

Submitted by
Rep. John Martin
3-13-12

ANNOTATED VERSION

**125th Maine Legislature
Second Regular Session – 2012
HP 1371, LD 1853**

**An Act to Improve Environmental Oversight and Streamline Permitting
for Mining in Maine**

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

Sec. 1. 38 MRSA c. 3, subchapter I, Art. 9 is enacted to read:

ARTICLE 9

MAINE NONFERROUS METAL MINERAL MINING ACT

§490-AAA. Short title

This article may be cited as the Maine Nonferrous Metal Mineral Mining Act.

Commentary: This section simply provides that this new law may be cited as the Maine Nonferrous Metal Mineral Mining Act.

§490-BBB. Findings; purpose

The Legislature finds and declares that:

1. It is the policy of this state to foster the conservation and development of the State's natural resources.
2. Discoveries of nonferrous metallic sulfide deposits have resulted in exploration activities and may lead to the development of one or more mines.
3. Nonferrous metallic sulfide minerals may react, when exposed to air and water, to form acid rock drainage. If the mineral products and waste materials associated with nonferrous metallic sulfide mining operations are not properly managed and controlled, they can cause damage to the environment, impact human health, and degrade the quality of life of the impacted community.
4. The concerns surrounding nonferrous metallic mineral mining warrant special regulatory measures.
5. Nonferrous metallic mineral mining may be an important contributor to Maine's economic vitality and lead to significant job opportunities. The economic benefits of nonferrous metallic mineral mining shall occur only under conditions that assure that the environment, natural resources, and public health and welfare are adequately protected.
6. These circumstances warrant a consolidated permitting process under the jurisdiction of the Department of Environmental Protection.

Commentary: This section sets forth the Legislative findings, taken in large part from the Michigan Mining Act. Note that a primary purpose of this Act is to provide a consolidated permitting process for mines.

§490-CCC. Definitions

As used in this article, unless the context otherwise indicates, the following terms have the following meanings.

1. Affected area. "Affected area" means an area outside of the mining area where the land surface, surface water, groundwater, or air resources are determined through an environmental impact assessment to be potentially affected by mining operations within the proposed mining area.

2. Contamination. As applied to ground water, "contamination" means exceeding water quality standards, the concentrations of which are attributable to the mining operation. As applied to surface water, "contamination" means an unlicensed discharge to a classified body of surface water that is attributable to the mining operation.

3. Fund. "Fund" means the Mining Corrective Action Fund created in Title 36, part 4, ch. 371, section 2866.

4. Metallic product. "Metallic product" means a commercially salable mineral or metal produced primarily for its nonferrous metallic mineral content in its final marketable form or state.

5. Mining waste. "Mining waste" means all waste materials (solid, semi-solid, or liquid) associated with exploration, advanced exploration, and mining activities. Such wastes include, but are not limited to, rock, spent leach material, tailings, and other process waste such as leachate and wastewater treatment plant residuals. Land clearing debris, woodwaste, wastes from solvent extraction and electrowinning are not considered mine waste for purposes of this article. Notwithstanding 06 096 CMR 850, mine waste is not hazardous waste to the extent mine waste has been excluded by Subchapter 3 of the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq.

6. Mining. "Mining," means an activity or process necessary for the extraction or removal of metallic minerals or overburden or for the preparation, washing, cleaning or other treatment of metallic minerals and includes the bulk sampling, extraction or beneficiation of metallic minerals, not including test sampling methods conducted in accordance with rules adopted by the department such as test boring, test drilling, hand sampling and digging of test pits with a limited maximum surface opening or methods determined by the department to cause minimal disturbance of soil or vegetative cover.

7. Mining area. "Mining area" means an area of land described in the permit application from which earth material is removed in connection with nonferrous metallic mineral mining, the lands on which material from that mining, including waste rock, is stored or deposited, the lands on which beneficiating or treatment plants and auxiliary facilities are located, including groundwater and surface water management and treatment systems, the lands on which the water reservoirs used in the nonferrous metallic mineral mining process are located, and auxiliary lands that are used in connection with the mining.

8. Mining permit. "Mining permit" means a permit issued under this part for conducting nonferrous metallic mineral mining and reclamation operations.

9. Nonferrous metallic mineral. "Nonferrous metallic mineral" means any ore or material to be excavated from the natural deposits on or in the earth for its metallic content, but not primarily for its iron or iron mineral content, to be used for commercial or industrial purposes. "Nonferrous metallic mineral" does not include thorium or uranium.

10. Nonferrous metallic mineral operator. "Nonferrous metallic mineral operator" or "operator" means a permittee or other person who is engaged in, or who is preparing to engage in, mining operations for nonferrous metallic minerals, whether individually or jointly, or through agents, employees, or contractors.

