

Additional Testimony in Opposition to

**Chapter 200: METALLIC MINERAL EXPLORATION, ADVANCED EXPLORATION
AND MINING**

By Nick Bennett, Staff Scientist

September 26, 2016

Chairman Parker and members of the Board of Environmental Protection:

In addition to our oral and written testimony we delivered at the September 15, 2016 public hearing, NRCM has the following additional written testimony on Chapter 200:

1. There is no conflict between the 2012 mining statute and the existing rules. The 2012 statute clearly states the following:

[R]ules regulating metallic mineral mining adopted by the Department of Environmental Protection and the Maine Land Use Regulation Commission prior to the effective date of this section remain in effect until the Legislature approves major substantive rules provisionally adopted by the Department of Environmental Protection pursuant to this Act.

This means that DEP **does** have a regulatory system in place for processing permits and does not need to rush these proposed rules through. DEP has already waited nearly five years since the 2012 statute passed because it has come up with rules that large, bipartisan majorities of the Legislature rejected.

2. DEP should not claim helplessness due to the 2012 statute and other existing mining statutes. NRCM and many others who testified at the September 15 hearing believe that Maine should not allow mines in, on, or under public lands, floodplains, great ponds, rivers, streams, and coastal wetlands. DEP has said that it cannot protect at least some of these areas due to the 2012 statute and existing language in Title 12 Section 549 et. seq. NRCM believes that Title 12 Section 549-C may require any applicant for mining to comply with DEP siting rules anywhere in Maine. This section states:

Nothing in this subchapter may be deemed to relieve any explorer or mining lessee from the obligation to comply with all applicable environmental or other regulatory laws and rules of the State.

If DEP truly believes, however, that it needs additional authority from the Legislature to prohibit mines in, on, or under public lands, floodplains, great ponds, rivers, streams, and coastal wetlands, it should ask the Legislature for this authority. Given the concern about mining in these areas among the public and legislators, the Legislature would likely support such a request.

DEP has had many opportunities to ask for changes to the 2012 mining law. In 2015, DEP supported a number of amendments to the 2012 law in LD 750, and it could have asked for more. DEP could also have asked for changes in the 2016 legislative session, but it did nothing related to the mining law or these proposed rules.

We urge the BEP to recommend that the Administration ask the Legislature for authority to prohibit mines in, on, or under public lands, floodplains, great ponds, rivers, streams, and coastal wetlands if the BEP believes that DEP lacks this authority. Otherwise, the BEP should amend these rules to prohibit mining in these areas.

3. The Eagle Mine is not necessarily a “model mine”. The Eagle Mine in Michigan was a topic of discussion at the September 15, 2016 hearing. This mine is very new and started production in 2014. The owner trucks ore to a refurbished iron mill for processing. It disposes of tailings in an old iron mine pit that contains large quantities of tailings from past gold processing.¹ Maine is unlikely to have a mine with a comparable arrangement using an existing mine pit for waste disposal or that transports raw ore off-site for refining.

The Eagle Mine tailings are acid generating and will need to stay under water permanently.² Over time, the disposal pit may pose significant environmental problems. In addition, the Eagle Mine is discharging both treated and untreated wastewater from the pit to neighboring wetlands as new tailings displace pit water. The long-term environmental impacts of this remain unknown, and there is significant public concern about these impacts.³

The Eagle Mine is very small. The ore body at the site is about four million tons⁴, much smaller than the 35-million ton⁵ ore body at Bald Mountain. It is also an underground mine. Most of the recent discussion on mining in Maine has focused on an open-pit mine at Bald Mountain, which is what J.D. Irving proposed there. In general, underground mines generate about 10 percent of the waste that open-pit mines do.⁶ In this respect, the Eagle Mine is using an environmentally preferable mining practice. NRCM believes the BEP should consider prohibiting open-pit mines

¹ See <http://eaglemine.com/responsibility/environment/>.

² Eagle Project Mining Permit Application, Volume 1, P. 86. Accessed at <https://gis.lic.wisc.edu/wwwlicgf/glifwc/Kennecott/PermitAp2/Mining/Vol1/Mine%20Permit%20App%20text.pdf>

³ See, for example: <http://savethewildup.org/2015/01/concerns-raised-about-proposed-discharge-permit-for-eagle-mines-humboldt-mill/>

⁴ Eagle Project Mining Permit Application, Volume 1, P. 17. Accessed at <https://gis.lic.wisc.edu/wwwlicgf/glifwc/Kennecott/PermitAp2/Mining/Vol1/Mine%20Permit%20App%20text.pdf>

⁵ NMM, Resources, Inc. 1997. Application for Mining. P. ii. Accessible at <http://www.nrcm.org/wp-content/uploads/2013/11/miningreportsupportingdocs.pdf>, p. 98.

⁶ Earthworks and Oxfam America. 2004 Dirty Metals. P. 4. Accessed at http://www.earthworksaction.org/library/detail/dirty_metals

in Maine as a means of lowering the quantity of waste mines generate and the risks they pose to the environment.

Conclusion

NRCM opposes these rules because they are not protective of Maine’s environment, clean water, or taxpayers. The BEP should amend the rules to ban mining in, on, or under public lands, floodplains, great ponds, rivers, streams, and coastal wetlands. If the BEP believes it lacks authority to do this in rule, it should recommend that the Administration seek such authority from the Legislature. The Board should also consider banning open-pit mines.

As we stated in our September 15 testimony, the rules should require mining companies to pay enough financial assurance prior to receiving a permit to cover the cost of a worst-case mining disaster. The rules should require dry management of tailings and other mine wastes. They should ban wet management of tailings and other mine wastes.

Finally, I apologize for a typo in the first paragraph of the testimony I submitted on September 15. It should have stated:

My name is Nick Bennett, I am the Staff Scientist for the Natural Resources Council of Maine, and I am testifying in opposition to these proposed rules.

Instead, I inadvertently wrote:

My name is Nick Bennett, I am the Staff Scientist for the Department of Environmental Protection, and I am testifying in opposition to these proposed rules.

I apologize for any confusion this may have caused.