</sup> *ibid*, p 16

<sup>13</sup> Affidavit, *supra*, note 7

<sup>14</sup> *ibid*

<sup>15</sup> *ibid*

use by the community. Tests on the water by both a government agency<sup>16</sup> and a university<sup>17</sup> show high levels of salt that make it unsuitable for normal agricultural purposes. The general manager at La Platosa has advised the Ejido leadership and individual farmers that they should feel free to use the water for agricultural use; however, signs posted around the mine, which read “Water Not Appropriate for Agriculture or Cattle”, indicate otherwise.<sup>18</sup>

The Agreement provides that a violation of the clause respecting the water treatment plant is grounds for rescission of the entire contract.

### 3. Preferential contracts and preferential hiring

Clause 4 provides for preferential contracting of community members for providing services to a company cafeteria, for providing transportation services and for hiring at the mine. The community alleges that these provisions have not been honoured.

The Agreement provides that a violation of the clause respecting preferential hiring is grounds for rescission of the entire contract.

### *Summary*

In sum, Excellon has failed to communicate the true nature of a conflict that creates a serious risk for the La Platosa mine, a facility that constitutes the corporation’s main source of revenue. For this reason, we request that the Ontario Securities Commission investigate whether and to what extent the filings of Excellon have failed to meet the disclosure requirements under Ontario’s securities legislation and policies.

If you have any questions please feel free to contact me at [simai@osgoode.yorku.ca](mailto:simai@osgoode.yorku.ca).

Yours sincerely,

Shin Imai  
Barrister and Solicitor  
Justice And Corporate Accountability Project

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<sup>16</sup> Appendix 4: Laboratorio Agropecuario Regional de la Comarca Lagunera, June 4, 2011. The concluding paragraph in Appendix 4d will be translated and forwarded with the the translation of the contract.

<sup>17</sup> Appendix 5: Universidad Autonoma Agraria “Antonio Narro”, June 13, 2011

<sup>18</sup> Appendix 6: Photographs of Company Signs, March 22-23, 2011.