11. Non-mining-related buildings. "Non-mining-related buildings" means buildings unrelated to mining operations.

12. Permittee. "Permittee" means a person who holds a mining permit.

13. Postclosure monitoring period. "Postclosure monitoring period" means a period following closure of a nonferrous metallic mineral mine during which the permittee is required to conduct monitoring of groundwater and surface water.

14. Reclamation. "Reclamation" means the rehabilitation of the area of land affected by mining under a plan approved by the department, including, but not limited to, the stabilization of slopes and creation of safety benches, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest and the enhancement of wildlife and aquatic resources, but not including the filling in of pits and the filling or sealing of shafts and underground workings with solid materials unless necessary for protection of ground water or safety.

15. Stockpile. "Stockpile" means material, including, but not limited to, surface overburden, rock, or ore, that in the process of mining and beneficiation or treatment has been removed from the earth and deposited on the surface. Stockpile does not include materials that are being treated in the production of metallic products and the metallic product that has been produced by that operation.

16. Tailings impoundment. "Tailings impoundment" means land on which is deposited, by hydraulic or other means, the material that is separated from the metallic product in the beneficiation or treatment of minerals including any surrounding dikes constructed to contain the material.

Commentary: This section sets forth the definitions of words used in the Mining Act, taken in large part from the Michigan Mining Act.

§490-DDD. Nonferrous metallic mineral mining; administration and enforcement; rules; regulation or control by local units of government

1. Administration; jurisdiction; rules. The department shall administer and enforce this article in all areas of the State, including the unorganized territories, in order to regulate nonferrous metallic mineral mining. The provisions of chapter 3, subchapter 1, articles 6, 7, 8, and 8-A, and chapter 13, and Title 38 section 420-D, do not apply to projects reviewed under this article. Except for permits required under the natural

resource protection laws, chapter 3, subchapter I, article 5-A, waste discharge licenses required under chapter 3, subchapter 1, article 2, section 413 for discharges of pollutants to surface waters of the State, and permits required under the protection and improvement of air laws, chapter 4, projects reviewed under this article do not require any other permits by any state agency. In addition to other powers granted to it, the department shall promulgate new rules to carry out its duties under this article, including standards for construction, operation, closure, postclosure monitoring, reclamation, and remediation of a nonferrous metallic mineral mine. Rules adopted under this article shall not be considered major substantive rules for purposes of Title 5, chapter 375, subchapter 2-A and Title 38, section 341-H. Rules regulating nonferrous metallic mineral mining promulgated under the authority of other statutory provisions have no continuing force or effect.

Commentary: Subsection 1 provides that DEP has consolidated permitting authority of metallic mineral mining, including in LURC territory. It exempts mining applications from all other state permits except NRPA (natural resource impacts), air emissions, and wastewater discharge permits. It gives DEP rulemaking authority under the Mining Act, provides that existing mining rules are no longer effective, and classifies the new rules as minor technical rules.

2. Land Use Regulation Commission.

- A.** Subject to paragraph B, the Land Use Regulation Commission shall not regulate or control mining or reclamation activities that are subject to this article, including construction, operation, closure, postclosure monitoring, reclamation, and remediation activities, and does not have jurisdiction concerning the issuance of permits or the application of zoning districts and regulations for those activities.
- B.** The Land Use Regulation Commission shall have jurisdiction over non-mining-related buildings located in a mining area.

Commentary: Subsection 2 provides that LURC does not have authority over mines, and that LURC zoning does not apply to mines except with respect to non-mine-related buildings.

3. Municipal authority not affected. This article does not prevent municipalities from regulating or controlling mining or reclamation activities that are subject to this article, including construction, operation, closure, postclosure monitoring, reclamation, and remediation activities.

Commentary: Subsection 3 provides that municipalities retain their full authority over mines.

§490-EEE. Mining permit; application procedure

1. Permit required. A person shall not engage in the mining of nonferrous metallic minerals except as authorized in a mining permit issued by the department.

Commentary: Subsection 1 requires a mining permit from the DEP.

