



December 13, 2012

Commissioner Patricia Aho
Maine Department of Environmental Protection
#17 State House Station
Augusta, ME 04333-0017

Dear Commissioner Aho:

I am writing on behalf of the Natural Resources Council of Maine to express our strong concerns about DEP's recent selection of the North Jackson Company to serve as a contractor to help revise Maine's metallic mineral mining rules. DEP has apparently decided to allow a mining industry consultant play a lead role in writing the rules for metal mining in Maine, without meaningful public input during the drafting phase and no clear indication of the role to be played by technical experts at Maine's natural resource agencies.

The process you are pursuing gives too much influence to mining interests and not enough opportunity for Maine people to participate in drafting rules that could result in widespread water pollution and massive financial clean-up costs for the State if the public's interests are not protected.

We believe the North Jackson Company is too closely tied to the mining industry to provide the type of objective technical input that is needed for this rulemaking process. We are concerned that the North Jackson Company and the DEP have misrepresented the qualifications of this firm with regard to its role in helping Michigan develop mining rules in 2004 and 2005. We also are concerned that the DEP process appears to be outsourcing the lead role of rewriting Maine's metallic mineral mining rules to the North Jackson Company. We strongly believe that this role should be reserved for DEP's senior professional and technical staff members, with support from staff at the Maine Geological Survey and Maine Department of Inland Fish and Wildlife. These agency experts work for the people of Maine, understand our laws and resources, and can protect our interests better than a Michigan-based company tied to mining corporations.

Based on the concerns provided below, we believe DEP should drastically alter the process for this rulemaking to make it transparent and open to public and stakeholder input *during the drafting phase*, with a publically-announced team of DEP technical and professional staff (not political staff) assigned to leadership roles in managing the process. Absent such steps, we believe this rulemaking process will be suspect from the start, with Maine people not able to trust that their interests are being protected. The DEP should look carefully at the open, transparent, consensus-based process that was used in Michigan and replicate that approach to the extent possible.

1. **North Jackson Company's Ties with the Mining Industry.** The bid submitted by North Jackson Company shows that this firm is a captive contractor beholden to some of the world's largest mining companies. As stated in the company's proposal (pg 1): "We have served multi-national mining companies from the start, including permitting new and expanded operations and addressing legacy environmental impacts." Among its clients, North Jackson has worked for Rio Tinto, Cliffs Natural Resources, Kennecott Exploration Canada, Kennecott Eagle Minerals Company, the Empire Iron Mine, Tilden Iron Mine, and Orvana Resources. North Jackson Company helped prepare the application for Kennecott's controversial nickel and copper mine (the Eagle Mine) in Michigamme Township, Michigan. A broad range of individuals and organizations including the National Wildlife Federation challenged Kennecott's permit for the Eagle Mine. North Jackson CFO Dan Wiitala (who is the principal contact for the bid to DEP) served as a *leading industry witness* for Kennecott during the appeal hearings. From conversations with individuals in Michigan, NRCM has confirmed that North Jackson Company primarily works for mining companies. The DEP press release (11/19/12) fails to mention any of this information, leaving Maine people to potentially believe, wrongly, that North Jackson Company is not essentially joined at the hip with mining interests.
2. **Misrepresentation of North Jackson Company's Qualifications.** In its proposal, the North Jackson Company represents that it was involved in the process of revising Michigan's mineral mining rules. DEP's press release highlights this qualification as a primary reason why the company received the award, saying: "they helped Michigan – a state with similar climactic conditions to Maine – with a similar rule updating process." This is false. The North Jackson Company was not a member of the working group that developed Michigan's revised mining rules (Part 632), as the attached list of participants shows.

NRCM has spoken with several members of the Part 632 Work Group who confirmed that North Jackson Company was not involved. They were not invited to participate and they did not participate. But the *Bangor Daily News* repeated DEP's false statement in a November 20, 2012 news story, misleading its readership by reporting: "the company has extensive experience with mining operations and helped the state of Michigan with a similar rewrite of its mining rules, according to the DEP."

