

**Proposed Committee Amendment to LD 1302, An Act To Amend the Maine Metallic Mineral Mining Act To Protect Water Quality**

Rep. McCabe

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

- (1) A description of materials, methods and techniques that will be used;
- (2) Information that demonstrates that the methods, materials and techniques proposed to be used are capable of accomplishing their stated objectives in protecting the environment and public health. The required information may consist of results of actual testing, modeling, documentation by credible independent testing and certification organizations or documented applications in similar uses and settings;
- (3) Plans and schedules for interim and final reclamation of the mining area and the affected area following cessation of mining operations and plans and schedules for measures taken during suspension of operations, including contemporaneous reclamation, to the extent practicable;
- (4) A description of the geochemistry of the ore, waste rock, overburden, peripheral rock, spent leach material and tailings, including characterization of leachability, reactivity and acid-forming characteristics;
- (5) A mining operations closure plan;
- (6) Provisions for the prevention, control and monitoring of acid-forming waste products and other waste products from the mining process in accordance with standards in subsection 4, paragraphs D and E;
- (7) Storm water and surface water management provisions;
- (8) A water quality monitoring plan;
- (9) A description of the wastewater discharge management plan;
- (10) A description of any tailings impoundment and the methods, materials and techniques to be used;
- (11) A plan for the storage of hazardous materials; ~~and~~
- (12) An estimate of costs for reclamation, closure and environmental protection; ~~and~~
- (13) Assurance that the mining operation will meet all applicable environmental requirements in state laws and rules and federal laws and regulations without requiring perpetual care. For the purposes of this subsection, "perpetual care" means treating wastewater or performing other significant site maintenance activities beyond 10 years after closure of the mine in order to avoid groundwater or surface water pollution, including maintenance of infrastructure whose failure would allow pollution;

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

**2-A. Demonstration.** The application for a mining permit for a mining operation mining in a sulfide ore body must include a demonstration of a comparable, nonpolluting metallic mineral mine in a sulfide ore body.

A. An applicant for a permit for a metallic mineral mine in a sulfide ore body shall provide information documenting that a comparable mine in a sulfide ore body has operated for at least 10 years without the pollution of groundwater or surface water. The sulfide ore body of this comparable mine, together with its host rock, must have a net acid generating potential as determined by using the net acid generation pH method. The comparable mine must also be in a climatic and geological setting similar to the State's, must be of a size and depth similar to the proposed mine in the State, must be in the United States and must have sufficient monitoring data to determine whether pollution has occurred. If the applicant is proposing a shaft mine, the mine identified to meet these criteria must be a shaft mine. If the applicant is proposing an open pit mine, the mine identified to meet these criteria must be an open pit mine.

B. For the purposes of this paragraph, the comparable, nonpolluting mine may not have caused:

(1) Environmental degradation that results in a violation of any environmental law as determined by an administrative proceeding, civil action, criminal action or other legal proceeding. Issuance of an order or acceptance of an agreement requiring corrective action or a stipulated fine, forfeiture or other penalty is considered a determination of a violation, regardless of whether there is a finding or admission of liability;

(2) The direct or indirect discharge of pollutants into the groundwater or surface water that causes receiving waters to fail to meet the federal Clean Water Act or the federal Safe Drinking Water Act standards; or

(3) In cases where pollutants are present at levels in excess of the federal Clean Water Act or the federal Safe Drinking Water Act standards prior to commencement of mining activities, the direct or indirect discharge of pollutants into the groundwater or surface water that increases these pollutants above background levels present prior to commencement of mining activities.

C. Once an applicant for a shaft metallic mineral mine in a sulfide ore body has received a permit from the department, including certification of having met the requirements of this subsection to identify a comparable, nonpolluting mine, no other applicant for a shaft mine is required to meet the requirements of this subsection. Once an applicant for an open pit metallic mineral mine in a sulfide ore body has received a permit from the department, including certification of having met the requirements of this subsection to identify a comparable, nonpolluting mine, no other applicant for an open pit mine in a sulfide ore body is required to meet the requirements of this subsection.

**Sec. 3. 38 MRS §490-OO, sub-§4, ¶D,** as enacted by PL 2011, c. 653, §23 and affected by §33, is amended to read:

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

**Sec. 4. 38 MRS §490-OO, sub-§4, ¶¶K to O** are enacted to read:

K. If the mining operation is to be located in a sulfide ore body, the applicant has identified a comparable, nonpolluting mine pursuant to section 490-OO, subsection 2-A.

L. The mining operation will not cause a discharge of pollutants into groundwaters of the State or cause a violation of the groundwater classifications pursuant to sections 464, 465-C and 470.

M. Downgradient monitoring wells placed to determine whether a site causes a discharge of pollutants into groundwaters of the State are located as close as practicable to the areas that may

result in the discharge of pollutants into groundwater or surface water, including but not limited to boundaries of the mining pits or shafts, ore processing areas, tailings impoundments, waste handling areas and waste rock dumps. The downgradient monitoring wells may not be located greater than 100 feet away from these areas, unless placing some of the wells at greater distances enhances the ability to detect a release from an area. Placement of wells more than 100 feet away from these areas may be proposed for approval by the department.

N. The applicant has designed the metallic mineral mine to meet all applicable environmental requirements in state laws and rules and federal laws and regulations without requiring perpetual care. For the purposes of this paragraph, "perpetual care" means treating wastewater or performing other significant site maintenance activities beyond 10 years after closure of the mine in order to avoid groundwater or surface water pollution, including maintenance of infrastructure whose failure would allow pollution.

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

**3. Adequacy and form of financial assurance.** ~~The financial assurance may consist of a~~ In advance of construction and operation, an applicant for a permit shall provide to the department an estimate of the costs to close the mining operation. The adequacy of the estimate must be verified by a qualified 3rd-party entity with no conflict of interest with the applicant and who is selected by the department. The cost of the analysis is to be borne by the applicant. Once the estimated costs are verified and before any construction may begin, the applicant shall provide the financial assurance required under subsection 1 through a trust that may be funded by the following instruments, standing alone or in combination: surety bond, escrow, cash, certificate of deposit, trust, irrevocable letter of credit issued by a financial institution acceptable to the department, or other equivalent security, or combination thereof, as long as the department approves the financial assurance as proposed by the applicant. The State is the beneficiary of the trust. The instruments must provide the total amount of the required financial assurance upon demand of the State to cover the costs of closure. When determining the appropriate security to require, the department shall take into consideration the type and location of the mining operation and the type of security that is adequate to protect the State's financial interest. The financial assurance must be in a form that cannot be cancelled, withdrawn, revoked or otherwise reduced without the express written consent of the commissioner after a finding that the reduced amount is appropriate given the conditions related to the mining operation, including, but not limited to, the potential cost of long-term maintenance and monitoring, closure and any necessary response to episodic maintenance. The provisions for financial assurance must include a requirement concerning the applicant's and the metallic mineral operator's duty to provide the department with timely notice 90 days prior to the expiration of the various financial instruments and simultaneously with the renewal and execution of the instruments.

## SUMMARY

This bill amends the Maine Metallic Mineral Mining Act to increase protection of groundwater and surface water quality and to establish new permit conditions. The bill requires applicants for a metallic mineral mining permit to provide assurance that the mine will not require perpetual wastewater treatment following mine closure in order to avoid groundwater or surface water pollution. The bill also requires an applicant for an open pit or a shaft mine located within a sulfide ore body to identify, as part of the permit application, a comparable mine that has operated for at least 10 years without polluting groundwater or surface water.