2. Application procedure. An application for a mining permit shall be submitted to the department in a format to be developed by the department. The application shall include all of the following:

- A. Fee. The permit application fees established in Title 38, section 352. The department shall forward the annual license fee received under that section to the state treasurer for deposit in the Fund.
- B. Environmental impact assessment. An environmental impact assessment for the proposed mining operation that describes the natural and human-made features, including, but not limited to, flora, fauna, hydrology, geology, and geochemistry, and baseline conditions in the proposed mining area and the affected area that may be impacted by the mining, and the potential impacts on those features from the proposed mining operation. The environmental impact assessment shall define the affected area and shall address feasible and prudent alternatives.
- C. Environmental protection, reclamation, and closure plan. A mining, reclamation, and environmental protection plan for the proposed mining operation, including beneficiation operations, that will reasonably minimize the actual and potential adverse impacts on natural resources, the environment, and public health and safety within the mining area and the affected area. The plan shall address the unique issues associated with nonferrous metal mining and shall include all of the following:
 - (1) A description of materials, methods, and techniques that will be utilized.
 - (2) Information that demonstrates that the methods, materials, and techniques proposed to be utilized are capable of accomplishing their stated objectives in protecting the environment and public health, except that such information may not be required for methods, materials, and techniques that are widely used in mining or other industries and are generally accepted as effective. The required information may consist of results of actual testing, modeling, documentation by credible independent testing and certification organizations, or documented applications in similar uses and settings.
 - (3) Plans and schedules for interim and final reclamation of the mining area following cessation of mining operations, including contemporaneous reclamation, to the extent practical.
 - (4) A description of the geochemistry of the ore, waste rock, overburden, peripheral rock, spent leach material, and tailings, including characterization of leachability and reactivity.
 - (5) Provisions for the control and monitoring of acid-forming waste products and other waste products from the mining process.
 - (6) Storm and surface water management provisions.
 - (7) A water quality monitoring plan.

- D. Contingency plan.** A contingency plan that includes an assessment of the risk to the environment or public health and safety associated with potential significant incidents or failures and describes the operator's notification and response plans. When the application is submitted to the department, the applicant shall provide a copy of the contingency plan to each municipality having jurisdiction over the affected area or, in the unorganized territory, to the county commissioners for the county in which the mine may be located.
- E. Financial assurance.** Financial assurance as described in section 490-HHH, including an estimate of the cost of completing the reclamation plan by a third party.

Commentary: Subsection 2 sets forth the application process. It provides that the annual license fee will be deposited into the Mining Corrective Action Fund, which already exists in Maine law. It requires the following to be included with the application: (1) an environmental impact assessment, (2) an environmental protection, reclamation, and closure plan, (3) a failure contingency plan, and (4) financial assurance. These provisions are derived from the Michigan mining law.

3. Violations. A mining permit shall not be issued or transferred to a person if the department has determined that person to be in violation of this part, rules promulgated under this part, the permit, or an order of the department under this part, unless the person has corrected the violation or the person has agreed in writing to correct the violation pursuant to a compliance schedule approved by the department.

Commentary: Subsection 3 requires that any violations must be corrected before issuance or transfer of a mining permit.

4. Criteria for approval. Subject to subsection (3), the department shall approve a mining permit whenever it finds the following:

- A. Financial capacity and technical ability.** The applicant has the financial capacity and technical ability to develop the project in a manner consistent with applicable state environmental standards and with the provisions of this article.
- B. Effect on the natural resources.** The mining operation will not unreasonably adversely affect existing uses, air quality, water quality or other natural resources.
- (1) In making a determination under this paragraph regarding a mining operation's effects on natural resources regulated by the Natural Resources Protection Act, article 5-A of this subchapter, the department shall apply the same standards applied under the Natural Resources Protection Act.
- C. Soil types.** The mining operation will be built on soil types that are suitable to the nature of the mining operation. In making this determination the department shall presume that a mining operation

located over or adjacent to a naturally occurring nonferrous metallic mineral deposit meets this criterion.

- D. Ground and surface water.** There is reasonable assurance that discharges of pollutants from the project will not violate applicable state water quality standards. Discharges to groundwater may occur within the mining area, but such discharges may not result in groundwater beyond the mining area exceeding water quality standards.
- E. Infrastructure.** The applicant has made adequate provision of utilities, including water supplies, wastewater facilities and solid waste disposal, required for the mining operations, and the mining operations will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.
- F. Flooding.** The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure. This criterion shall not prohibit the placement of mining waste, stockpiles, ore leaching operations, and tailings impoundments within flood hazard zones and floodplains.
- G. Safety.** The applicant has made adequate provisions for protection of public safety.
- H. Traffic movement.** The applicant has made adequate provisions for traffic movement related to the mining operations out of or into the mining area.

Commentary: Subsection 4 sets forth the approval criteria, which are largely derived from the Site Law. With respect to impacts on natural resources, the DEP is required to apply the NRPA standards to mining applications. With respect to soil types, the DEP is required to presume that soils over a metallic mineral deposit are appropriate. With respect to groundwater, the mining operation is permitted to discharge to groundwater as long as the discharge will not result in groundwater beyond the mining area exceeding water quality standards. With respect to flooding, mining facilities are permitted within the floodplain, provided there is no unreasonable increase in flooding.

