

# Building More Mines Act, 2023

## FACT SHEET

April 2024

### DISCRETIONARY EXEMPTIONS

The prior regulation prescribing the standards for mine rehabilitation and closure planning (Ontario Regulation 240/00) contained numerous provisions to provide discretionary exemptions from compliance with the regulatory requirements respecting rehabilitation measures. Ontario Regulation 35/24, which revokes and replaces O. Reg. 240/00, has consolidated these provisions into a single section, and clarified the process for requesting an exemption, while maintaining the same grounds for exemptions to be available. The new exemption provisions are found in section 5 of O. Reg. 35/24.

In addition to consolidating the exemption provisions, O. Reg. 35/24 contains a mechanism for closure plans to contain rehabilitation measures that vary from the requirements of the Mine Rehabilitation Code (the Code), as long as the measures meet or exceed the objectives of the applicable Part of the Code. Under O. Reg. 35/24, these are called “certified alternative measures”. **It is not a ministry exemption; rather, certified alternative measures are automatically permitted in a closure plan or closure plan amendment, provided that the associated certifications from qualified persons are included in the closure plan or closure plan amendment submission.**

The “certified alternative measure” mechanism relates only to variances from the Code.

By contrast, the grounds for Minister’s discretionary exemptions under section 5 of O. Reg 35/24 are broader. Proponents must apply for these exemptions in writing to the ministry.

After receiving an application, the Minister has the discretion to issue an exemption under subsection 5(1) of O. Reg. 35/24, on one or more of the following grounds:

- a) it is impracticable to carry out the requirement;
- b) the requirement would adversely affect the environment;
- c) the requirement is inconsistent with a land use control set out in a municipal by-law or an order of the Minister of Municipal Affairs and Housing made under the *Planning Act*; or
- d) the proponent has specified in the closure plan a rehabilitation measure that meets or exceeds the objective of the requirement.

If an exemption is granted, the proponent is not required to comply with a requirement under O. Reg. 35/24 respecting a rehabilitation measure, subject to any terms or conditions the Minister may specify. This could include, but is not limited to, requirements under the Code. Where an exemption is granted, any corresponding requirement in Schedule 2 does not apply. In other words, where an exemption is issued regarding a requirement, and where Schedule 2 would normally require the closure plan to contain details of how the requirement will be carried out, the closure plan can be filed without those details.

Note that where an exemption request relates to a requirement that is currently captured in a filed closure plan, the closure plan may need to be amended if the exemption is approved. This is because, as confirmed by subsection 1(6) of O. Reg. 35/24, nothing in the regulation affects the operation of section 141.2 of the *Mining Act*. Section 141.2 of the *Mining Act* provides that proponents must comply with their filed closure plan. So, if a rehabilitation measure in a filed closure plan will not be performed on the basis of an exemption, the closure plan should be amended to reflect this; the amendment should also capture any substitute rehabilitation measures that are planned instead, as well as any implications for the costing schedule and financial assurance.

#### **How to apply for an exemption under subsection 5(1) of O. Reg. 35/24**

A proponent must apply in writing for an exemption under subsection 5(1) of O. Reg. 35/24. There is no specific application form required; however, proponents should describe the requirement from which they wish to be exempted, and the rationale for the proposed exemption in their written submission, with specific reference to the grounds under subsection 5(1) that they consider to be applicable. The request should be clear and contain sufficient information for the ministry to evaluate and make a decision. The written application can be sent by email to [partVIIsubmissions@ontario.ca](mailto:partVIIsubmissions@ontario.ca).

While an exemption request can be received at any time, including at the same time as a closure plan or closure plan amendment is formally submitted for filing, the ministry recommends that proponents apply as early as possible in their planning process. An exemption request is a discretionary decision, and it is advisable for proponents to leave time to ensure that the results of the decision can be reflected in the drafting of the closure plan, prior to being finalized and certified. If a closure plan or closure plan amendment is submitted with the expectation that an exemption will be granted, and the exemption is ultimately not granted, if edits are required as a result of the exemption decision, or if the exemption request cannot be processed within the 45-day service standard for filing, the closure plan may be returned for resubmission pursuant to subsections 140(5)(b), 141(5)(b), or 143(6)(b) of the *Mining Act*, as applicable.

The Minister will notify the proponent in writing if an exemption is granted. A copy of this notification must then be attached to the submitted closure plan, or the next submitted closure plan amendment, as an appendix.

While this fact sheet is intended to provide information on discretionary exemptions under the O. Reg. 35/24, it is not legal advice. The applicable provisions regarding exemptions are set out 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.