

Building More Mines Act, 2023

FACT SHEET

April 2024

TECHNICAL CERTIFICATES FROM QUALIFIED PERSONS

As a result of O. Reg. 35/24 (the Regulation), new closure plans (and, where applicable, new closure plan amendments) must contain certificates from qualified persons regarding the extent to which the rehabilitation measures in the closure plan conform with the Mine Rehabilitation Code of Ontario (the Code) effective as of April 1, 2024.

The Code is divided into ten Parts, and technical certificates are required on a Part-by-Part basis. For new closure plans, there must be one or more qualified person certificates submitted, covering all ten Parts of the Code. A closure plan may contain as many as ten certificates from ten different qualified persons or as few as one certificate from a single qualified person, if that person is appropriately qualified to certify all ten parts. For new closure plan amendments, up-to-date qualified person certificates are only required with respect to the Parts of the Code that would be changing through the amendment. These technical certificates, or certificates of conformance, are distinct from the studies or reports required under the Code that also need to be certified by qualified persons (e.g., the certified report required in respect of a concrete cap, after it is installed and tested).

The specific required wording of these certificates is set out in O. Reg. 35/24. Certificates must either be in Form 3 or Form 4, in each case as set out in the Regulation. Downloadable versions are provided for convenience on the Central Forms Repository - <https://forms.mgcs.gov.on.ca/>.

Form 3 is used for closure plans that conform with the requirements of the applicable Part or Parts of the Code in all respects.

Form 4 is used where the closure plan does not conform to the requirements in one or more respects. In these cases, the qualified person must certify that the non-conforming measure either:

- is only non-conforming to the extent permitted in a conditional filing order included together with the closure plan; or
- meets or exceeds the objective of the applicable Part(s) and is consistent with one or more of the following: (a) recognized industry standards or best practices, (b) sound scientific principles, and (c) good engineering practice.

The latter type of non-conforming measure is defined in O. Reg. 35/24 as a “certified alternative measure”. Previously, non-conforming measures like this required ministry exemptions in order to be included in a closure plan. After April 1, 2024, these non-conforming measures are allowed to be included in closure plans, as long as the qualified person provides the appropriate certification. However, under the new Section 14 of Schedule 2 to O. Reg. 35/24, the closure plan must contain an itemized description of each certified alternative measure, and details about the nature of its non-conformity with the Code.

To date, it has been a common practice, encouraged by the ministry, for proponents to send draft closure plans or closure plan amendments for technical review in advance of formal submission. The ministry is no longer encouraging this practice. Once the ministry is satisfied that appropriate consultation with Aboriginal communities has been carried out, a proponent will submit their certified closure plan or closure plan amendment for filing which will include the necessary up-front certificates from qualified persons. The obligation is on proponents to ensure that their submissions are fully certifiable from the technical perspective.

Qualified Persons

The following persons can serve as 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 Agrologists.
- **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 can provide certifications related to surface water monitoring (Part 5) and revegetation (Part 9).

Under O. Reg 35/24:

- Professional Engineers or Geoscientists can provide certifications regarding all Parts of the Code.
- Professional Agrologists can provide certifications regarding surface water monitoring (Part 5), metal leaching and acid rock drainage (Part 7) and revegetation (Part 9).
- Landscape Architects provide certifications regarding the following Parts of Code: surface water monitoring (Part 5) and revegetation (Part 9).

Note, however, that O. Reg. 35/24 does not supersede or otherwise modify the scope of practice limitations imposed by other professional regulators or the legal requirements governing them. Qualified persons who are members of regulated professions should take into account all regulatory obligations and professional ethics requirements that apply to them, and any qualified person should only give certifications that are appropriate given their personal expertise and scope of practice.

While this fact sheet is intended to provide information on updates to technical certifications under the *Mining Act*, it is not legal advice. Requirements relating to technical certifications are contained in the *Mining Act*, its regulations and the Code. While all efforts are made to ensure the accuracy of this information, if there is any discrepancy between this fact sheet and the Act, its regulations or the Code, the provisions of the Act, regulation and/or Code prevail.