5. Coordination with Natural Resources Protection Act. If a person submits an application for a mining permit under this article and an application for a permit under the Natural Resources Protection Act, article 5-A of this subchapter, the department shall process the applications in a coordinated fashion and issue a joint decision. The coordinated permit process shall include consolidating any public hearings.

Commentary: Subsection 5 provides that NRPA applications will be consolidated with Mining Act applications.

6. Public and local participation. In addition to provisions for public participation provided pursuant to Title 5, chapter 375, the following provisions apply to an application for a mining permit.

- A. Notification.** An applicant shall give, at the time the application is submitted to the department, written notice to the municipal officers of the municipality in which the proposed mine may be located, or, in the unorganized territory, to the county commissioners for the county in which the mine may be located, and shall publish notice of the application in a newspaper of general circulation in the area.
- B. Preliminary notice.** Sixty days prior to submitting an application to the department, the applicant shall notify by certified mail the municipal officers of the municipality in which the site is located or, in the unorganized territory, the county commissioners. The applicant shall provide a copy of the notice to the Director of the Bureau of Geology and Natural Areas.
- C. Public hearing.** The department may hold an adjudicatory public hearing within the municipality in which the facility may be located or in a convenient location in the vicinity of the proposed facility. Administrative expenses of a hearing held pursuant to this paragraph and all costs incurred by the department in processing an application must be paid for by the applicant.
- D. Automatic municipal intervenor status.** The municipal officers, or their designees, from the municipality in which the mine may be located, or, in the unorganized territory, to the county commissioners for the county in which the mine may be located, have intervenor status if they request it within 60 days of notification under paragraph A. The intervenor status granted under this subsection applies in any proceeding for a permit under this article. Immediately upon the commissioner's receipt of such a request, the intervenors have all rights and responsibilities commensurate with this status.
- E. Financial assistance.** The commissioner shall reimburse or make assistance grants for the direct expenses of intervention of any party granted intervenor status under paragraph D, not to exceed \$50,000. The department shall adopt rules governing the award and management of intervenor assistance grants and reimbursement of expenses to ensure that the funds are used in support of direct, substantive participation in the proceedings before the department. Allowable expenses include, without limitation, hydrogeological studies, traffic analyses, the retention of expert witnesses and attorneys and other related items. Expenses not used in support of direct, substantive participation in the proceedings before the department, including attorney's fees related to court appeals, are not eligible for reimbursement under this subsection. Expenses otherwise eligible under this section that are incurred by the municipality or county commissioners after notification pursuant to paragraph A are eligible for reimbursement under this paragraph only if a completed application is accepted by the department. The department shall also establish rules governing the process by which an intervenor under paragraph D may gain entry to the proposed mining site for purposes of reasonable inspection and site investigations under the auspices of the department

Commentary: Subsection 6 provides for municipal and county participation, and requires notices of the application. It provides that the DEP may hold a public hearing, but a hearing is not required. It provides that the applicant must pay the expenses of the hearing and the application processing. It gives municipalities and counties automatic intervenor status and requires the applicant to pay up to \$50,000 to fund intervention. These provisions are based on provisions in Maine's landfill statutes.

§490-FFF. Mining permit; duration; termination; revocation; transfer; amendment.

1. Duration of permit. A mining permit issued by the department shall remain in effect until terminated or revoked by the department.

Commentary: Subsection 1 provides that a mining permit does not expire, unlike under current law.

2. Termination of permit. The department may terminate a mining permit after public notice under one or more of the following conditions:

- A. The permittee has not commenced construction of plant facilities or conducted actual mining activities covered by the mining permit within four years after the effective date of the mining permit.
- B. The permittee has completed final reclamation of the mining area and requests the termination of the mining permit and the department determines all of the following:
 - (1) The mining operation has not polluted, impaired, or destroyed the air, water, or other natural resources or the public trust in those resources by activities conducted within the scope of the permit.
 - (2) The permittee has otherwise fulfilled all conditions determined to be necessary by the department to protect the public health, safety, and welfare and the environment.
 - (3) The requirements for the postclosure monitoring period have been satisfied.

Commentary: Subsection 2 allows DEP to terminate a mining permit based on failure to commence construction or operation and based on completion of reclamation activities. This subsection is based on Michigan's mining law.

3. Revocation of permit. The department may revoke a mining permit after public notice pursuant to section 490-JJJ.

Commentary: Subsection 3 allows DEP to revoke a mining permit under Section 490-JJJ.

