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**LD 750**
**MAJORITY REPORT (MIN ONTP)**

*Amend the bill by striking everything after the title and before the summary and inserting the following:*

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 38 MRSA §490-MM, sub-§3** is amended to read:

**3. Beneficiation.** "Beneficiation" means the treatment of ore to liberate or concentrate its valuable constituents. "Beneficiation" includes, but is not limited to, crushing, grinding, washing, dissolution, crystallization, filtration, sorting, sizing, drying, sintering, pelletizing, briquetting, calcining, roasting in preparation for leaching to produce a final or intermediate product that does not undergo further beneficiation or processing, gravity concentration, magnetic separation, electrostatic separation, flotation, ion exchange, solvent extraction, electrowinning, precipitation, amalgamation and dump, vat, and tank ~~and in situ~~ leaching.

**Sec. 2. 38 MRSA §490-MM, sub-§7** is amended to read:

**7. Heap or percolation leaching.** "Heap or percolation leaching" means a process for the primary purpose of recovering metallic minerals in an outdoor environment from a stockpile of crushed or excavated ore by percolating water or a solution through the ore and collecting the leachate. "Heap or percolation leaching" includes in situ leaching.

**Sec. 3. 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~~ impoundments used in a mining operation are located, including, but not limited to, water storage ponds, sedimentation ponds, retention ponds or leachate collection ponds, or any other land on which a single mining operation or mining activity is located. Each mining operation or mining activity must have a defined mining area.

**Sec. 4. Department of Environmental Protection; approval of final adoption.** Notwithstanding any provision of law to the contrary in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A, the Department of Environmental Protection is authorized to finally adopt Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining, a provisionally adopted major substantive rule of the Department of Environmental Protection that was submitted to the Legislature for review pursuant to Title 5, chapter 375, subchapter 2-A on January 10, 2014, and that was also submitted to the Legislature for review on January 9, 2015, only if the following changes are made:

1. The rule must be amended in section 1(B)(1) to prohibit the issuance of a permit for a mining operation that includes heap or percolation leaching, in situ leaching or block caving;

2. The rule must be amended in section 2(Q) to amend the definition for "beneficiation" as necessary to ensure consistency with the statutory definition for "beneficiation" under Title 38, section 490-MM(3);

3. The rule must be amended in section 2(VV) to amend the definition for "heap or percolation leaching" as necessary to ensure consistency with the statutory definition for "heap or percolation leaching" under Title 38, section 490-MM(7);

4. The rule must be amended in section 2(GGG) to amend the definition for "mining area" as necessary to ensure consistency with the statutory definition for "mining area" under Title 38, section 490-MM(12);

5. The rule must be amended in section 2(MMM) to amend the definition for "passive treatment system" to mean the process of sequentially removing metals and/or acidity by utilizing naturally available energy sources, such as topographical gradient, microbial metabolic energy, photosynthesis and chemical energy, that does not require power or chemicals after construction and operates successfully over its design life with regular but infrequent maintenance;

6. The rule must be amended in section 2 to add a definition for "remediation" that means the clean up, removal or containment of contaminants or contamination within a mining area or an affected area, including long-term action that stops or substantially reduces a release or threat of release of contaminants or contamination that is serious but not an immediate threat to public health and safety or the environment, short-term immediate actions that address releases of contaminants or contamination that require expedited responses and an action involving either a short-term removal action or a long-term removal response. The rule must provide that remediation activities may include, but are not limited to, removing contaminants or contamination, containing or treating waste on-site and identifying and removing sources of groundwater contamination and halting further migration of contaminants;

7. The rule must be amended in section 9(B)(1)(i)(i) to require, as part of the application contents relating to applicant information, a list and explanations of all felony convictions and all criminal convictions of environmental or land use laws administered by the department, the State, other states, the United States or another country, not just those within the 10 years

immediately preceding the filing of the application. The rule must provide that a list and explanations of civil violations of environmental or land use laws administered by the department, the State, other states, the United States or another country is only required for those civil violations occurring in the 10 years immediately preceding the filing of the application. The rule must provide that the department may require the applicant to update the list to reflect any felony or criminal convictions or civil violations of environmental or land use laws imposed on the applicant, its responsible officers or related corporations subsequent to the filing of the application;

8. The rule must be amended in section 9(C) to provide that the department shall require testing, as part of the baseline site characterization report, to establish a baseline for maximum contaminant levels established by the federal Environmental Protection Agency, maximum exposure guidelines for drinking water standards established by the Department of Health and Human Services, Maine Center for Disease Control and Prevention, drinking water standards adopted pursuant to the Title 22, section 2611 and applicable water quality or licensing standards under Title 38, sections 414-A and 420, unless the applicant can demonstrate to the department's satisfaction that testing for specific elements, contaminants or conditions under any of these specified water quality guidelines and standards is not necessary. To the extent necessary, the rule shall be amended in section 22 to provide that the department shall require monitoring, as part of the monitoring plan, to ensure maintenance of the baseline for these specified water quality guidelines and standards, unless the applicant can demonstrate to the department's satisfaction that monitoring for specific elements, contaminants or conditions under any of these specified water quality guidelines and standards is not necessary;

