

## **Maine's Metallic Mining Regulations Minimize the Risk of Catastrophic Events Maine's Environment and Taxpayers**

- Permits are issued only to operators that are financially and technically capable to safely construct, operate and close a mining operation. Sec. 11.A.(1). A permit may not be issued to an applicant with a current violation of an federal or state law, rule or order, a poor compliance history, or a default on a prior financial assurance. Sec. 11, B, C and D.
- DEP obtains and reviews substantial information regarding an applicant's corporate organizational structure, and financial and technical capability, including operating history at other mine sites. Sec. 9.B.
- The application must be supported by a substantial baseline site characterization report, including an expected water balance, Sec. 9.C, a tailings management plan, Sec. 9.D.(10), supported by an Engineering Report that addresses site-specific factors considered during design and address design selection for engineered structure, including an evaluation of the potential modes and significance of failures in engineered systems. Sec. 9.E.
- The application must include an alternatives analysis which reviews alternative sites, technologies and sizes for facilities including storage piles, tailing basins, reservoirs and processing plants. Sec. 9.H.(1). The alternatives analysis must include data and analysis to support a reasoned choice among alternatives and the need for mitigation measures. Sec. 9.H.(4).
- The application must also include a contingency plan that includes the assessment of risk to public health and safety of potential accidents or failures and identifies procedures for dealing with site emergencies. Sec. 9.K.
- All of the material in the application and mine plan is subject to public review and comment. Sec. 10.
- Permit conditions include a requirement that all facilities be inspected and certified to be constructed in compliance with the permit terms. Sec. 12.A. The permit also includes extensive requirements for monitoring and reporting any noncompliance or unexpected occurrences. Sec. 12.A.(10).
- DEP has extensive enforcement authority. An operator may be ordered to correct any violation of the mining law, the mining regulations, or a mining permit within 10 days. DEP may order an operator to prepare and implement a corrective action plan for any violation. Sec.30.
- Where there is a determination that a violation may result in an imminent and substantial endangerment to the public health or safety, the environment or natural resources, the Department may take immediate action to abate or

- eliminate the endangerment, including ordering the operator to undertake response actions necessary to abate or eliminate the endangerment. Sec. 31.
- The regulations require that an applicant post financial assurance to cover the costs of implementing all monitoring, reclamation, closure, post closure before mining begins. Sec. 17.D.(1). If the applicant is subject to any corrective action order, completion of that work must also be confirmed by additional financial assurance. Sec. 30.A., Sec. 17.D.(1).
  - Providing financial assurance, or release of financial assurance, does not relieve the operator from any obligation or responsibility for public health, safety or environmental conditions at the mine site. Sec. 17.E.(2).
  - Operations and facilities at the mine site must be covered by insurance. In order to have an application approved, an applicant must provide proof that a comprehensive general liability insurance policy that provides personal injury and property damage protection adequate to compensate persons who might be damaged as a result of the mining operation or reclamation or restoration connected with the operation. Sec. 9.B.(1)(j). The financial assurance provisions of the regulations include separate and additional requirements for insurance. Sec. 17.F. DEP can impose higher minimum coverage because of greater risks at a particular site.

**Imposing additional financial assurance or insurance requirements for catastrophic risks would be unworkable and unreasonable.**

- No jurisdiction, federal or state, requires financial assurance to respond to low frequency occurrences, even where potential costs are high. Other environmental programs with financial assurance components, including EPA and state hazardous waste programs, do not require financial assurance for “worst case” scenarios.
- Calculation of potential costs associated with catastrophic scenarios is an unworkable task as it is always possible to envision a combination of circumstances or events that would be more damaging or more costly. This question was considered by the federal Bureau of Land Management when it adopted financial assurance requirements for mining on public lands in 2000. BLM decided “not to require bonding for contingencies” in part “because of the uncertainties involved in calculating the amount.” Federal Register, Nov. 21, 2000.
- Financial assurance is expensive. Requiring an operator to provide financial assurance for contingencies that are not expected to happen, in fact when there

is only a very small chance that they might happen, imposes significant additional costs that are likely to make mining projects economically infeasible.

- Insurance provides an alternative for some costs associated with contingencies or unlikely events. An experienced operator (as required by the regulations) will have substantial insurance coverage. However, that insurance may not line up precisely with a list of contingencies or hypothetical catastrophes that might be identified in the review process. Insurance to cover every potential damage or cost may not be available at all times during the permitting process or mine operations or may be prohibitively expensive. The existing regulatory requirements for comprehensive general liability insurance and policies for certain occurrences will provide substantial coverage.

