

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND SEVENTEEN

S.P. 265 - L.D. 820

**An Act To Protect Maine's Clean Water and Taxpayers from Mining
Pollution**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA §549-B, sub-§7, ¶C-1 is enacted to read:

C-1. Notwithstanding any other provision of law to the contrary, the director of the agency having jurisdiction over the state lands on which a mining lease is sought may not grant a mining lease under this section that authorizes mining operations proposed to be located wholly or partially in, on or under any of the following state lands:

- (1) Designated lands under section 598-A;
- (2) Historic sites as defined in section 1801, subsection 5;
- (3) Parks as defined in section 1801, subsection 7;
- (4) Public reserved lands as defined in section 1801, subsection 8;
- (5) Submerged lands as defined in section 1801, subsection 9;
- (6) The Allagash Wilderness Waterway as established under chapter 220, subchapter 6; and
- (7) State-owned wildlife management areas acquired in accordance with section 10109, subsection 1.

Sec. 2. 38 MRSA §490-MM, sub-§§5-A, 10-A, 10-B, 10-C and 13-A are enacted to read:

5-A. Dry stack tailings management. "Dry stack tailings management" means the process of disposing of dewatered, compacted mine tailings into a freestanding, stable structure on an area with an impervious liner designed to shed water to a water collection and treatment system.

10-A. Mine shaft. "Mine shaft" means a vertical, inclined or horizontal excavation, including all underground workings, with a surface opening not exceeding 1,000 square feet.

10-B. Mine waste. "Mine waste" means all material, including, but not limited to, overburden, rock, lean ore, leached ore or tailings, that in the process of mining and beneficiation has been exposed or removed from the earth during advanced exploration and mining activities.

10-C. Mine waste unit. "Mine waste unit" means any land area, structure, location, equipment or combination thereof on or in which mine wastes are managed. A structure or area of land does not become a mine waste unit solely because it is used to store nonreactive mine wastes generated on the site, such as soil or overburden, for 90 days or less.

13-A. Open-pit mining. "Open-pit mining" means, for any single mining operation permitted under this article, the process of mining a metallic mineral deposit by use of surface pits or excavations having greater than 3 acres of surface area in aggregate or by means of a surface pit excavated using one or more horizontal benches.

Sec. 3. 38 MRS §490-MM, sub-§17, as enacted by PL 2011, c. 653, §23 and affected by §33, is repealed and the following enacted in its place:

17. Tailings impoundment. "Tailings impoundment" means a surface area, contained by dikes or dams, on which is deposited the slurry of material that is separated from a metallic product in the beneficiation or treatment of minerals, including any surrounding dikes constructed to contain such material. "Tailings impoundment" does not include a lined surface area on which dewatered tailings are stacked.

Sec. 4. 38 MRS §490-MM, sub-§18 is enacted to read:

18. Wet mine waste unit. "Wet mine waste unit" means a mine waste unit in which mine wastes are placed under water to minimize sulfide oxidation, acid formation or particulate pollution.

Sec. 5. 38 MRS §490-NN, sub-§1, ¶B, as enacted by PL 2011, c. 653, §23 and affected by §33, is amended to read:

B. In addition to other powers granted to it, the department shall adopt rules to carry out its duties under this article, including, but not limited to, standards for exploration, advanced exploration, construction, operation, closure, post-closure monitoring, reclamation and remediation. Except as otherwise provided, rules adopted under this article are major substantive rules for purposes of Title 5, chapter 375, subchapter 2-A and are subject to section 341-H. Notwithstanding Title 5, section 8072, subsection 11, or any other provision of law to the contrary, rules provisionally adopted by the department in accordance with this article and submitted for legislative review may not be finally adopted by the department unless legislation authorizing final adoption of those rules is enacted into law.

Sec. 6. 38 MRSA §490-NN, sub-§2, as enacted by PL 2011, c. 653, §23 and affected by §33 and amended by c. 682, §38, is further amended to read:

2. Maine Land Use Planning Commission. The department may not approve a permit under this article in an unorganized territory unless the Maine Land Use Planning Commission certifies to the department that:

- A. The proposed mining is an allowed use within the subdistrict or subdistricts in which it is to be located; and
- B. The proposed mining meets any land use standard established by the Maine Land Use Planning Commission and applicable to the project that is not considered in the department's review.

The Maine Land Use Planning Commission shall adopt rules in accordance with this subsection relating to the certification of mining permit applications under this article. Notwithstanding any other provision of law to the contrary, rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 7. 38 MRSA §490-OO, sub-§4, ¶¶D and H, as enacted by PL 2011, c. 653, §23 and affected by §33, are amended to read:

D. There is reasonable assurance that discharges of pollutants from the mining operation will not violate applicable water quality standards. ~~Notwithstanding sections 465-C and 470, discharges to~~ contamination of groundwater from activities permitted under this article may occur within a mining area, but such discharges contamination must be limited and may not result in contamination of groundwater beyond each mining area. In determining compliance with this standard, the department shall require groundwater monitoring consistent with the standards established pursuant to section 490-QQ, subsection 3.