4. Transfer of permit. A mining permit may be transferred to a new owner or operator with approval of the department after public notice as follows:

- A. The person acquiring the mining permit shall submit to the department on forms provided by the department a request for transfer of the mining permit and shall provide the financial assurance required under section 490-HHH.
- B. The person acquiring the mining permit shall accept the conditions of the existing mining permit and adhere to the requirements set forth in this part.
- C. If the permittee is determined by the department to be in violation of this part or the rules promulgated under this part at the mining site involved in the transfer, then the mining permit shall not be transferred to a person until the permittee has completed the necessary corrective actions or the person acquiring the mining permit has entered into a written consent agreement to correct all of the violations.
- D. The transferee shall demonstrate to the department's satisfaction the technical and financial capacity and intent to: (1) comply with all terms and conditions of the applicable license, and (2) satisfy all applicable statutory or regulatory criteria. This includes providing adequate evidence of the financial assurance required by Section 490-HHH.

Commentary: Subsection 4 regulates transfers of mining permits. It is similar to other transfer provisions of DEP laws and rules.

5. Amendment of permit. A mining permit may be amended after public notice as follows:

- A. The permittee may submit to the department a request to amend the mining permit to address anticipated changes in the mining operation, including, if applicable, amendments to the environmental impact assessment and to the mining, reclamation, and environmental protection plan.
- B. The department may require a mining permit to be amended if the department determines that the terms and conditions of the mining permit are not providing the intended reasonable protection of the environment, natural resources, or public health and safety.

Commentary: Subsection 5 allows amendment of mining permits, including allowing the DEP to amend the permit if DEP determines that additional environmental protection measures are needed. This is based on the Michigan mining law.

§490-GGG. Performance, operation, and reclamation standards

1. Performance standards. Rules adopted by the department shall be performance-based to the extent feasible, and may require liners beneath tailings

impoundments, ore leaching facilities, and process solution ponds, but shall not require liners beneath any other portions of the mining area, including stockpiles.

Commentary: Subsection 1 provides that mining rules shall be performance based, and may require liners beneath tailings impoundments, ore leaching facilities, and process solution ponds, but no other portions of the mining area.

2. Suspension of mining operations. If mining operations are suspended for a continuous period exceeding 90 days, the permittee shall provide notice to the department and take actions to maintain, monitor, and secure the mining area and shall conduct any interim sloping or stabilizing of surfaces necessary to protect the environment, natural resources, or public health and safety in accordance with the permit.

Commentary: Subsection 2 requires the operator to take certain actions to protect the environment if mining operations are suspended for 90 days.

3. Water quality monitoring. A permittee shall conduct groundwater and surface water monitoring in accordance with the provisions of the permit during mining operations and during the postclosure monitoring period. The postclosure monitoring period shall be 30 years following cessation of mining, subject to the following conditions:

- A. The permittee shall provide to the department a written request to terminate the postclosure 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. The department shall extend the postclosure monitoring period in increments of up to 20 years unless the department determines, approximately one year before the end of a postclosure monitoring period or postclosure incremental monitoring period, that there is no significant potential for water contamination resulting from the mining operation.
- B. The department may shorten the postclosure monitoring period at any time upon determining that there is no significant potential for water contamination resulting from the mining operation.

Commentary: Subsection 3 requires water quality monitoring, both during mining operations and for at least 30 years after closure. The Michigan mining law requires monitoring for only 20 years after cessation of mining.

4. Reclamation. The following reclamation requirements will apply:

- A. Subject to paragraph B, a permittee shall begin final reclamation of a mining area within two years of the date of cessation of mining operations and shall complete reclamation within the time set forth in the mining, reclamation, and environmental protection plan approved by the department.
- B. Upon written request of a permittee, the department may approve an extension of time to begin or complete final reclamation.

C. Both the mining area and the affected area shall be reclaimed with the goal that the affected area shall be returned to the ecological conditions that approximate premining conditions subject to changes caused by nonmining activities or other natural events. The open pit shall be configured for long-term geotechnical stability and shall have safety berms or fencing installed during closure to prevent ingress into the open pit. Any portion of the mining area owned by the applicant may be used for any legal purposes.

Commentary: Subsection 4 requires reclamation of the mining site within two years after operations cease. Both the mining area and the affected area shall be reclaimed with the goal that the affected area shall be returned to the ecological conditions that approximate premining conditions subject to changes caused by nonmining activities or other natural events. The open pit shall be configured for long-term geotechnical stability and shall have safety berms or fencing installed during closure to prevent ingress into the open pit.