9. The rule must be amended in section 9(K), to require, as part of the contingency plan, a description of the detection and warning systems to be used by the applicant in alerting the applicant or the department that an accident or failure listed in section 9(K)(1) has occurred;

10. The rule must be amended in section 10(G)(9) to clarify that access to a potential mining site during the application process by any intervenor shall be as allowed pursuant to an adjudicatory hearing process;

11. The rule must be amended in section 11(A)(2)(j) to clarify that a permit may not be approved unless the applicant has demonstrated that the proposed mining operation will not use heap or percolation leaching, in situ leaching or block caving;

12. The rule must be amended in section 11(D) to clarify that the department may not issue a mining permit if the applicant or any person in a position to control the operations of the applicant has documented violations of state or federal land use or environmental laws, or documented violations of land use or environmental laws of a foreign country, demonstrating that the applicant would not be capable of complying with the terms and conditions of a mining permit. The rule must provide that an applicant may present evidence of changed conditions or circumstances demonstrating the current ability to comply with all permit terms and conditions notwithstanding any prior violations and that if that evidence is sufficient to warrant a finding by the department that the applicant is capable of compliance, the department may issue the permit;

13. The rule must be amended in section 15(B)(4)(a) to require, as part of the information required to support a request to transfer a permit, a list and explanations of all felony convictions and all criminal convictions of environmental or land use laws administered by the department, the State, other states, the United States or another country, not just those within the 10 years immediately preceding the filing of the application. The rule must provide that a list and explanations of civil violations of environmental or land use laws administered by the department, the State, other states, the United States or another country is only required for those civil violations occurring in the 10 years immediately preceding the filing of the application. The rule must provide that the department may require the transferee to update the list to reflect any felony or criminal convictions or civil violations of environmental or land use laws imposed on the transferee, its responsible officers or related corporations subsequent to the filing of the application;

14. The rule must be amended in section 17(A)(7) to require the department to hire third parties with documented experience in material handling and construction, mining costs and financial analysis to analyze and evaluate the proposed terms and conditions of financial assurance required for the applicant or permittee;

15. The rule must be amended in section 17 to provide that additional financial assurance is required for a mining operation that includes a tailings impoundment. The rule must provide that, as part of the application requirements for a mining operation that includes a tailings impoundment, the applicant must submit the following information: information assessing the potential risk for a failure of the tailings impoundment that would pose a threat to the public health and safety and the environment; information estimating the cost of responding to a failure of the tailings impoundment, including the cost of restoring and repairing any damaged public facilities or services and the cost of restoring and remediating any damage to the environment resulting from a failure of the tailings impoundment; and information projecting the variation over time, and as based on the size of the tailings impoundment, of the potential costs of a failure of the tailings impoundment. The rule must provide for qualified, independent third party review of the application submission materials required for a mining operation that includes a tailings impoundment, with the costs of the third party review to be paid by the applicant. The rule must provide that the cost estimates of a failure of the tailings impoundment provided by the applicant may not include costs to the applicant associated with loss of use of the tailings impoundment for operations or the costs of repairing the tailings impoundment to restore operations. The rule must require financial assurance in an amount determined by the department to be sufficient for the department to respond to, restore and remediate any damage to public facilities or services or to the environment resulting from the highest cost estimate failure of the tailings impoundment, as based on the applicant's cost estimates or as based on information provided by the third party reviewer, and this financial assurance coverage amount must be posted in accordance with section 17 before any tailings may be placed or deposited in the impoundment. The rule must provide for administration of this financial assurance in accordance with section 17, including annual adjustment of the financial assurance amount so that the amount is sufficient for the department to respond to, restore and remediate any damage to public facilities or services or to the environment resulting from the highest cost estimate failure of the tailings impoundment in the upcoming year. This rule change shall be incorporated as necessary in section 17 and any other affected sections;

16. The rule must be amended in section 20(B)(3) to provide that no mining shall be conducted in or on designated lands under Title 12, section 598-A, including, but not limited to, the Allagash Wilderness Waterway and public reserved lands, but not including public reserved lots described in Title 12, section 1801(8)(A);

17. The rule must be amended in section 20(B)(4) to provide that the setback from the resources listed in section 20(B)(4) applies to both surface and underground mining;

18. The rule must be amended in section 20(B)(4) to provide for a setback in accordance with section 20(B)(4) from designated lands under Title 12, section 598-A, including, but not limited to, the Allagash Wilderness Waterway and public reserved lands, but not including public reserved lots described in Title 12, section 1801(8)(A);

19. The rule must be amended in section 20(D) to provide that the applicant shall design, construct, operate and maintain underground mine openings to prevent unauthorized entry and, to the extent feasible and practicable, to minimize the risk of unacceptable settling, subsidence, voids or caving;

