



Testimony in Opposition to LD 1772:

"Resolve, Regarding Legislative Review of Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining, a Late-filed Major Substantive Rule of the Department of Environmental Protection"

By Nick Bennett, Staff Scientist, Natural Resources Council of Maine, February 24, 2014

Good morning Senator Boyle, Representative Welsh, and members of the Committee on Environment and Natural Resources.

I am testifying on behalf of the Natural Resources Council of Maine (NRCM) in opposition to LD 1772.

NRCM believes these draft rules will not protect Maine's environment or Maine taxpayers from the risks of metal mining in sulfide ore deposits like those we have in Maine. When the material in these deposits reacts with air and water, it forms sulfuric acid. This acid can kill fish and other aquatic creatures when it enters surface water. The acid also leaches toxic heavy metals from rock—metals such as arsenic, lead, copper, and zinc (the last two are particularly deadly to aquatic organisms). This type of acid and heavy metal pollution is called acid mine drainage.

Over the past two years, we have reviewed the records of many mines around the country, examined mining rules in other states, and spoken with mining experts and affected citizens about mining pollution. From this research, we have learned that mining companies often pollute the environment and leave the public to pay the cleanup costs. If Maine is going to have large-scale metal mining again, then we need very protective and clear rules that will help prevent the type of problems that have plagued communities, taxpayers and the environment near mines across the country. These rules are neither protective nor clear.

LD 1772 and the rules to which it refers are a direct result of JD Irving's stated desire to construct an open pit mine at Bald Mountain in Central Aroostook County at the headwaters of the Fish River. Irving has claimed that Maine's existing rules are too strict to allow it to mine at Bald Mountain. At the same time, Irving has also claimed that "new and advanced" technologies have made mining safer than ever before. Although the irony in this argument seems obvious, the Committee is now considering these dangerously weak rules very much as a result of JD Irving's pressure. As you do that, please consider the following four points:

1. Bald Mountain is a very dangerous ore deposit with extremely high concentrations of sulfur and arsenic. A mine at this site would create a high risk of extensive pollution and

large cleanup costs. A recent NRCM report describes that risk.¹ It is poor policy to weaken rules to allow mining at a site this dangerous. This is a site that calls for very strict rules.

2. Although these rules are a direct result of Irving’s interest in an open pit mine at Bald Mountain, they will apply statewide. NRCM believes these weak rules will likely allow a Bald Mountain mine to pollute the Fish River and its headwaters in Aroostook County, which are very well known for their brook trout, but these rules could also threaten many other treasured places. Attached is a map of volcanic sedimentary deposits². These are places where mining companies would look for sulfide ore bodies like that at Bald Mountain. Volcanic sedimentary deposits are present in much of the Western Mountains, along the Downeast Coast, in Central Aroostook County, near Moosehead Lake, and on both sides of Cobscook Bay. Thus, these rules will affect the level of protection for important natural resources throughout the state.

3. Mining companies are typically overconfident about their ability to mine without damaging the environment. JD Irving fits this pattern well. Jim Irving is so confident that an open pit mine will not pollute the Bald Mountain area, he stated the following at a public forum: “If I can’t go and drink the water at the end of the pipe coming from the mine, we shouldn’t be doing it.”³ However, a recent study shows this confidence is misplaced. The authors looked at 25 mines, and the owners of all 25 predicted their operations would cause no pollution. Seventy-six percent of the mines had pollution that exceeded water quality standards⁴.

4. Maine citizens throughout the state are concerned that these draft rules are not protective of the environment and Maine taxpayers. NRCM has reviewed all of the submittals to the Board of Environmental Protection on the Proposed Chapter 200 mining rules. Submittals opposed to the rules outnumbered those from rule supporters by approximately 100 to 1.

Substantive problems with the proposed Chapter 200 mining rules

The above four points help explain why the Committee is here today reviewing these seriously flawed rules. Here are some of the major substantive problems with the proposed rules:

1. The rules allow unlimited groundwater pollution within vaguely defined “mining areas”.

The rules specifically allow unlimited pollution of groundwater in “mining areas” (Section 2(GGG), P.6), a term which is still not clearly defined despite overwhelming public testimony requesting clarification. In its basis statement for the rules, DEP admits that: “such groundwater will almost inevitably leave the area where the discharge occurs (Basis Statement, Part I, P. 129).”

¹ Natural Resources Council of Maine. 2013 Bald Mountain Mining Risks: Hidden from the Public. October. Accessible at <http://www.nrcm.org/MiningReport.asp>

² This map is also available at: <http://www.maine.gov/dacf/mgs/explore/mining/sites/nov05.pdf>, on page 2.

