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House of Representatives, April 2, 2013

**An Act To Amend the Maine Metallic Mineral Mining Act To
Protect Water Quality**

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative McCABE of Skowhegan.
Cosponsored by Senator WOODBURY of Cumberland and
Representatives: COTTA of China, DUNPHY of Embden, ESPLING of New Gloucester,
MAKER of Calais, MALABY of Hancock, SANDERSON of Chelsea, SHAW of Standish.

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

2 **Sec. 1. 38 MRSA §490-OO, sub-§3-A** is enacted to read:

3 **3-A. Permit issuance for mining in a sulfide ore body.** The provisions of this
4 subsection apply to surface or open pit mining in a sulfide ore body.

5 A. For the purposes of this subsection, unless the context otherwise indicates, the
6 following terms have the following meanings.

7 (1) "Sulfide ore body" means a mineral deposit in which metals are mixed with
8 sulfide minerals.

9 (2) "Surface or open pit mining" means removing the overburden lying above a
10 deposit of a metallic mineral and mining directly from the exposed deposit or
11 mining directly from a deposit lying exposed in the mineral's natural state.

12 B. The department may not issue a permit for surface or open pit mining in a sulfide
13 ore body unless the applicant has operated a mining operation:

14 (1) In a geographic location that has climatic and geological features similar to
15 the proposed mining area;

16 (2) In the United States or Canada;

17 (3) That has not violated any environmental law as determined in an
18 administrative proceeding, civil action, criminal action or other legal proceeding.
19 For the purposes of this paragraph, issuance of an order or acceptance of an
20 agreement requiring corrective action or a stipulated fine, forfeiture or other
21 penalty is considered a determination of a violation, regardless of whether there
22 was a finding or admission of liability; and

23 (4) That has not discharged pollutants to groundwater or surface water causing
24 the water to fail to meet water quality standards.

25 C. Within 3 months after the department has issued a permit for surface or open pit
26 mining of a sulfide ore body under this subsection, the department shall submit a
27 report to the joint standing committee of the Legislature having jurisdiction over
28 metallic mineral mining matters recommending whether or not the provisions of this
29 subsection should be repealed. The joint standing committee of the Legislature
30 having jurisdiction over metallic mineral mining matters has authority to submit
31 legislation repealing this subsection.

32 **Sec. 2. 38 MRSA §490-OO, sub-§4, ¶D,** as enacted by PL 2011, c. 653, §23 and
33 affected by §33, is amended to read:

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

1 department may not issue a permit if the department determines that the mining
2 operation will result in the contamination of groundwater or surface water requiring
3 treatment of the water or other remedial actions beyond 10 years after cessation of
4 mining operations.

5 **Sec. 3. 38 MRSA §490-QQ, sub-§3**, as enacted by PL 2011, c. 653, §23 and
6 affected by §33, is amended to read:

7 **3. Water quality monitoring.** Through rulemaking the department shall establish
8 standards for monitoring groundwater ~~as close as practicable to any mining area that may~~
9 ~~pose a threat to groundwater.~~ The standards must include locating down gradient
10 monitoring wells no more than 100 feet away from the boundary of each waste handling
11 area, mining area, affected area and any other area where mining activities may result in
12 the discharge of pollutants into groundwater. The department may approve the location
13 of a monitoring well exceeding the 100-foot maximum distance if the location enhances
14 the ability to detect a discharge of pollutants. A permittee shall conduct groundwater and
15 surface water monitoring in accordance with the provisions of a mining permit during
16 mining operations, during suspension of mining operations, during closure and during the
17 post-closure monitoring period. The post-closure monitoring period must be at least 30
18 years following cessation of mining, subject to the following conditions.

19 A. The permittee shall provide to the department a written request to terminate post-
20 closure monitoring not less than 18 months before the proposed termination date and
21 shall provide the department with technical data and information demonstrating the
22 basis for the termination of the post-closure monitoring.

23 B. The department may shorten the post-closure monitoring period at any time upon
24 determining that there is no significant potential for water contamination resulting
25 from the mining operation.

26 C. The department shall extend the post-closure monitoring period in increments of
27 up to 20 years unless the department determines, approximately one year before the
28 end of a post-closure monitoring period or post-closure incremental monitoring
29 period, that there is no significant potential for surface water or groundwater
30 contamination resulting from the mining operation.

31 **Sec. 4. 38 MRSA §490-RR, sub-§3**, as enacted by PL 2011, c. 653, §23 and
32 affected by §33, is amended to read:

33 **3. Form of financial assurance.** ~~The financial assurance may consist of~~ must be
34 fulfilled through creation of a trust fund established for the benefit of the department.
35 The trust fund may be established using the following instruments: a surety bond, escrow,
36 cash, certificate of deposit, trust, irrevocable letter of credit issued by a financial
37 institution acceptable to the department, or other equivalent security, or combination
38 thereof, as long as the department approves the financial assurance as proposed by the
39 applicant. ~~When determining the appropriate security to require, the department shall~~
40 ~~take into consideration the type and location of the mining operation and the type of~~
41 ~~security that is adequate to protect the State's financial interest.~~ The financial assurance
42 trust fund must be in a form that cannot be cancelled, withdrawn, revoked or otherwise
43 reduced without the express written consent of the commissioner after a finding that the

1 reduced amount is appropriate given the conditions related to the mining operation,
2 including, but not limited to, the potential cost of long-term maintenance and monitoring,
3 closure and any necessary response to episodic maintenance.

4 **Sec. 5. Effective date.** This Act takes effect June 1, 2014.

5 **SUMMARY**

6 This bill makes changes to the Maine Metallic Mineral Mining Act.

7 1. It prohibits the Department of Environmental Protection from issuing a permit for
8 surface or open pit mining in a sulfide ore body unless the applicant has previously
9 operated a mining operation that meets certain conditions. It also requires the department
10 to submit a report to the joint standing committee of the Legislature having jurisdiction
11 over metallic mineral mining matters recommending whether or not the prohibition
12 should be repealed. The report must be submitted within 3 months after the department
13 has issued a permit for surface or open pit mining of a sulfide ore body.

14 2. It amends the approval criteria related to water quality by requiring that discharges
15 of pollutants from the mining operation will not violate applicable water quality standards
16 and it prohibits the issuance of a permit if the mining operation will result in the
17 contamination of groundwater or surface water requiring treatment beyond 10 years after
18 cessation of mining operations.

19 3. It amends the standards for monitoring groundwater.

20 4. It requires financial assurance to be fulfilled through creation of a trust fund.