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Board of Environmental Protection, Maine DEP
17 State House Station
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Dear chairman Parker, Mr. Ahlers, Easteer, Dobbins, Draper, Mapes and Ms Chase.

I'm writing to urge the BEP to reject the DEP's request to schedule a public hearing on the Department's proposed Chapter 200 Metallic Mineral Exploration, Advanced Exploration and Mining.

As you're no doubt aware, this ostensibly simple request comes wrapped in the context of recent public hearings on the DEP's proposed mining rules which were rejected in 2014 and again in 2015.

Much of the extensive public comment throughout both series of public hearings regarding these rules focused on the problem that Maine's current Mining Statute doesn't address questions essential to issues of environmental and public safety raised by the prospect of metallic mining in our state.

These issues include the specific risks posed by Maine's volcanogenic massive sulfide deposits and Maine's wet climate. You may be aware of numerous metallic mining failures, in this country and and abroad, none of them, of course, predicted To be specific, here are four salient findings from a study that compared predicted vs actual water quality, looking at 25 in-depth case studies of modern era U.S. mines. I've provided the link.*

- 64% of the time, mitigation measures predicted to prevent exceeding water quality limits failed.
- 76% of the mines violated groundwater or surface water standards, or both.
- 89% of the mines that specifically predicted there would be no acid drainage, did develop acid drainage.
- 100% of the 19 mines that failed to comply with water quality standards had predicted they would comply with them.

All of these mining failures in the U.S. occurred in areas whose climate and geology are far more hospitable to metallic mining safety than is Maine's, given our wet conditions and unique geology of volcanogenic massive sulfide deposits. Amplifying these risks is the spectre of unpredictable and possibly unprecedented climate change which makes extrapolation from past experience tenuous. During previous hearings on the DEP's proposed mining rules, the public heard a number of geologists and hydrologists with extensive mining experience state flatly and with near unanimity that open-pit sulfide mining in Maine is tantamount to courting disaster.

Given this history, relevant issues posed by metallic mining in Maine include judgments about what degrees of risk of catastrophic mining failure that may result in irremediable water quality damage or unaffordable financial liability – from public or private coffers – should be deemed acceptable to Mainers. If, for example, legislators decide that a precautionary principle should guide decisions regarding the acceptability of certain risks, then certain projects in certain locales may be deemed inappropriate at the outset.

If a statute doesn't ask these kinds of questions, rules that the DEP writes can't possibly answer them. The calculus of environmental and public safety risks which Mainers should tolerate vs the possible benefits of metallic mining projects is a question that legislators writing laws, not rule-writers writing regulations, need to answer.

All that the DEP can really do at this point, which they have done, is to try to address the problem that the current mining statute has inconsistencies with the most recent, approved, rules approved in 1991, since rules proposed to replace them were rejected in 2013 and again in 2015. And they have made some additional changes to the rules to try to address some, but hardly all, of the public and legislative criticism that led to their rejection last year.

However, the bigger, framing, questions about mining in Maine referenced above can't be addressed by amended rules, only by revised statute. If you don't mind a metaphor ill suited to mining, the DEP at this point is not seeing the forest for the trees.

If the BEP grants the DEP's request for public hearings on its newest iteration of the mining regulations, you are not simply facilitating an exercise in transparency and public participation. You will be making the judgment yourselves, and sanctioning the DEP's judgment, that re-revised regulations rather than legislative action is all that need be required to settle the question of how we decide whether metallic mining should be done in our state and if so, with what safeguards.

If you approve the DEP's request, we will all be too far down the road to avoid yet another frustrating series of public hearings that can't be properly focused on the essential issues we confront in considering the advisability of metallic mining in Maine. Please spare us.

Sincerely

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* <http://pebblescience.org/pdfs/ComparisonsReportFinal.pdf>)
Comparison of Predicted and Actual Water Quality at Hardrock Mines
The reliability of predictions in Environmental Impact Statements