20. The rule must be amended in section 22(B)(1) to clarify that the points of monitoring and compliance identified in section 22(B)(1) are to be placed in relation to a mining area and not in relation to a mining operation or activity;

21. The rule must be amended in section 22(B)(1)(a) to clarify that the language in section 22(B)(1)(a) relates to groundwater monitoring systems;

22. The rule must be amended in section 22(B)(1)(a)(i) to clarify that the language in section 22(B)(1)(a)(i) relates to groundwater monitoring at points of compliance;

23. The rule must be amended in section 22(B)(1)(a)(ii) to clarify that the language in section 22(B)(1)(a)(ii) relates to groundwater monitoring within a mining area, and to provide that, to the extent technically feasible, the department shall require groundwater monitoring within any mining area if the department determines such monitoring to be necessary to assess the performance of pollution control measures or the potential for contamination as defined under Title 38, section 490-MM(5) outside any mining area;

24. The rule must be amended in section 22(B)(1)(a)(iii) to clarify that the language in section 22(B)(1)(a)(iii) relates to groundwater monitoring to determine compliance with surface water quality standards, and to provide that, to the extent technically feasible, the department shall require groundwater monitoring at any location to determine the potential for groundwater discharges to surface waters that would cause or contribute to nonattainment of applicable water quality criteria. The rule must provide that failure of groundwater to meet applicable water quality criteria at points of baseflow discharge constitutes contamination as defined under Title 38, section 490-MM(5);

25. The rule must be amended in section 22(B)(1)(b) to clarify that the language in section 22(B)(1)(b) relates to background groundwater monitoring wells. The department may

renumber section 22(B)(1)(b) as section 22(B)(1)(a)(iv) and make all other necessary changes in section 22(B)(1) to ensure proper numbering and formatting within section 22(B)(1);

26. The rule must be amended to provide that wet mine waste units may not be used for storage or treatment of mine waste after closure. This rule change must be incorporated as necessary in section 2(LLLL), section 9(D)(12), section 20(G)(2), section 24(A)(3)(d), section 24(B)(5) and any other affected sections;

27. The rule must be amended to provide that perpetual treatment means treatment for more than 20 years post-closure. This rule change must be incorporated as necessary in section 2(OOO), section 9(D)(12), section 20(G)(2), section 24(B)(5) and any other affected sections;

28. All necessary corrections must be made to the table of contents so that it corresponds with the page numbers and the subchapter, section or subsection titles within the rule;

29. All other necessary grammatical, formatting, punctuation or other technical non-substantive editing changes must be made to the rule, including the removal of strikethrough letters or words remaining from prior drafts and edits; and

30. All other necessary changes must be made to the rule to ensure conformity throughout the rule with the specified rule changes directed under this section.

The department is not required to hold hearings or undertake further proceedings prior to final adoption of the rule in accordance with this section.

**Sec. 5. Maine Land Use Planning Commission rulemaking; certification of mining permit applications.** By February 1, 2016, the Maine Land Use Planning Commission shall adopt rules related to commission certification of metallic mineral mining permit applications as described in the Maine Metallic Mineral Mining Act established pursuant to the Maine Revised Statutes, Title 38, chapter 3, subchapter 1, article 9. Rules adopted pursuant to this section must include any additional provisions necessary to ensure consistency with the Maine Metallic Mineral Mining Act and rules related to the Maine Metallic Mineral Mining Act adopted by the Department of Environmental Protection. Notwithstanding any provision of law to the contrary, rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 6. Metallic Mining Fund; Department of Environmental Protection.** Any costs to the Department of Environmental Protection associated with implementing the directives in section 4 shall be drawn from existing funds within the Metallic Mining Fund, established by Public Law 2011, chapter 653, section 32.

## SUMMARY

This amendment, which is the majority report of the committee, replaces the bill and authorizes final adoption by the Department of Environmental Protection of Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining, a provisionally adopted major substantive rule of the Department of Environmental Protection that was submitted to the Legislature for review on January 10, 2014, and that was also submitted to the Legislature for review on January 9, 2015, only if a number of specified changes to the rule are made. The amendment also provides for a number of corresponding changes to the Maine Metallic Mineral Mining Act established pursuant to the Maine Revised Statutes, Title 38, chapter 3, subchapter 1, article 9. The amendment also provides for rulemaking by the Maine Land Use Planning Commission related to commission certification of metallic mineral mining permit applications as described in the Maine Metallic Mineral Mining Act.

The rules implementing the Maine Metallic Mineral Mining Act, which are authorized for final adoption by this amendment, are intended to allow for the commercial mining of metallic minerals in the State under a statutory and regulatory framework that addresses risks and protects and prevents damage to the public health and safety and the environment and that ensures that the full cost of closure, reclamation and post-closure treatment and monitoring of a permitted mining site, as well as the full cost of correction and remediation of an accident or failure at a permitted mining site, are paid by the permittee and not by the State.