

Building More Mines Act, 2023

FACT SHEET

April 2024

CONDITIONAL FILING ORDERS

Through the *Building More Mines Act, 2023*, sections 140, 141 and 143 of the *Mining Act* (the Act) have been amended to enable conditional filing orders as of April 1, 2024.

A conditional filing order allows a proponent to submit a closure plan (CP) or closure plan amendment (CPA) that does not meet all statutory requirements at the time of submission.

The Minister may issue a conditional filing order of a CP or CPA if the proponent submits a request for conditional filing in the prescribed form and manner, and the Minister determines that the order would be consistent with the purposes of the Act.

All conditional filing orders will include terms and conditions, including the condition that the proponent meet the outstanding requirements within a specified time and manner, and any other terms or conditions the Minister considers appropriate. A proposal to issue a conditional filing order may be subject to public notice and comment under the *Environmental Bill of Rights*, and may also be subject to consultation requirements associated with the Crown's duty to consult.

Conditional filing orders are intended to prevent delays in proponent submission of CPs and CPAs by allowing for required items to be deferred if they are not available at the time the proponent wishes to submit the CP/CPA, and if the deferral does not compromise the integrity of the CP.

While it is possible to apply for a conditional filing order for any required element of a CP/CPA, the ministry expects that conditional filing orders will typically be requested in relation to studies not planned or required in the near term (i.e., during construction) and can reasonably be deferred without compromising the integrity of the closure plan (e.g. studies that require data to be collected over numerous years, where there is sufficient baseline information to develop a closure plan, or amend the closure plan, despite such study being incomplete at the time of submission).

The ministry does not anticipate being open to approving conditional filing orders that would result in Ontario holding an amount of financial assurance that is insufficient to cover the rehabilitation work required for the project.

How to apply for conditional filing

Proponents must submit a request for conditional filing to the Minister in the approved form. Proponents may submit a request for conditional filing together with, or at any time after, submission of a Notice of Project Status (NPS) or Notice of Material Change (NMC) and prior to their closure plan submission. The information provided in the form will assist the Minister in making a decision on whether a conditional filing order is appropriate, and assessing what, if any, notice or consultation requirements may apply.

It is recommended that proponents submit their requests well in advance, so, if an order is issued, the terms and conditions of the order can be factored into the proponent's planning process without resulting in project delays.

The application form requires the following information:

- A list and description of each requirement that is not expected to be met in the proposed CP/CPA submission;
- A proposed delivery date for the deferred item(s);
- An explanation for why the requirement is not proposed to be met at the time of submission and why the absence of the requirement would not impair the ability of the proponent to determine or propose adequate rehabilitation measures for the rest of the items in the closure plan;
- An explanation of environmental, health, or public safety implications or uncertainties that could derive from the absence of the required item at the time of submission, if such implications or uncertainties exist; and
- If the requirement involves the completion of a study or report, the estimated third-party market costs of meeting the requirement.

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

A CP or CPA that relies on a conditional filing order will need to contain the appropriate certification statements. For the proponent's certification, Form 2 should be used; for qualified person certifications, as applicable, Form 4 should be used. These forms are contained in O. Reg 35/24, and downloadable versions are provided for convenience on the Central Forms Repository - <https://forms.mgcs.gov.on.ca/>.

While this fact sheet is intended to provide information on conditional filing under the *Mining Act*, it is not legal advice. Requirements relating to conditional filing are contained 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.