- (1) Contamination of groundwater beyond the mining area;
- (2) Contamination of groundwater within the mining area that exceeds applicable water quality criteria for pollutants other than pH or metals;
- (3) Contamination of groundwater within the mining area due to pH or metals that exceeds limits set forth in the mining permit by the department based on site-specific geologic and hydrologic characteristics;
- (4) Any violation of surface water quality standards under section 413 or article 4-A; or
- (5) If groundwater or surface water quality within the mining area prior to the commencement of any mining activity exceeds applicable water quality standards, further degradation of such groundwater or surface water quality.

In determining compliance with this standard, the department shall require groundwater monitoring consistent with the standards established pursuant to section 490-QQ, subsection 3.

Notwithstanding section 490-MM, subsection 12, for the purposes of this paragraph, "mining area" means an area of land, approved by the department and set forth in the

mining permit, not to exceed 100 feet in any direction from a mine shaft, surface pit or surface excavation, and does not include the following lands, regardless of the distance of such land from a mine shaft, surface pit or surface excavation: the land on which material from mining is stored or deposited, the land on which beneficiating or treatment facilities are located, the land on which groundwater and surface water management systems are located or the land on which water reservoirs used in a mining operation are located.

H. The mining operation will not unreasonably cause or increase the flooding of the area that is altered by the mining operation or adjacent properties or create an unreasonable flood hazard to any structure. ~~Mining Notwithstanding any provision of law to the contrary, mining operations involving the removal of metallic minerals, the storage of metallic minerals or mine waste, the processing of metallic minerals or the treatment of mine waste may not be placed in or on flood plains or flood hazard areas as long as they are designed, constructed, operated and reclaimed in a manner that complies with the approval criteria in this subsection and the Natural Resources Protection Act.~~

Sec. 8. 38 MRSA §490-OO, sub-§4, ¶¶K to O are enacted to read:

K. No part of the mining operation will be located wholly or partially in, on or under any state land listed in Title 12, section 549-B, subsection 7, paragraph C-1.

L. The mining operation will not involve the removal of metallic minerals in, on or from a river, stream or brook, as defined in section 480-B, subsection 9; a great pond, as defined in section 480-B, subsection 5; a freshwater wetland, as defined in section 480-B, subsection 4; or a coastal wetland, as defined in section 480-B, subsection 2.

M. The mining operation will not involve placement of a mine shaft in, on or under a significant river segment, as identified in section 437; an outstanding river segment, as identified in section 480-P; an outstanding river, as identified in Title 12, section 403; a high or moderate value waterfowl and wading bird habitat that is a significant wildlife habitat pursuant to section 480-B, subsection 10, paragraph B, subparagraph (2); a great pond, as defined in section 480-B, subsection 5; or a coastal wetland, as defined in section 480-B, subsection 2.

N. The mining operation will use dry stack tailings management and will not use wet mine waste units or tailings impoundments for the management of mine waste and tailings, except that the mining operation may involve the placement into a mine shaft of waste rock that is neutralized or otherwise treated to prevent contamination of groundwater or surface water.

O. The mining operation will not use open-pit mining.

Sec. 9. 38 MRSA §490-RR, sub-§2, as enacted by PL 2011, c. 653, §23 and affected by §33, is repealed and the following enacted in its place:

2. Coverage and form of financial assurance. The financial assurance required under subsection 1 applies to all mining and reclamation operations that are subject to a mining permit.

A. The amount of the financial assurance must be sufficient to cover the cost for the department to administer, and hire a 3rd party to implement, all necessary investigation, monitoring, closure, post-closure, treatment, remediation, corrective action, reclamation, operation and maintenance activities under the environmental protection, reclamation and closure plan, including, but not limited to:

(1) The cost to investigate all possible releases of contaminants at the site, monitor all aspects of the mining operation, close the mining operation in accordance with the closure plan, conduct treatment activities of all expected fluids and wastes generated by the mining operation for a minimum of 100 years, implement remedial activities for all possible releases and maintenance of structures and waste units as if these units have released contaminants to the groundwater and surface water, conduct corrective actions for potential environmental impacts to groundwater and surface water resources as identified in the environmental impact assessment and conduct all other necessary activities at the mine site in accordance with the environmental protection, reclamation and closure plan; and

(2) The cost to respond to a worst-case catastrophic mining event or failure, including, but not limited to, the cost of restoring, repairing and remediating any damage to public facilities or services, to private property or to the environment resulting from the event or failure.

B. An applicant for a mining permit must include with its application a review of the proposed financial assurance amounts required under this section as performed by a qualified, independent 3rd-party reviewer approved by the department. The costs of the 3rd-party review must be paid by the applicant. Estimates of the costs of a worst-case catastrophic mining event or failure under paragraph A, subparagraph (2) provided by the applicant may not include costs to the applicant associated with loss of use of any mining operation or facility or the costs of repairing any damaged mining operation or facility to restore operations or other functionality.

