

Majority Report

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For ENR Review

LD 1302, An Act To Amend the Maine Metallic Mineral Mining Act To Protect Water Quality

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

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

12. 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 surface water or ground water treatment facilities 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 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. The mining area may include more than 1 activity unit.

Sec. 3. 38 MRSA §490-OO, sub-§2, ¶C, sub-¶¶11 and 12 are amended to read:

(11) A plan for the storage of hazardous materials; ~~and~~

(12) An estimate of costs for reclamation, closure and environmental protection; ~~and~~
and

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Sec. 4. 38 MRSA §490-OO, sub-§2, ¶C, sub-¶¶13 and 14 are enacted to read:

(13) Assurance that the mining operation will meet all applicable environmental requirements in state laws and rules and federal laws and regulations without requiring water treatment beyond 10 years after closure of the mine; and

(14) A waste rock management plan that includes a plan to ensure that waste rock is not used for the construction of roads.

Sec. 5. 38 MRSA §490-OO, sub-§2, ¶D-1 is enacted to read:

D-1. An estimate of the costs to close the mining operation, including estimated costs sufficient for the department to undertake the activities and measures identified in 490-RR, subsection 2 and a verification of the adequacy of the estimate by a qualified 3rd-party selected by the department. The department shall ensure the 3rd-party does not have a conflict of interest with the applicant. The applicant shall pay the costs associated with the analysis.

Sec. 6. 38 MRSA §490-OO, sub§2, ¶¶E and F are amended to read:

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

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

Sec. 7. 38 MRSA §490-OO, sub§2, ¶G is enacted to read:

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

Sec. 8. 38 MRSA §490-OO, sub-§2-A is enacted to read:

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

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Sec. 9. 38 MRSA §490-OO, sub-§4, ¶D 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 an activity unit 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-A.

Sec. 10. 38 MRSA §490-OO, sub-§4, ¶¶K and L are enacted to read:

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

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

Sec. 11. 38 MRSA §490-QQ, sub-§3 is amended to read:

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

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

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

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

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Sec. 12. 38 MRS §490-QQ, sub-§3-A is enacted to read:

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

Sec. 13. 38 MRS §490-RR, sub-§3 is amended to read:

3. Form of financial assurance. ~~The financial assurance may consist of~~ Before any construction may begin, the applicant shall provide the financial assurance required under subsection 1 through the following instruments, either alone or in combination: a surety bond, escrow, cash, certificate of deposit, trust, or irrevocable letter of credit issued by a financial institution acceptable to the department. The instruments must provide the total amount of the required financial assurance upon demand of the State to cover the costs identified in subsection 2, or other equivalent security, or combination thereof, as long as the department approves the financial assurance as proposed by the applicant. 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. A permittee shall provide the department with notice 90 days prior to the expiration of a financial assurance instrument and simultaneously with the renewal and execution of an instrument.

Sec. 14. 38 MRS §490-RR, sub-§4 is enacted to read:

4. Standby trust requirements. A permittee using any of the mechanisms authorized in subsection 4, except a trust, shall establish a standby trust fund that stands ready to receive funds from a surety bond, letter of credit or other financial assurance instrument required for costs to close the mining operation. The standby trust must provide for administration and oversight identical to those for an active trust fund.

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SUMMARY

This amendment is the majority report of the committee and replaces the bill. The amendment does the following.

1. **Groundwater.**
 - A. It includes a definition of "activity unit." (section 1)
 - B. It provides that a mining area may include more than 1 activity unit (section 2)
 - C. It requires that compliance groundwater monitoring wells be located as close as physically practicable to an activity unit being monitored for groundwater contamination. (section 12)
 - D. It removes a directive to the department to establish standards for monitoring groundwater as close as practicable to any mining area that may pose a threat to groundwater. (section 11)
 - E. It amends an approval criteria to provide that discharges to groundwater may occur within an activity unit. It strikes the current law which provides that discharges to groundwater may occur within a mining area, but such discharges may not result in contamination of groundwater beyond each mining area. (section 9)
2. **Water treatment beyond 10 years after closure.**
 - A. It requires an application to include assurance that the operation will meet all state and federal environmental requirements without requiring water treatment beyond 10 years after closure. (section 4)
 - B. It adds an approval criteria requiring that the department find the mining operation is designed to meet all state and federal environmental requirements without requiring water treatment beyond 10 years after closure. (section 10)
3. **Waste rock.**
 - A. It requires an application to include a waste rock management plan (section 4);
 - B. It adds an approval criteria requiring that the department find the mining operation is designed to ensure that waste rock is not used for the construction of roads. (section 10)
4. **Jobs created.**
 - A. It requires an application to include information related to the number and type of jobs expected to be created (section 7).
5. **Identification of responsible mining operations.**
 - E. For an application for a mining operation in a sulfide ore body, it requires an application to include information related to 3 responsible mining operations (section 8).
6. **Financial assurance.**
 - It requires an application to include an estimate of the costs to close the mining operation, including estimated costs sufficient for the department to undertake the activities and measures specified in the financial assurance requirements and a 3rd-party verification of the adequacy of the estimate. (section 5)
 - It amends the financial assurance provisions to require that financial assurance must be provided before any construction may begin. (section 13)

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- It provides that the financial assurance instruments must provide the total amount of the required financial assurance upon demand of the State to cover the costs for activities necessary for the investigation, monitoring, closure, treatment, remediation, reclamation, operation and maintenance and any other necessary environmental protection measures. (section 13)
- It requires a permittee to provide the department with notice prior to the expiration of a financial assurance instrument and the renewal and execution of an instrument. (section 13)
- It requires the establishment of a standby trust fund, except when a trust is the mechanism used. (section 13)

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