

# Building More Mines Act, 2023

## FACT SHEET

April 2024

### PHASED FINANCIAL ASSURANCE

Through the *Building More Mines Act, 2023*, effective April 1, 2024, the *Mining Act* (the Act) and its regulations have been amended. Among other things, the amendments create a clearer mechanism to allow proponents to submit financial assurance associated with their closure plan in phases tied to the construction schedule of a project (Phased Financial Assurance or Phased FA). The new O. Reg. 35/24 - Rehabilitation of Lands (the Regulation), sets out the requirements for submitting financial assurance (FA) in the form of Phased FA instead of providing it at once up-front when the closure plan (CP) or, where applicable, closure plan amendment (CPA), is submitted.

This process provides proponents with a simpler and clearer mechanism to submit FA in phases. 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, including the requirements in section 21 and Schedule 2 (items 2 and 13) of that Regulation. The submitted CP/CPA must be certified by the proponent (or, where the proponent is a corporation, its officers, including the most senior financial officer) as meeting such requirements.

The requirements in s. 21 of O. Reg. 35/24 include the following:

- FA must be provided with respect to each phase of a project.
- The amount and timing of FA must result in the ministry holding, at any given time during a project, adequate and sufficient financial assurance to cover the rehabilitation required under the CP for each mine hazard existing on a site at that time.
- If it is a new CP, FA for the first phase of the project must be submitted together with the CP; for all other phases, FA must be received by the ministry at least 45 days before the start of any activity in the phase.
- The amount of the FA provided for a phase of the project shall not include any set-off or deduction for any progressive rehabilitation done during the phase or any previous phase. (Proponents seeking a return or credit of FA for progressive rehabilitation done, or planned to be done, must apply to the ministry under subsection 145(7) of the Act rather than reflecting such progressive rehabilitation as a credit in a phasing schedule).

Section 13 of Schedule 2 to O. Reg. 35/24 is new and sets out the required content of CPs that use Phased FA. To support the above requirements, Section 13 of Schedule 2 requires proponents to provide a phasing schedule, supported by detailed costing information, and broken down by phase, specifying:

- estimated date ranges for the start and end of the phase;
- a list of each mine hazard that will be constructed or materially impacted during the phase, and a projected timeframe for the start of the activity, consistent with the overall project schedule required through subsection 5(ix) of Schedule 2;
- costing details for the rehabilitation measures for the listed mine hazards, itemized for each mine hazard; and
- a description of the amount of FA to be provided before the commencement of the phase.

Phasing schedules for mine production closure plans are required to list pre-existing mine hazards predating the start of the project, and details of the expected costs for rehabilitation measures required in respect of such listed mine hazards. Consistent with the ministry's Closure Plan Boundary and Land Tenure Guideline, advanced exploration proponents will not be expected to deal with the rehabilitation of previous mine hazards on the site unless the project proceeds to mine production (or if the previous mine hazard has been or will be materially affected by the proponent's advanced exploration activities).

Note that the estimated date ranges and projected timeframes referred to above are best estimates at the time of submission, not binding deadlines. FA for a phase can be provided later than the estimated date, as long as no activity in the phase has started. However, proponents must still comply with the Regulation and more specifically, FA for each subsequent phase of the project must be received by the ministry at least 45 days before the start of the activity in that phase.

If the proponent fails to comply with the phasing schedule (e.g., starting construction on a feature in a phase without delivering the FA associated with the phase), the Minister may require that the proponent promptly provide any or all of the outstanding amount of FA.

While this fact sheet is intended to provide information on Phased FA requirements under the *Mining Act* and its regulations, it is not legal advice. Requirements relating to Phased FA 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.