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ENVIRONMENT AND NATURAL RESOURCES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
126TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 929, L.D. 1302, Bill, “An Act To Amend the Maine Metallic Mineral Mining Act To Protect Water Quality”

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 38 MRSA §490-MM, sub-§1-A is enacted to read:

1-A. Activity unit. "Activity unit" means an area of land within a mining area where a particular mining activity takes place, including, but not limited to, an area from which earth material is removed; an area where overburden, waste rock and ore are stored; a tailings impoundment or other tailings storage area; an area where ore is processed; an area where groundwater and surface water management treatment systems are located; a waste disposal area; and an area where any other activity associated with mining occurs.

Sec. 2. 38 MRSA §490-MM, sub-§12, as enacted by PL 2011, c. 653, §23 and affected by §33, 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. A mining area may include more than one activity unit.

Sec. 3. 38 MRSA §490-OO, sub-§2, ¶C, as enacted by PL 2011, c. 653, §23 and affected by §33, is amended to read:

C. An environmental protection, reclamation and closure plan for the proposed mining operation, including beneficiation operations, that will reasonably avoid, minimize and mitigate the actual and potential adverse impacts on natural resources, the environment and public health and safety within the mining area and the affected

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1 area. The plan must address unique issues associated with mining and must include,
2 but not be limited to, the following:

- 3 (1) A description of materials, methods and techniques that will be used;
- 4 (2) Information that demonstrates that the methods, materials and techniques
5 proposed to be used are capable of accomplishing their stated objectives in
6 protecting the environment and public health. The required information may
7 consist of results of actual testing, modeling, documentation by credible
8 independent testing and certification organizations or documented applications in
9 similar uses and settings;
- 10 (3) Plans and schedules for interim and final reclamation of the mining area and
11 the affected area following cessation of mining operations and plans and
12 schedules for measures taken during suspension of operations, including
13 contemporaneous reclamation, to the extent practicable;
- 14 (4) A description of the geochemistry of the ore, waste rock, overburden,
15 peripheral rock, spent leach material and tailings, including characterization of
16 leachability, reactivity and acid-forming characteristics;
- 17 (5) A mining operations closure plan;
- 18 (6) Provisions for the prevention, control and monitoring of acid-forming waste
19 products and other waste products from the mining process in accordance with
20 standards in subsection 4, paragraphs D and E;
- 21 (7) Storm water and surface water management provisions;
- 22 (8) A water quality monitoring plan;
- 23 (9) A description of the wastewater discharge management plan;
- 24 (10) A description of any tailings impoundment and the methods, materials and
25 techniques to be used;
- 26 (11) A plan for the storage of hazardous materials; ~~and~~
- 27 (12) An estimate of costs for reclamation, closure and environmental protection;:
- 28 (13) Assurance that the mining operation will meet all applicable environmental
29 requirements in state laws and rules and federal laws and regulations without
30 requiring water treatment beyond 10 years after closure of the mine; and
- 31 (14) A waste rock management plan that includes a plan to ensure that waste
32 rock is not used in the construction of roads;

33 **Sec. 4. 38 MRSA §490-OO, sub-§2, ¶D-1** is enacted to read:

34 D-1. An estimate of the costs to close the mining operation, including estimated
35 costs sufficient for the department to undertake the activities and measures identified
36 in section 490-RR, subsection 2, and a verification of the adequacy of the estimate by
37 a qualified 3rd party selected by the department. The department shall ensure the 3rd

1 party does not have a conflict of interest with the applicant. The applicant shall pay
2 the costs associated with producing the estimate;

3 **Sec. 5. 38 MRSA §490-OO, sub-§2, ¶¶E and F**, as enacted by PL 2011, c. 653,
4 §23 and affected by §33, are amended to read:

5 E. Financial assurance as described in section 490-RR; ~~and~~

6 F. A list of other state and federal permits or approvals anticipated by the applicant
7 to be required-; and

8 **Sec. 6. 38 MRSA §490-OO, sub-§2, ¶G** is enacted to read:

9 G. An estimate of the number and types of direct and indirect jobs expected to be
10 created by the mining operation and estimates of the expected duration of those jobs
11 and the number of jobs by type that will likely be filled by individuals in the State's
12 workforce who have the necessary expertise.

