

COVID – 19 PANDEMIC - ASSESSMENT WORK RELIEF APPLICATIONS UNDER THE MINING ACT (ONTARIO)

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Following the declaration of emergency made on March 17, 2020 under the *Emergency Management and Civil Protection Act* (Ontario) due to the COVID-19 pandemic, the ability of holders of unpatented mining claims to perform assessment work required under the *Mining Act* (Ontario) (the "Act") will be difficult or impossible until such time as government ordered social distancing measures have been lifted.

Although the Ministry of Energy, Northern Development and Mines (the "Ministry") has not yet provided blanket relief to holders of mining claims, relief may be available to claim holders by making an application for an extension of time or the exclusion of time to perform assessment work under the Act.

Requirement to Perform Assessment Work

A holder of an unpatented mining claim in the Province of Ontario is required pursuant to section 65(1) of the Act to perform certain prescribed annual assessment work, or make payments in place of assessment work, in order to keep a mining claim in good standing.

Assessment work prescribed pursuant to section 2(1) of O. Reg 65/18: Assessment Work includes items such as performing grass roots prospecting, bedrock trenching, bedrock pitting, overburden stripping, taking samples for purposes of geoscience work, geological survey work, geochemical work, line cutting, exploratory drilling, environmental baseline studies and rehabilitation work.

If such required annual assessment work is not performed and reported through the Mining Lands Administration System by the deadline, being the anniversary date of the registration of the mining claim, then the mining claim is subject to being forfeited pursuant to section 72(1) of the Act.

Applications Seeking an Extension of Time

A holder of a mining claim may apply to the Mining Recorder pursuant to section 73(1) of the Act seeking a discretionary order to extend the time period to perform assessment work. An application must be made within 30 days before the anniversary date of the mining claim. The application must be made using the Ministry's form and submitted directly to the Provincial Recording Office, Technical Services Unit either in person, by fax (1-877-640-1444), regular mail or email to pro.ndm@ontario.ca together with a fee of \$20 per mining claim. The claim holder must explain the circumstances that will prevent the assessment work from being performed by the anniversary or due date of the mining claim and provide supporting evidence.



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A claim holder making an application for the extension of time must be prepared to support the request by describing the circumstances preventing the assessment work to be performed and what steps were taken to meet the requirements despite the circumstances. The Mining Recorder would consider whether the claim holder made reasonable good faith efforts to complete the assessment work, which would include evidence showing that work plans, schedules for completion, an exploration plan in effect or an issued exploration permit and signed contracts with persons hired to perform the assessment work.

The Mining Recorder may make a decision after the due date of the mining claim. An extension of time order pursuant to section 73(1) of the Act sets a new due date for the current assessment year of the claim. It does not change the due date for subsequent assessment years and it does not change the claim's anniversary date. Extensions may not be more than one year from the anniversary date.

Applications Seeking an Exclusion of Time

A holder of a mining claim may also bring an application seeking an order excluding a period of time within which work on a mining claim must be performed or reported. The application if successful would result in a new anniversary date being set for the mining claim. The Ministry policies makes clear that an exclusion order is discretionary and will only be granted when a claim holder has been prevented from performing or reporting assessment work due to exceptional circumstances outside of the claim holder's control.

An application may be made to the Mining Recorder or the Minister. Applications made to the Mining Recorder pursuant to section 67(3) of the Act are generally made in circumstances where an exploration work permit is refused or the work prohibited pursuant to the *Forest Fires Prevention Act* (Ontario) or where work is delayed at the Crown's request or by the Crown's actions.

In the circumstances of the COVID-19 pandemic, an application to the Minister pursuant to section 67(4) of the Act would be applicable as that section deals with the existence of "special circumstances" which prevent a claim holder from performing assessment work. The Ministry's policy provides that special circumstances includes natural disasters and health concerns. An application must be made within 30 days before the anniversary date of the mining claim. A claim holder seeking an exclusion order must be able to provide evidence to support the request, describing the circumstances preventing the claim holder from meeting the assessment work requirements, efforts made to meet the requirements and assurance that the claim will be kept in good standing if the exclusion of time is granted. The Minister may make an order before or after the anniversary date of a mining claim.

The Ministry's policies provide that when issuing an exclusion of time order, the Minister or the Mining Recorder will set a new due date and change the anniversary date of the claim with a new due date. The new anniversary date may be up to, but not exceeding, the number of days that have been excluded, which shall not be more than two years from the date the order is granted.

Conclusion

Due to the inability of claim holders to perform assessment work in a timely manner due to the special circumstances surrounding the COVID-19 pandemic, it is hoped that the Ministry will take a lenient approach in approving time extension and time exclusion applications. If the number of applications becomes too burdensome to process in a timely manner, the Ministry may need to consider making a

blanket order for all mining claims to either extend the time for performing assessment work for a time period after the declaration of emergency is terminated or excluding the time during which the emergency was in effect.