

Building More Mines Act, 2023

FACT SHEET

April 2024

BUILDING MORE MINES ACT, 2023 **AND** **O. REG 35/24 (REHABILITATION OF LANDS)**

Through the *Building More Mines Act, 2023*, (BMMA) Ontario has made changes to the *Mining Act* and created a new regulation, Ontario Regulation 35/24 (Rehabilitation of Lands) (the “Regulation”) which replaced Ontario Regulation 240/00 (Advanced Exploration, Mine Development and Closure under Part VII of the Act) as of April 1, 2024.

The new regulatory framework is intended to reduce administrative burden, clarify requirements for rehabilitation and create regulatory efficiencies to ensure Ontario has a modern and competitive regime for mineral exploration and development, all while maintaining our public health and safety and environmental standards, and meeting Duty to Consult obligations.

In particular, the intent of the BMMA was to develop a fully certified, proponent driven process strengthened by the introduction of a “qualified person” certification system to replace the current ministry practice of reviewing draft closure plans. Coupled with other changes that make Ontario’s requirements clearer and, in some cases, more flexible, reducing the ministry’s involvement prior to submission should make closure planning more efficient for proponents, while still ensuring fully compliant, high quality closure plans are received by the ministry for filing.

This fact sheet provides a high-level summary of some of the changes. More detail on certain specific changes is provided in other fact sheets, found on the Ministry of Mines “Mining Act Resources” webpage.

Technical Certifications

The regulation establishes the requirement that qualified persons provide up-front technical certifications to establish that the rehabilitation measures in closure plans either conform to the standards in the Mine Rehabilitation Code of Ontario or, where they do not conform, meet or exceed the objectives in the Code and are consistent with one or more of: (i) recognized industry standards and best practices, (ii) sound scientific principles, and (iii) good engineering practice.

This new requirement of the regulatory framework, in lieu of the current practice of ministry review of draft closure plans, will ensure that the fully certified closure plans

submitted to the ministry are compliant with the requirements of the regulation and the Code.

For existing filed closure plans, these certificates of conformance are required when the closure plan is amended, although only to the extent necessary to cover the Parts of the code that are relevant to the changes made through the amendment.

Additionally, proponents now have the ability to include non-conforming measures that meet or exceed the objective of the Code provided that a qualified person gives the necessary certifications. This was previously available under the prior O. Reg. 240/00, but only with a ministry exemption; now, these measures can be included without an exemption.

Qualified Persons

The following persons are considered qualified persons under the Act, although in some cases they can only provide certifications in respect of particular Parts of the Code:

- **Regulated professional** - a professional engineer under the Professional Engineers Act or a member of the Association of Professional Geoscientists of Ontario, the Ontario Association of Landscape Architects or the Ontario Institute of Professional Agriologists.
- **Non-regulated person** - an individual who holds a university degree in science or engineering and has at least five years of relevant experience in respect of the subject matter of the certificate.
 - Note that non-regulated persons can only provide certifications related to surface water monitoring (Part 5 of the Code) and revegetation (Part 9 of the Code).

Proponent (Corporate) Certification

Recognizing that not all corporations use the same titling system for officers, and that corporations can vary in size, the new O. Reg 35/24 has expanded the definition of "senior officer" to include additional eligible positions, including a Chair or Vice-Chair, a Chief Executive Officer, a Chief Operating Officer, and a Chief Administrative Officer, a president or vice-president, and "any other duly appointed officer" of the corporation. Additionally, the definition has been amended to provide that where a proponent does not have a Chief Financial Officer, a person performing a similar function in the corporation may provide the corporate certification. These changes are intended to provide operational flexibility to proponents, while ensuring that those in senior positions continue to have accountability for closure planning.

Updating the Mine Rehabilitation Code

The Code has been moved out of regulation and into policy, making it easier for the ministry to make timely updates that respond to changes in rehabilitation best practices and technological advances.

Changes to objective statements have been made to minimize ambiguity and ensure that Ontario's intentions for rehabilitation are adequately expressed. Other changes

made clarify the timing and content of certain reports submitted together with closure plans, or subsequently required when rehabilitation measures are carried out.

A new Part of Code (Part 10) covering standards, procedures, and requirements for rehabilitating mine infrastructure, machinery and equipment, was added to clarify rehabilitation requirements, address gaps and internal inconsistency, and build in flexibility, where appropriate.

Conditional Filing

This mechanism allows the Minister to issue an order permitting the filing of a closure plan or closure plan amendment that does not meet all legal requirements at the time of submission, subject to the condition that the outstanding requirements are met within a set timeframe, and any other terms and conditions that may be included by the Minister in the order.

Proponents must apply for conditional filing orders in the approved form.

