

MINING BILL DRAFT

For Consideration at Public Hearing on 5/11/2015

Committee: ENR

LA: DCT

Date: 5/1/15

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

Sec. 1. 38 MRSA §490-LL is amended to read:

§490-LL. Short title and declaration of policy.

This article may be known and cited as “the Maine Metallic Mineral Mining Act.”

It is declared to be the policy and intent of the Legislature and the purpose of this article to allow for the commercial mining of metallic minerals in the State under a statutory and regulatory framework that is sufficiently protective of the public health and safety and the environment and that ensures that the full cost of closure, reclamation and post-closure treatment and monitoring of a permitted mining site, as well as the full cost of correction and remediation of an accident or failure at a permitted mining site, are paid by the permittee and not by the State.

Sec. 2. 38 MRSA §490-MM, sub-§3 is amended to read:

3. Beneficiation. "Beneficiation" means the treatment of ore to liberate or concentrate its valuable constituents. "Beneficiation" includes, but is not limited to, crushing, grinding, washing, dissolution, crystallization, filtration, sorting, sizing, drying, sintering, pelletizing, briquetting, calcining, roasting in preparation for leaching to produce a final or intermediate product that does not undergo further beneficiation or processing, gravity concentration, magnetic separation, electrostatic separation, flotation, ion exchange, solvent extraction, electrowinning, precipitation, amalgamation and dump, vat, and tank ~~and in situ~~ leaching.

Sec. 3. 38 MRSA §490-MM, sub-§7 is amended to read:

7. Heap or percolation leaching. "Heap or percolation leaching" means a process for the primary purpose of recovering metallic minerals in an outdoor environment from a stockpile of crushed or excavated ore by percolating water or a solution through the ore and collecting the leachate. “Heap or percolation leaching” includes in situ leaching.

Sec. 4. 38 MRSA §490-MM, sub-§12 is amended to read:

12. Mining area. "Mining area" means an area of land described in a permit application and approved by the department, including but not limited to land from which earth material is removed in connection with mining, ~~the~~ lands on which material from that mining is stored or deposited, ~~the~~ lands on which beneficiating or treatment facilities, including groundwater and surface water management treatment systems, are located, ~~or the~~ lands on which water reservoirs used in a mining operation are located or any other land on which a single mining operation or mining activity is located. Each mining operation or mining activity must have a defined mining area.

Sec. 5. Approval of final adoption; Department of Environmental Protection.

Notwithstanding any provision of law to the contrary in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, the Department of Environmental Protection is authorized to finally adopt Chapter 200:

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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 Title 5, chapter 375, subchapter 2-A on January 10, 2014, and that was also submitted to the Legislature for review on January 9, 2015, only if the following changes are made:

1. [PAGE 1] The rule must be amended in section 1(B)(1) to prohibit the issuance of a permit for a mining operation that includes in situ leaching;

2. [PAGE 2] The rule must be amended in section 2(Q) to amend the definition for “beneficiation” as necessary to ensure consistency with the statutory definition for “beneficiation” under Title 38, section 490-MM(3);

3. [PAGES 5-6] The rule must be amended in section 2(VV) to amend the definition for “heap or percolation leaching” as necessary to ensure consistency with the statutory definition for “heap or percolation leaching” under Title 38, section 490-MM(7);

4. [PAGE 6] The rule must be amended in section 2(GGG) to amend the definition for “mining area” as necessary to ensure consistency with the statutory definition for “mining area” under Title 38, section 490-MM(12);

5. [PAGE 7] The rule must be amended in section 2(MMM) to amend the definition for “passive treatment system” to mean the process of removing metals and/or acidity through the use of self-maintaining chemical, biological and physical removal processes that occur naturally in the environment;

6. [PAGE 8] The rule must be amended in section 2 to add a definition for “remediation” that means the clean up, removal or containment of contaminants or contamination within a mining area or an affected area, including long-term action that stops or substantially reduces a release or threat of release of contaminants or contamination that is serious but not an immediate threat to public health and safety or the environment, short-term immediate actions that address releases of contaminants or contamination that require expedited responses and an action involving either a short-term removal action or a long-term removal response. The rule must provide that remediation activities may include, but are not limited to, removing contaminants or contamination, containing or treating waste on-site and identifying and removing sources of groundwater contamination and halting further migration of contaminants;

7. [PAGE 9] The rule must be amended in section 2 to add a definition for “water reservoir” that means a water storage pond;

