



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



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GOVERNOR

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MEMORANDUM

TO: Board of Environmental Protection
FROM: Jeffrey Crawford, Office of the Commissioner
DATE: January 3, 2014
RE: Chapter 200 Metallic Mineral Exploration, Advanced Exploration and Mining-
Proposal for Provisional Adoption

Background

In 2011, the Maine Legislature passed Public Law 2011, Chapter 653, An Act to Improve Environmental Oversight and Streamline Permitting for Metallic Mineral Mining in Maine, which directed the Department to promulgate new rules intended to modernize Maine's mining requirements and reduce the number of separate environmental permits necessary for mining activities.

The Department's proposal will repeal and replace the existing Chapter 200 regulations, and provide a comprehensive application and permitting process within the statutory framework for exploration, advanced exploration and mining activities.

Chronology

On October 17, 2013, the Board held a public hearing on the Department's draft proposal, and heard testimony from a number of consultants, interested parties and the general public. Additional testimony was received from these and other stakeholders during the written comment period, which closed on October 28, 2013.

The Board held the first of several planned deliberative sessions to discuss public comments at its November 7, 2013 meeting. During this session, Board members and Department staff discussed a number of key issues raised by commenters, including: a) Prohibitions against mining in or under waters of the State; b) Post-closure wastewater treatment periods; c) Groundwater compliance monitoring requirements; d) Financial assurance requirements and mechanisms; e) Identification and implementation of multiple industry best management practices in other jurisdictions; f) Ground and surface water monitoring requirement; g) Air quality standards monitoring; and h) Mining setback standards.

On November 21, the Board continued its deliberations, providing additional guidance on these and other key issues.

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The Board's next deliberative session was held on December 5, 2013. At the Board's request, the Department prepared draft language incorporating suggestions from the previous deliberative sessions, including:

- Revisions to Section 1(B) amending the proposal to allow mining in groundwater, under waters of the state and in freshwater wetlands (these activities would still be subject to all permitting requirements, including the Natural Resources Protection Act, as applicable).
- Revisions to Section 9(B) requiring the disclosure of all entities with a financial interest in the proposed activity.
- Changes to Section 9(D)(12) regarding the use of wet waste management techniques.
- Revisions to the financial assurance and insurance requirements (Sections 17 and 18) allowing the use of an irrevocable letter of credit to initially fund the financial assurance mechanism, and allowing incremental funding of the financial assurance mechanism(s) with full funding prior to the extraction of any ore.
- Changes to Sections 20(B)(3) and (4) that eliminate the prohibition against mining on public reserve lots and reduce the mining setback from certain resources to ¼ mile.
- Revision to Section 20(G)(2) that require all discharges to affected areas to meet applicable water quality standards as soon as practicable, but in no case greater than 30 years, with the exception of wet waste management units.
- Additional requirements as Section 20(L) that institute explicit air quality requirements.
- Revisions to the monitoring and reporting requirements in Section 22.
- Changes to Section 24(B)(5) that provide for the post-closure care of wet waste management units.
- New procedures detailing the appeals process for orders issued under the proposed Chapter 200.

Recognizing that some of these revisions might constitute a “significant change”, and require an additional public comment period pursuant to the Maine Administrative Procedures Act, the Board posted these changes to an additional written comment period ending on December 23, 2013.

On December 19, 2013, the Board held its fourth, and final, deliberative session to discuss any outstanding concerns and provide additional guidance to the Department.

The Final Proposal

The Department received comments on the proposed rulemaking from approximately 500 interested persons during the public hearing and written comment periods. A large number of commenters expressed concerns regarding the potential environmental impacts from metallic mineral mining in Maine. There were also a large number of technical comments suggesting clarifications, corrections and other changes.

In addition to the significant changes outlined above, the Department's final proposal incorporates a

number of technical revisions. These revisions include:

- The standards for exploration activities were revised to better align the proposal with rules of the Land Use Planning Commission.
- The final proposal clarifies that each mining activity must have a defined mining area (Section 9(1)(G)(1)(a)). The Department also revised references to mining areas and affected areas as appropriate throughout the proposal.
- The public and local participation procedures within section 10 were clarified.
- The Department included explicit requirements for controlling fugitive dust, along with the submission of a dust management plan.
- The mine waste characterization requirements of section 20(E) were revised to clarify that all material removed from a mine must be tested for acid generation potential.
- The blasting standards of section 20(k) were revised to include requirements for seismic monitoring.
- Requirements for the Applicant and Permittee to address unreasonable noise impacts were added as section 20(M).
- The corrective action triggers within section 22 (Monitoring and Reporting Requirements) were clarified.
- The contents and required elements of a corrective action plan were clarified in section 30.

Conclusion

The Department's proposal will repeal and replace the existing Chapter 200 regulations, and provides a comprehensive application and permitting process within the statutory framework for metallic mineral mining. Relying primarily on performance standards, the proposal ensures that the most effective and environmentally appropriate technologies are utilized by any prospective exploration, advanced exploration or mining operation.