If a conditional filing order is issued, a copy of the order must be submitted with the closure plan or closure plan amendment submission.

The decision to issue a conditional filing order is a discretionary decision for the Minister, with regard to the purpose of the Act (including any potential Duty to Consult requirements, and any implications for the environment, public health, and safety associated with the conditional filing order).

Phased Financial Assurance

This process provides proponents with a mechanism to submit financial assurance associated with their closure plan in phases tied to the development schedule of a project.

O. Reg 35/24 sets out the requirements for submitting financial assurance (FA) in the form of Phased FA instead of providing it up-front when the closure plan (CP) or, where applicable, closure plan amendment (CPA), is submitted. There is no application form required; rather, the submitted CP/ CPA must contain a phasing schedule that meets the applicable requirements of O. Reg. 35/24.

Different Post-Closure Use or Condition

The definition of “rehabilitate” in the *Mining Act* now allows for the consideration of post-closure land uses where the proposed use is either i) compatible with adjacent land, or ii) suitable for a different use or condition.

Proponents must apply for the different post-closure use or condition in the approved form. If approved, the proponent would then be able to submit a closure plan or closure plan amendment, including any deviations from the Code associated with the post-closure state determination.

Class of Facilities Exclusion

Under subsection 1(1) of the Mining Act, the definition of “mine” is broad, but “does not include any prescribed classes of plant, premises, or works”. The excluded classes of facilities were previously set out in the former O. Reg. 240/00 and have been moved to the General Regulation (O. Reg. 45/11), under section 0.1.

The existing classes of facilities excluded remains the same and a new class of facilities has been added to the list under O. Reg. 45/11 to include facilities which primarily process certain specific battery mineral precursors. These facilities, which function more like a manufacturing facility than a mine, would no longer be included in the definition of “mine” and accordingly would not require a closure plan.

Minister’s Decision-Making Authority

Similar to other provisions in the *Mining Act* and other resource related legislation, the *Act* and related regulations have been amended to give the Minister decision-making authority over mine closure planning and rehabilitation that was previously vested in the Director of Mine Rehabilitation.

Where the Minister exercises these powers, the ministry will continue to provide advice, consistent with the Act, to inform decision-making. The Minister may also delegate day-to-day decision-making to others within the ministry using existing delegation powers.

Any decision made by the Minister, or a delegate, must always be consistent with the purpose of the Act and all legislative and regulatory requirements.

Streamlining the Regulation

While much of the Regulation is derived from the former O. Reg 240/00, numerous structural and drafting changes have been made to eliminate duplication and overlap, including changes to clarify requirements relating to rehabilitation standards, exemption mechanisms, stages of closure (temporary suspension, inactivity and closed out), and revegetation.

Transition Provisions

An important change arising out of the new Regulation is that there is now a requirement for closure plans (and, to the extent applicable, closure plan amendments) to contain certificates from one or more qualified persons regarding the closure plan’s conformance with the Mine Rehabilitation Code of Ontario (“certificates of conformance”).

The ministry appreciates that many proponents are currently in the process of preparing closure plans and closure plan amendments, and may not have made arrangements to obtain such certifications. As a result, the Regulation contains transition provisions relating to this requirement.

These provisions are found in Section 28 of the O. Reg 35/24. Under these provisions, the ministry is providing a two-year transition period, from April 1, 2024 to April 1, 2026. Proponents that have submitted a Notice of Project Status or Notice of Material Change on or before July 1, 2024 are not required to include these certificates of conformance in the closure plan or closure plan amendment to which the notice relates, as long as the closure plan is submitted on or before April 1, 2026.

Note, however, that if a proponent wishes to include a “certified alternative measure” in a closure plan, a certificate from a qualified person in the appropriate form (Form 4 to the Regulation) is necessary.

During the transition period, where a closure plan or closure plan amendment will not contain certificates of conformance in reliance on the transition rules, the Ministry expects that a draft of the closure plan be submitted for Ministry review and comment prior to formal submission for filing.

However, proponents remain welcome to include certificates of conformance, even if Section 28 would apply given the timing of their notice of project status or notice of material change. If a proponent intends to provide certificates of conformance in the closure plan or closure plan amendment, ministry advance review should not be necessary, and reviews that are currently underway may be discontinued. Proponents in these circumstances should discuss the matter with their Mineral Exploration and Development Consultant.

While this fact sheet is intended to provide information on a variety of changes associated with the *Mining Act* and its regulations, it is not legal advice. Legal requirements can be found in the *Mining Act* and its regulations. While all efforts are made to ensure the accuracy of this information, if there is any discrepancy between this fact sheet and the Act or its regulations, the provisions of the Act and/or regulation prevail.