§490-HHH. Financial assurance

1. Duration of financial assurance. An operator shall maintain financial assurance during mining operations until the department determines that all reclamation has been completed and for a postclosure monitoring period as determined under section 490-GGG(4) and (5), except that financial assurance shall be released immediately upon termination of a mining permit under section 490-FFF(2)(A).

Commentary: Subsection 1 requires financial assurance to be in place during mining operations, until reclamation has been completed, and through the postclosure monitoring period.

2. Coverage of financial assurance. The financial assurance required under subsection (1) shall apply to all mining and reclamation operations subject to the mining permit and be sufficient to cover the cost to administer, and to hire a third party to implement, reclamation under the mining, reclamation, and environmental protection plan as well as necessary environmental protection measures, including remediation of any contamination of the air, surface water, or groundwater that is in violation of the mining permit.

Commentary: Subsection 2 provides that financial assurance shall be sufficient to cover the cost to hire a third party to conduct reclamation as well as necessary environmental protection measures, including remediation.

3. Form of financial assurance. The financial assurance shall consist of a surety bond, escrow, cash, certificate of deposit, irrevocable letter of credit, or other equivalent security, or any combination thereof.

Commentary: Subsection 3 allows various forms of financial assurance, which are the same as those allowed by Maine's waste management laws.

4. Updates to financial assurance. A permittee shall provide an annual statement of financial responsibility and shall adjust the bond, escrow, cash, certificate of deposit, irrevocable letter of credit, or other security, as applicable, to assure that the financial assurance is sufficient for the purposes of subsection (2).

Commentary: Subsection 4 requires that financial assurance be updated annually; Michigan's law requires the update only once every three years.

5. Failure to provide financial assurance. Failure to provide financial assurance under this section constitutes grounds for the department to order immediate suspension of activities at a mining operation, including the removal of metallic product from the site, pursuant to section 490-JJJ.

Commentary: Subsection 5 provides that failure to provide financial assurance shall be grounds to require suspension of mining operations.

§490-III. Mining and reclamation report

1. Filing requirement. A permittee shall file with the department a mining and reclamation report on or before March 15 of each year, during the period the mine is operating and during the postclosure monitoring period. The mining and reclamation report shall contain all of the following:

- A. A description of the status of mining and reclamation operations.
- B. An update of the contingency plan. The permittee shall provide a copy of the update to the municipality or county commissioners, as applicable.
- C. A report of monitoring results for the preceding calendar year.
- D. A report of the total tons of material mined from the mining area, and the amount of metallic product by weight, produced from the nonferrous metallic mineral mine for the preceding calendar year.
- E. A list of the reports required under subsection (2) for the preceding calendar year.

Commentary: Subsection 1 requires the permittee to file annually a mining and reclamation report during operations and the postclosure monitoring period.

2. Notification requirement. A permittee shall promptly notify the department and each municipality having jurisdiction over the affected area, or, in the unorganized territory, to the county commissioners for the county in which the mine is located, of any incident, act of nature, or exceedance of a permit standard or condition at a mining operation that has created, or may create, a threat to the environment, natural resources, or public health and safety.

Commentary: Subsection 2 requires the permittee to notify the DEP and the town or county commissioners of any incident that may create a threat to the environment or public health and safety.

3. Records. Records shall be retained as follows:

- A. Records upon which the mining and reclamation reports are based shall be preserved by the permittee for six years and made available to the department upon request.
- B. Records upon which incident reports under subsection (2) are based shall be preserved by the permittee for six years or until the end of the postclosure monitoring period, whichever is later.

Commentary: Subsection 3 requires the permittee to retain certain records for six years; the Michigan law requires retention for only three years.

§490-JJJ. Violations

1. Permittee required to correct violations. If the department determines that a permittee has violated this chapter, a rule promulgated under this part, or a mining permit issued under this part, the department shall require the permittee to correct the violation.

Commentary: Subsection 1 requires the permittee to correct any violations.

2. Imminent endangerment. If the department determines that a violation under subsection (1) is causing or resulting in an imminent and substantial endangerment to the public health or safety, environment, or natural resources, the department shall take action necessary to abate or eliminate the endangerment. Such action may include one or more of the following:

- A. Revoking the mining permit.
- B. Issuing an order to the permittee requiring immediate suspension of activities at the mining operation, including the removal of metallic product from the site.
- C. Issuing an order to the permittee to undertake such other response actions as may be necessary to abate or eliminate the endangerment.

Commentary: Subsection 2 requires the DEP to take action if it determines that a violation is resulting in imminent danger. This action may include permit revocation, suspension of mining activities, or an order requiring corrective action.

3. Notice and opportunity for hearing required. Before taking action under this section to suspend operations or revoke a mining permit, or to otherwise prevent the continuation of mining operations, the department shall give written notice, in person or by mail, to the permittee. Subject to subsection (4), the department shall provide the permittee an opportunity for a hearing.