8. [PAGES 20-21] The rule must be amended in section 9(C) to provide that the department shall require testing, as part of the baseline site characterization report, to establish a baseline for maximum contaminant levels established by the federal Environmental Protection Agency, maximum exposure guidelines for drinking water standards established by the Department of Health and Human Services, Maine Center for Disease Control and Prevention, drinking water standards adopted pursuant to the Title 22, section 2611 and applicable water quality or licensing standards under Title 38, sections 414-A and 420, unless the applicant can demonstrate to the department’s satisfaction that testing for specific elements, contaminants or conditions under any of these specified water quality guidelines and standards is not necessary. To the extent necessary, the rule may be amended in section 22 to provide that the department shall require monitoring, as part of the monitoring plan, to ensure maintenance of the baseline for these same specified water quality guidelines and standards, unless the applicant can demonstrate to the department’s satisfaction that testing for specific elements, contaminants or conditions under any of these specified water quality guidelines and standards is not necessary;

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9. [PAGES 26-27] The rule must be amended in section 9(I)(5) to require a detailed written cost estimate and rationale for the cost of responding to and correcting each of the accidents or failures listed in section 9(K)(1);

10. [PAGE 27] The rule must be amended in section 9(K)(1) to provide that the listed accidents or failures are to be assessed in terms of the risk to public health and safety and risk to the environment;

11. [PAGES 27-28] The rule must be amended in section 9(K), to require, as part of the contingency plan, a description of the detection and warning systems to be used by the applicant in alerting the applicant or the department that an accident or failure listed in section 9(K)(1) has occurred;

12. [PAGES 33-34] The rule must be amended in section 10(G)(9) to clarify that access to a potential mining site during the application process by any intervenor shall be as allowed pursuant to an adjudicatory hearing process conducted in accordance with applicable provisions in the Maine Administrative Procedure Act, Title 5, chapter 375;

13. [PAGE 35] The rule must be amended in section 11(D) to clarify that, in addition to the stipulations already set forth in section 11(D), the department may also not issue a mining permit if the applicant has documented violations of land use or environmental laws of a foreign country demonstrating that the applicant would not be capable of complying with the terms and conditions of a mining permit;

14. [PAGE 44] The rule must be amended in section 17(A)(7) to require the department to hire third parties with documented experience in material handling and construction, mining costs and financial analysis to analyze and evaluate the proposed terms and conditions of financial assurance required for the applicant or permittee;

15. [PAGE 44] The rule must be amended in section 17(B)(1) to require additional financial assurance coverage sufficient for the department to respond to and correct each of the accidents or failures listed in section 9(K)(1);

16. [PAGES 43-49] The rule must be amended in section 17 to require each applicant to create, separate from and in addition to the other financial assurance requirements in section 17, an emergency response fund, the purpose of which is to assure that funding is immediately available to effectively address unanticipated events that pose an imminent and substantial endangerment to the public health and safety, the environment or natural resources under section 31. The rule must provide that the emergency response fund does not take the place of, but is required in addition to, any financial assurance that may be required to assure performance of corrective action under section 30. The rule must require that the amount of financial assurance in the emergency response fund shall be \$10 million unless the permittee can demonstrate, to the department's satisfaction, that a lesser amount is adequate to fulfill the purpose of the emergency response fund. The rule must require that the emergency response fund will be established, maintained, administered and released consistent with section 17. The rule must require that the department may access the emergency response fund if the permittee fails to timely comply with an order issued under section 31(d). The rule must provide that the department's decision to use funding from the emergency response fund does not relieve the permittee of the obligation to comply with an order issued under section 31(d) or any other order issued under the rule, or any responsibility or liability under applicable state or federal law;

17. [PAGES 51-52] The rule must be amended in section 20(B)(3) to provide that, except as allowed under Title 12, chapter 201-A, subchapter 3, no mining shall be conducted in or on public reserved lands, but not including public reserve lots described in Title 12, section 1801(8)(A);