³ See <http://bangordailynews.com/2012/05/03/business/james-irving-addresses-maine-mining-interests-at-umfk-forum/>

⁴ Anne Meist and Jim Kuipers. 2006. Predicting Water Quality Problems at Hardrock Mines. A Failure of Science Oversight and Good Practice. Pp. 2,4. Accessed at <http://www.earthworksaction.org/files/publications/PredictionsComparisonsWhitePaperFINAL.pdf>

2. The rules allow mines that are so dangerous and difficult to control, they would require active wastewater treatment forever (Section 9(D)(12), P. 22). Perpetual treatment greatly increases the risk of harm to the environment -- because wastewater treatment plants fail at times. Perpetual treatment also increases the risk to Maine taxpayers, because no company will pay for wastewater treatment forever.

3. The rules do not require an upfront payment of financial assurance sufficient to cover full-scale mine cleanup. Instead, they allow complex calculations and recalculations of what a mine might cost to clean up if a company stopped mining and went bankrupt within the following year (Section 17(D)(1)(a), P. 46). This increases the risk that financial assurance will not cover the full costs of cleanup, which can amount to hundreds of millions of dollars. The rules still do not require an independent, qualified professional to ensure the amount of financial assurance is sufficient.

4. The rules allow open pit mines next to almost all of Maine's lakes and many of our most spectacular rivers (Section 20(B)(4)(h-i), P. 52). They require a small buffer for open pit mines of between ¼ mile and one mile for 346 of approximately 2700 Maine Lakes, the Allagash Wilderness Waterway, and Atlantic Salmon Rivers. The rest of our rivers and lakes would require no buffer for open pit mines.

5. The rules allow mines on and next to many public lands (Section 20(B)(3-4), Pp. 51-52), including Land for Maine's Future lands and other designated lands described in 12 MRSA § 598-A. Despite strong objection, the BEP adopted the rules without even discussing the specific public lands where they were expressly allowing mines!

6. The rules provide no buffer for underground mines (Section 20(B), Pp. 51-52). The rules allow underground mines next to and under important resources including state and national parks. The rules also allow underground mines next to and under every lake and river in Maine.

7. The rules only allow municipal intervenors to conduct mining site visits as part of the permit review process, not citizen intervenors (Section 10 (G)(9), P. 33). This severely limits the ability of the public to participate meaningfully in mining decisions.

8. The rules allow injection of drilling chemicals into soil, rock, and groundwater during exploratory mining (Section 3 D), P. 10). This was added as a "minor" change without discussion of what this practice is and any potential negative effects it could have.

Given the length and complexity of the rules, there are likely many more substantive problems than the list above.

Flaws in the Rulemaking Process

The rulemaking process also had many flaws. Here are some of them:

1. DEP took far too long to develop draft rules. LD 1853, the law requiring new major substantive mining rules, passed in May 2012. However, DEP did not post its draft rules for public comment until September 2013, and BEP did not hold a hearing until October 2013. This limited the time available for both internal and public revision and discussion of the rules, which were due to the Legislature on January 10, 2014.

2. The DEP did not provide opportunities to discuss the draft rules with staff prior to the official beginning of rulemaking. In the past, DEP staff have shared rules as important as these with the public prior to rulemaking and held multiple meetings to allow questions from stakeholders.

3. DEP wrote the rules behind closed doors with a mining industry consultant. This is totally unacceptable given the importance of these rules for the future of Maine's environment.

4. DEP did not share documents with BEP or the public in a timely manner. Even the BEP chair admitted that he had not seen the basis statement, which is over 300 pages long, until the day before the January 10, 2014 vote.

5. Both DEP and BEP ignored the overwhelming number of public comments calling for more protective rules. In total, there were 561 sets of comments and 2000 signatories to a petition opposing the rules because they were not protective; there were only 21 sets of comments in support of the rules.

6. The DEP made many last-second changes to the rules on the day of its vote and did not post them for written public comment. Instead, the BEP allowed brief oral comments, which they ignored, on some of these changes. It then made additional changes with no public comment and voted to adopt the last-second changes.

Conclusion

These rules are the result of JD Irving's stated desire to mine at Bald Mountain. The sense of urgency that has surrounded this rulemaking over the course of the past two years – the sense that Maine needs new mining rules **NOW OR ELSE** – is also a JD Irving creation. The Bald Mountain deposit and others like it have been present for hundreds of millions of years. They will be present after Maine develops mining rules that will protect our environment and taxpayers, even if that takes time. These rules protect neither Maine's environment nor its taxpayers. We urge the Committee to vote ought-not-to-pass on LD 1772.