13 **Sec. 7. 38 MRSA §490-OO, sub-§2-A** is enacted to read:

14 **2-A. Identification of responsible mining operations.** In addition to the
15 requirements in subsection 2, an application for a mining permit for a mining operation in
16 a sulfide ore body must include an analysis and description of at least 3 mines operating
17 in the United States that the applicant believes represent responsible mining operations
18 and demonstrate the use of best practices for preventing contamination of groundwater
19 and surface water and other negative impacts on the environment. The analysis must
20 describe the environmental issues present at each of the 3 mines, the practices and
21 technologies used to minimize pollution and environmental impacts and how the
22 applicant will use those best practices in the proposed mining operation.

23 **Sec. 8. 38 MRSA §490-OO, sub-§4, ¶D**, as enacted by PL 2011, c. 653, §23 and
24 affected by §33, is amended to read:

25 D. There is reasonable assurance that discharges of pollutants from the mining
26 operation will not violate applicable water quality standards. Notwithstanding
27 sections 465-C and 470, discharges to groundwater from activities permitted under
28 this article may occur within a mining area, ~~but such discharges may not result in~~
29 ~~contamination of groundwater beyond each mining area~~ an activity unit. In
30 determining compliance with this standard, the department shall require groundwater
31 monitoring consistent with the standards established pursuant to section 490-QQ,
32 subsection ~~3~~ 3-A.

33 **Sec. 9. 38 MRSA §490-OO, sub-§4, ¶¶K and L** are enacted to read:

34 K. The applicant has designed the mining operation to meet all applicable
35 environmental requirements in state laws and rules and federal laws and regulations
36 without requiring water treatment beyond 10 years after closure of the mine.

37 L. The applicant has designed the mining operation to ensure that waste rock is not
38 used in the construction of roads.

39 **Sec. 10. 38 MRSA §490-QQ, sub-§3**, as enacted by PL 2011, c. 653, §23 and
40 affected by §33, is amended to read:

1 **3. Water quality monitoring.** ~~Through rulemaking the department shall establish~~
2 ~~standards for monitoring groundwater as close as practicable to any mining area that may~~
3 ~~pose a threat to groundwater.~~ A permittee shall conduct groundwater and surface water
4 monitoring in accordance with the provisions of a mining permit during mining
5 operations, during suspension of mining operations, during closure and during the post-
6 closure monitoring period. The post-closure monitoring period must be at least 30 years
7 following cessation of mining, subject to the following conditions.

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

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

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

20 **Sec. 11. 38 MRSA §490-QQ, sub-§3-A** is enacted to read:

21 **3-A. Minimizing groundwater contamination.** A permittee shall minimize the
22 contamination of groundwater to the greatest extent practicable. The department shall
23 require that compliance monitoring wells be located as close as physically practicable to,
24 but not more than 100 feet from, the activity unit being monitored for groundwater
25 contamination. The department may approve an alternative water monitoring location
26 only if the operator demonstrates the location is protective of the environment and public
27 health and safety and a closer location is not feasible or effective.