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18. [PAGES 51-52] The rule must be amended in section 20(B)(3) to exclude mining from The Allagash Wilderness Waterway, lands under great ponds as defined in Title 38, section 480-B(5) and submerged lands of the State as defined in Title 12, section 1801(9);
19. [PAGE 52] The rule must be amended in section 20(B)(4) to provide that the setback from the resources listed in section 20(B)(4) may not be reduced to less than 1 mile;
20. [PAGE 52] The rule must be amended in section 20(B)(4) to provide that the setback from the resources listed in section 20(B)(4) applies to both surface and underground mining;
21. [PAGE 53] The rule must be amended in section 20(D) to provide that the applicant shall design, construct, operate and maintain underground mine openings to prevent unauthorized entry and, to the extent feasible and practicable, to minimize the risk of unacceptable settling, subsidence, voids or caving;
22. [PAGES 64-66] The rule must be amended in section 22(B)(1) to require that groundwater monitoring wells be outfitted with equipment that will provide continuous monitoring of data relating to, at a minimum, pH, temperature and conductivity;
23. [PAGES 64-66] The rule must be amended in section 22(B)(1) to clarify that the points of monitoring and compliance identified in this section are to be placed in relation to a mining area rather than in relation to a mining operation or activity;
24. [PAGE 64] The rule must be amended in section 22(B)(1)(a) to clarify that this language relates to groundwater monitoring systems;
25. [PAGE 65] The rule must be amended in section 22(B)(1)(a)(i) to clarify that this language relates to groundwater monitoring at points of compliance;
26. [PAGE 65] The rule must be amended in section 22(B)(1)(a)(ii) to clarify that this language relates to groundwater monitoring within a mining area, and to provide that, to the extent technically feasible, the department shall require groundwater monitoring within any mining area if the department determines such monitoring to be necessary to assess the performance of pollution control measures or the potential for contamination as defined under Title 38, section 490-MM(5) outside any mining area;
27. [PAGE 65] The rule must be amended in section 22(B)(1)(a)(iii) to clarify that this language relates to groundwater monitoring to determine compliance with surface water quality standards, and to provide that, to the extent technically feasible, the department shall require groundwater monitoring at any location to determine the potential for groundwater discharges to surface waters that would cause or contribute to nonattainment of applicable water quality criteria. The rule must provide that failure of groundwater to meet applicable water quality criteria at points of baseflow discharge constitutes contamination as defined under Title 38, section 490-MM(5);
28. [PAGE 65] The rule must be amended in section 22(B)(1)(b) to clarify that this language relates to background groundwater monitoring wells. The department may renumber section 22(B)(1)(b) as section 22(B)(1)(a)(iv) and make all other necessary changes in section 22(B)(1) to ensure proper numbering and formatting within section 22(B)(1);
29. [PAGES 9, 22, 55, 73-74, 76] The rule must be amended to provide that an applicant may not use wet mine waste units for storage or treatment of mine waste after closure. This rule change must be

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incorporated as necessary in section 2(LLLL), section 9(D)(12), section 20(G)(2), section 24(A)(3)(d), section 24(B)(5) and any other affected sections;

30. [PAGES 7, 22, 55] The rule must be amended to provide that perpetual treatment means treatment for more than 20 years post-closure. This rule change must be incorporated as necessary in section 2(OOO), section 9(D)(12), section 20(G)(2) and any other affected sections;

31. All necessary corrections are made to the Table of Contents so that it corresponds with the page numbers and the subchapter, section or subsection titles within the rule;

32. All other necessary grammatical, formatting, punctuation or other technical non-substantive editing changes are made to the rule, including the removal of strikethrough letters or words remaining from prior drafts and edits; and

33. All other necessary changes are made to the rule to ensure conformity throughout the rule with the rule changes directed under this section.

The department is not required to hold hearings or undertake further proceedings prior to final adoption of the rule in accordance with this section.

Sec. 6. Maine Land Use Planning Commission rulemaking; certification of mining permit applications. By January 8, 2016, the Maine Land Use Planning Commission shall provisionally adopt and submit to the Legislature for review rules related to commission certification of metallic mineral mining permit applications as described in the Maine Metallic Mineral Mining Act established pursuant to the Maine Revised Statutes, Title 38, chapter 3, subchapter 1, article 9. 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. Rules adopted pursuant to this section are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 7. Metallic Mining Fund; Department of Environmental Protection. Any costs to the Department of Environmental Protection associated with implementing the directives in section 5 shall be drawn from existing funds within the Metallic Mining Fund, established by Public Law 2011, chapter 653, section 32.

SUMMARY

This amendment replaces the bill and authorizes final adoption by the Department of Environmental Protection 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 on January 10, 2014, and that was also submitted to the Legislature for review on January 9, 2015, only if a number of specified changes to the rule are made. The amendment also provides for a number of corresponding changes to the Maine Metallic Mineral Mining Act established pursuant to the Maine Revised Statutes, Title 38, chapter 3, subchapter 1, article 9. The amendment also provides for major substantive rulemaking by the Maine Land Use Planning Commission related to commission certification of metallic mineral mining permit applications as described in the Maine Metallic Mineral Mining Act.