We believe that the DEP Director of Communications, at a minimum, should issue a retraction to the media stating that the Department's news release was inaccurate. But we also are concerned that the Department may actually believe that the North Jackson Company has experience that it does not have. In its evaluation of the North Jackson Company, the Department should have verified whether the company was in fact a member of the work group that helped draft Michigan's mining statute and rules over a two year process.

North Jackson Company also is culpable in this misrepresentation. For its bid, the company proposed subcontracting with an individual (John Meier) who previously worked with Michigan's largest iron mining company – Cleveland Cliffs Mining

Services (now Cliffs Natural Resources). Meier was an industry representative in the Part 632 Work Group who, according to participants of the Work Group, was there to ensure that the revised rules—which were aimed at non-ferrous mining operations—did not inadvertently include language restricting the iron mining activities of his employer, Cleveland Cliffs. He had a very narrow focus and purpose for being included on the Work Group. The North Jackson Company’s representation that Meier played a significant role in drafting Michigan’s mining rules is not supported by key players who actually did the work of drafting Michigan’s rules.

- 3. Flawed DEP Process for Rulemaking.** Given the close ties that North Jackson Company has with mining companies, it will be *extremely important* for this rulemaking process to include extensive opportunities for Maine people and interested parties to participate—to be sure that the interests of Maine people, and not simply out-of-state mining corporations, are well reflected in the final rules. But that is not what we see emerging as the DEP process.

According to the request for proposals, North Jackson Company by February 15, 2013, will develop draft rules and the justification document (basis statement) and submit them to DEP for review, and then DEP will submit the materials to the Board of Environmental Protection (BEP) by May 2013, with a public hearing to be held in July 2013.

No provision is made for any public or stakeholder input before the draft rules are essentially a “done deal” heading to the BEP. Anyone who has followed rulemaking and the work of the BEP knows that it is extremely difficult, and rare, for draft rules to be altered in a significant way once they are presented to the Board. Following the public hearing, the North Jackson Company will play a role in determining how public comments are to be considered and whether to modify the rules. It remains entirely unclear whether DEP professional and technical staff with expertise in Maine’s hydrology, wildlife habitat, geology, and permitting requirements will play a meaningful part in this rulemaking, or whether the work mostly be done by the North Jackson Company.

Although the DEP news release announcing the selection of North Jackson Company claims that a transparent process will be pursued, the process that has been revealed by DEP thus far is not transparent. It looks, instead, like a process that will be mostly behind closed doors. In sharp contrast, Michigan’s Department of Environmental Quality in 2004 and 2005 *did* utilize an open and transparent process, which resulted in unanimous enactment of the final rules by the Michigan legislature.

Michigan’s so-called Part 632 Work Group included 27 individuals representing a broad range of interests. The group met more than 20 times, using a consensus-based approach. At the end of each meeting, 30 minutes were set aside to hear from other interested parties who were not formal members of the Work Group (see attached e-mail to Work Group participants). Minutes of meetings were publicly available, as were dates and locations of upcoming meetings. Revisions of draft rules were

broadly available for review. We are not aware that the DEP intends to pursue a process anything like this, but we believe such an approach is essential.

We are troubled that only one bid was submitted to DEP's request for proposals, and we believe it was a mistake for DEP to award the contract to a company so closely tied to the mining industry. We recognize that it is difficult to overturn a contract award, and in this case an appeal is precluded because DEP failed to publicly announce the contract award until after the appeal filing period had ended. Maine procurement policy requires contract appeals to be filed within 15 days of the award. In this case, we recently learned that the DEP contract award letter was signed on October 11, 2012, but DEP delayed a public announcement until November 19, 2012, five weeks later.

Absent an avenue for appeal of this contract, we request that the Department take prompt action to ensure that this rulemaking process not have the appearance—or the reality—of being driven by a contractor whose primary clients are multi-national mining corporations. We request that you quickly develop and announce a revised rulemaking process that will guarantee openness and transparency, and that will ensure meaningful involvement during the rules' drafting phase for Maine people and state agency technical experts who can be counted on to have the best interests of Maine in mind.

Sincerely,



Pete Didisheim
Advocacy Director