Commentary: Subsection 3 requires an opportunity for a hearing before the DEP suspends operations or revokes a permit.

4. Emergency order. If the department finds that emergency action is required to protect the public health, safety, or welfare, or to protect the environment, the department may issue an emergency order without a public hearing to require a permittee to suspend operations or to take other corrective actions. An emergency order shall remain in force and effect for not more than 21 days.

Commentary: Subsection 4 provides an exception to the hearing requirement in subsection 3 if there is an emergency condition, but for no more than 21 days.

5. Department action. If the permittee fails or neglects to correct the violation or take corrective actions as specified under an order of the department, the department may, after giving written notice to the permittee, enter in or upon the mining area and upon and across any private or public property necessary to reach the mining area and take whatever action is necessary to curtail and remediate any damage to the environment and public health resulting from the violation, and the permittee is liable for all expenses incurred by the department.

Commentary: Subsection 5 allows the DEP to take corrective action if the permittee fails to do so, and makes the permittee liable for the DEP's costs in doing so.

6. Effect of revocation or suspension. The revocation of a mining permit or suspension of activities under subsection (2) does not relieve a permittee of the responsibility to complete reclamation, maintain financial assurance required under section 490-HHH, and undertake all appropriate measures to protect the environment, natural resources, and public health and safety.

Commentary: Subsection 6 provides that permit revocation does not relieve the permittee of its reclamation and financial assurance responsibility.

7. Compliance with Maine Administrative Procedures Act. The department shall comply with the Maine Administrative Procedure Act, Title 5, chapter 375, in its actions under this section.

Commentary: Subsection 7 requires the DEP to comply with the Maine APA under the Mining Act, which essentially means that DEP must provide notice and an opportunity for a hearing before taking action against a permittee.

Sec. 2. 12 MRSA §550-A, is repealed.

Commentary: This section repeals 12 MRSA 550-A, which requires the applicant to file a duplicative but somewhat inconsistent notice of intent to file with the Director of the

Bureau of Geology and Natural Areas. The intent of this notice provision is continued in Section 490-EEE(6)(B).

Sec. 3. 36 MRSA §2866, subsection 3, is repealed.

Commentary: This section repeals 36 MRSA 2866(3), which limits uses of the Mining Corrective Action Fund to mining operations located in municipalities.

Sec. 4. 36 MRSA §2866, subsection 4, is amended to read:

4. Uses of fund. Money from the fund may be used only to fund corrective action as defined in the mining rules adopted by the Department of Environmental Protection ~~and the Maine Land Use Regulation Commission~~. Corrective action includes, but is not limited to, remedial action related to:

- A. Contaminated ground water;
- B. Disposition of mining wastes;
- C. Reclamation defects on or surrounding the site; and
- D. Pollution control at the site.

Commentary: This section amends 36 MRSA 2866(4) to remove reference to LURC mining rules, which will no longer exist.

Sec. 5. 38 MRSA §349-A is repealed.

Commentary: This section repeals 38 MRSA 349-A, which authorizes DEP and LURC to adopt mining rules by 1991. This authorization is updated in Section 490-DDD(1).

Sec. 6. 38 MRSA §352, subsection 3, is amended to read:

3. Maximum fee. The commissioner shall set the actual fees and shall publish a schedule of all fees by November 1st of each year. If the commissioner determines that a particular application, by virtue of its size, uniqueness, complexity or other relevant factors, is likely to require significantly more costs than those listed on Table I, the commissioner may designate that application as subject to special fees. Such a designation must be made at, or prior to, the time the application is accepted as complete and may not be based solely on the likelihood of extensive public controversy. The maximum fee for processing an application may not exceed \$250,000, except that the maximum fee for processing an application under chapter 3, subchapter 1, article 9 may not exceed 300,000. All staff of the department, the Department of Inland Fisheries and Wildlife, the Department of Conservation, the Department of Agriculture, Food and Rural Resources and the Department of Marine Resources who have worked on the review of the application, including, but not limited to, preapplication consultations, shall

submit quarterly reports to the commissioner detailing the time spent on the application and all expenses attributable to the application, including the costs of any appeals filed by the applicant and, after taking into consideration the interest of fairness and equity, any other appeals if the commissioner finds it in the public interest to do so. Any appeal filed by the applicant of an application fee must be to the agency of jurisdiction of the application. The costs associated with assistance to the board on an appeal before the board may be separately charged. The processing fee for that application must be the actual cost to the department, the Department of Inland Fisheries and Wildlife, the Department of Conservation, the Department of Agriculture, Food and Rural Resources and the Department of Marine Resources. The processing fee must be distributed to each department that incurs a cost to be deposited in the account in which the expenses were incurred in that department to reimburse the actual cost to that department. The applicant must be billed quarterly and all fees paid prior to receipt of the permit. Nothing in this section limits the commissioner's authority to enter into an agreement with an applicant for payment of costs in excess of the maximum fee established in this subsection.