28 **Sec. 12. 38 MRSA §490-RR, sub-§3,** as enacted by PL 2011, c. 653, §23 and
29 affected by §33, is amended to read:

30 **3. Form of financial assurance.** ~~The financial assurance may consist of~~ Before any
31 construction for the mining operation may begin, the applicant shall provide the financial
32 assurance required under subsection 1 through the following instruments, either alone or
33 in combination: a surety bond, escrow, cash, certificate of deposit, trust, ~~and~~ irrevocable
34 letter of credit issued by a financial institution acceptable to the department, ~~or other~~
35 equivalent security, or combination thereof, as long as the department approves the
36 financial assurance as proposed by the applicant. The instruments must provide the total
37 amount of the required financial assurance upon demand of the State to cover the costs
38 identified in subsection 2. When determining the appropriate security to require, the
39 department shall take into consideration the type and location of the mining operation and
40 the type of security that is adequate to protect the State's financial interest. The financial
41 assurance must be in a form that cannot be cancelled, withdrawn, revoked or otherwise
42 reduced without the express written consent of the commissioner after a finding that the
43 reduced amount is appropriate given the conditions related to the mining operation,
44 including, but not limited to, the potential cost of long-term maintenance and monitoring,

1 closure and any necessary response to episodic maintenance. A permittee shall provide
2 the department with notice 90 days prior to the expiration of a financial assurance
3 instrument and within 2 business days of the renewal and execution of an instrument.

4 **Sec. 13. 38 MRSA §490-RR, sub-§3-A** is enacted to read:

5 **3-A. Standby trust fund requirements.** A permittee using any of the financial
6 assurance instruments authorized in subsection 3, except a trust, shall establish a standby
7 trust fund that stands ready to receive funds from a financial assurance instrument
8 required pursuant to subsection 3 for costs to undertake the activities and measures
9 identified in section 490-RR, subsection 2. The standby trust fund must provide for
10 administration and oversight identical to those for an active trust fund.

11 **Sec. 14. Effective date.** This Act takes effect June 1, 2014.'

12 SUMMARY

13 This amendment is the majority report of the committee and replaces the bill. The
14 amendment:

- 15 1. Includes a definition of "activity unit";
- 16 2. Provides that a mining area may include more than one activity unit;
- 17 3. Requires that compliance monitoring wells be located as close as physically
18 practicable to an activity unit being monitored for groundwater contamination;
- 19 4. Removes a directive to the Department of Environmental Protection to establish
20 standards for monitoring groundwater as close as practicable to any mining area that may
21 pose a threat to groundwater;
- 22 5. Amends approval criteria to provide that discharges to groundwater may occur
23 within an activity unit. It strikes the current law that provides that discharges to
24 groundwater may occur within a mining area, but such discharges may not result in
25 contamination of groundwater beyond each mining area;
- 26 6. Requires an application to include assurance that the mining operation will meet
27 all state and federal environmental requirements without requiring water treatment
28 beyond 10 years after closure;
- 29 7. Adds to the approval criteria to require that the department find the mining
30 operation is designed to meet all state and federal environmental requirements without
31 requiring water treatment beyond 10 years after closure;
- 32 8. Requires an application to include a waste rock management plan;
- 33 9. Adds to the approval criteria to require that the department find the mining
34 operation is designed to ensure that waste rock is not used in the construction of roads;
- 35 10. Requires an application to include information related to the number and types of
36 jobs expected to be created;
- 37 11. For an application for a mining operation in a sulfide ore body, requires an
38 application to include information related to 3 responsible mining operations;

1 12. Requires an application to include an estimate of the costs to close the mining
2 operation, including estimated costs sufficient for the department to undertake the
3 activities and measures specified in the financial assurance requirements, and a 3rd-party
4 verification of the adequacy of the estimate;

5 13. Amends the financial assurance provisions to require that financial assurance
6 must be provided before any construction may begin;

7 14. Provides that the financial assurance instruments must provide the total amount
8 of the required financial assurance upon demand of the State to cover the costs for
9 activities necessary for the investigation, monitoring, closure, treatment, remediation,
10 reclamation, operation and maintenance and any other necessary environmental
11 protection measures;

12 15. Requires a permittee to provide the department with notice prior to the expiration
13 of a financial assurance instrument and the renewal and execution of an instrument; and

14 16. Requires the establishment of a standby trust fund, except when a trust is the
15 financial assurance instrument used.