C. The department shall require the applicant to provide financial assurance in the amount determined by the 3rd-party reviewer under paragraph B to be sufficient for the department to conduct all activities listed under paragraph A. Financial assurance estimates provided by the applicant and reviewed by the 3rd-party reviewer under this section must use the highest cost option for all estimates and include a minimum 20% contingency to account for unexpected expenses.

D. The financial assurance required by department under this subsection must consist of a trust fund that is secured with any of the following forms of negotiable property, or a combination thereof, as approved by the department:

(1) A cash account in one or more federally insured accounts;

(2) Negotiable bonds issued by the United States or by a state or a municipality having a Standard and Poor's credit rating of AAA or AA or an equivalent rating from a national securities credit rating service; or

(3) Negotiable certificates of deposit in one or more federally insured depositories.

E. The financial assurance required by the department under this section must be posted by the applicant before the department issues a permit to mine under this article.

Sec. 10. 38 MRSA §490-RR, sub-§3, as enacted by PL 2011, c. 653, §23 and affected by §33, is repealed.

Sec. 11. Department of Environmental Protection; approval of final adoption. Final adoption of Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining, a provisionally adopted major substantive rule of the Department of Environmental Protection that was submitted to the Legislature for review pursuant to the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A on January 13, 2017, is authorized only if the following changes are made:

1. The rule must be amended in section 2 to define "dry stack tailings management" consistent with the statutory definition of "dry stack tailings management" under Title 38, section 490-MM, subsection 5-A;

2. The rule must be amended in section 2 to define "mine shaft" consistent with the statutory definition of "mine shaft" under Title 38, section 490-MM, subsection 10-A;

3. The rule must be amended in section 2 to amend the definition of "mine waste" as necessary to ensure consistency with the statutory definition of "mine waste" under Title 38, section 490-MM, subsection 10-B;

4. The rule must be amended in section 2 to amend the definition of "mine waste unit" as necessary to ensure consistency with the statutory definition of "mine waste unit" under Title 38, section 490-MM, subsection 10-C;

5. The rule must be amended in section 2 to define "open-pit mining" consistent with the statutory definition of "open-pit mining" under Title 38, section 490-MM, subsection 13-A;

6. The rule must be amended in section 2 to amend the definition of "tailings impoundment" as necessary to ensure consistency with the statutory definition of "tailings impoundment" under Title 38, section 490-MM, subsection 17;

7. The rule must be amended in section 2 to amend the definition of "wet mine waste unit" as necessary to ensure consistency with the statutory definition of "wet mine waste unit" under Title 38, section 490-MM, subsection 18;

8. The rule must be amended, as necessary, in section 11(A), section 20(B) and any other affected sections to incorporate the statutory prohibition against the permitting of a mining operation located in, on or under any state land listed in Title 12, section 549-B, subsection 7, paragraph C-1, as provided in Title 38, section 490-OO, subsection 4, paragraph K;

9. The rule must be amended, as necessary, in section 11(A), section 20(B) and any other affected sections to incorporate the statutory prohibition against the permitting of a

mining operation involving the removal of metallic minerals in, on or from certain natural resources as provided in Title 38, section 490-OO, subsection 4, paragraph L;

10. The rule must be amended, as necessary, in section 11(A), section 20(B) and any other affected sections to incorporate the statutory prohibition against the permitting of a mining operation involving the placement of a mine shaft in, on or under certain natural resources as provided in Title 38, section 490-OO, subsection 4, paragraph M;

11. The rule must be amended, as necessary, in section 11(A), section 21, section 24 and any other affected sections to incorporate the statutory requirement for the use of dry stack tailings management and the statutory prohibition against the permitting of a mining operation involving the use of wet mine waste units or tailings impoundments as provided in Title 38, section 490-OO, subsection 4, paragraph N;

12. The rule must be amended, as necessary, in section 11(A) and any other affected sections to incorporate the statutory prohibition against the permitting of a mining operation that uses open-pit mining as provided in Title 38, section 490-OO, subsection 4, paragraph O;

13. The rule must be amended in section 17 and any other affected sections to clarify the coverage and form of required financial assurance pursuant to Title 38, section 490-RR, subsection 2;

14. The rule must be amended in section 22 and any other affected sections to clarify the limited definition of "mining area" pursuant to Title 38, section 490-OO, subsection 4, paragraph D;

15. All necessary grammatical, formatting, punctuation or other technical nonsubstantive editing changes must be made to the rule, including, but not limited to, the addition of subsection headings in section 2 and the removal of strikethrough letters or words remaining from prior drafts and edits; and

16. All other necessary changes must be made to the rule to ensure conformity throughout the rule and consistency with the provisions of this Act.

Sec. 12. Maine Land Use Planning Commission rulemaking; certification of mining permit applications. By July 1, 2018, the Maine Land Use Planning Commission shall adopt rules related to commission certification of metallic mineral mining permit applications in accordance with the Maine Revised Statutes, Title 38, section 490-NN, subsection 2. Rules adopted pursuant to this section must include any additional provisions necessary to ensure consistency with the Maine Metallic Mineral Mining Act and rules related to the Maine Metallic Mineral Mining Act adopted by the Department of Environmental Protection.