Commentary: This section amends 38 MRSA 352(3) to increase to \$300,000 the maximum fee that may be charged to an applicant for review of a mining application.

Sec. 7. 38 MRSA §352, subsection 3, is amended to read:

4-A. Maximum fees for nonferrous metal mining. ~~Notwithstanding the fees for mining established in subsections 4 and 5, ¶~~The maximum fees for nonferrous metal mining are as follows:

- A. The preapplication fee is \$20,000 ~~until the one-time allocation made pursuant to section 1319-E, subsection 1, paragraph F, has been repaid. Thereafter the preapplication fee is \$10,000;~~
- B. The processing fee is \$30,000; and
- C. The annual license fee is \$10,000.

Commentary: This section provides that the preapplication fee is \$20,000 for all applications.

Sec. 8. 38 MRSA §353, subsection 1-A, is repealed.

Commentary: This section repeals 38 MRSA 353(1-A), which requires that the preapplication fee for nonferrous metal mining must be used to repay the Maine Hazardous Waste Fund for the \$100,000 cost to develop the 1991 mining rules, and requires submission of a baseline monitoring plan; the purpose of the baseline monitoring plan is addressed in the new Mining Act.

Sec. 9. 38 MRSA §353, subsection 2, is amended to read:

2. Processing fee. Except for annual air emission fees pursuant to section 353-A and annual waste discharge fees pursuant to section 353-B, a processing fee must be paid at the time of filing the application. Failure to pay the processing fee at the time of filing the application results in the application being returned to the applicant. One-half the processing fee assessed in section 352, subsection 5-A for licenses issued for a 10-year term must be paid at the time of filing the application. The remaining 1/2 of the processing fee for licenses issued for a 10-year term must be paid 5 years after issuance of the license. The commissioner may not refund the processing fee if the application is denied by the board or the commissioner. If the application is withdrawn by the applicant within 30 days of the start of processing, the processing fee must be refunded, ~~except in the case of nonferrous metal mining applications. If an application for nonferrous metal mining is withdrawn by the applicant within 30 days of the date of filing, 1/2 of the application fee must be refunded.~~

Commentary: This section amends 38 MRSA 353(2) to remove the provision stating that if a mining application is withdrawn within 30 days the DEP retains the processing fee and one-half of the application fee.

Sec. 10. 38 MRSA §420-D, subsection 5, is amended to read:

5. Relationship to other laws. A storm water permit pursuant to this section is not required for a project requiring review by the department pursuant to any of the following provisions but the project may be required to meet standards for management of storm water adopted pursuant to this section: article 6, site location of development; article 7, performance standards for excavations for borrow, clay, topsoil or silt; article 8-A, performance standards for quarries; article 9, Maine Nonferrous Metal Mineral Mining Act; sections 631 to 636, permits for hydropower projects; and section 1310-N, 1319-R or 1319-X, waste facility licenses. When a project requires a storm water permit and requires review pursuant to article 5-A, the department shall issue a joint order unless the permit required pursuant to article 5-A is a permit-by-rule or general permit, or separate orders are requested by the applicant and approved by the department.

A storm water permit pursuant to this section is not required for a project receiving review by a registered municipality pursuant to section 489-A if the storm water ordinances under which the project is reviewed are at least as stringent as the storm water standards adopted pursuant to section 484 or if the municipality meets the requirements of section 489-A, subsection 2-A, paragraph B.

Commentary: This section amends 38 MRSA 420-D(5) to add Mining Act permits to those that do not require separate review under Maine's stormwater law.

Sec. 11. 38 MRSA §480-D, subsection 3, is amended to read:

3. Harm to habitats; fisheries. The activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered

plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

In determining whether mining, as defined in Title 38, section 490-CCC, subsection 6, will comply with this subsection, the department shall presume that there is no practicable alternative to the activity that would be less damaging to the environment.

In determining whether there is unreasonable harm to significant wildlife habitat, the department may consider proposed mitigation if that mitigation does not diminish in the vicinity of the proposed activity the overall value of significant wildlife habitat and species utilization of the habitat and if there is no specific biological or physical feature unique to the habitat that would be adversely affected by the proposed activity. For purposes of this subsection, "mitigation" means any action taken or not taken to avoid, minimize, rectify, reduce, eliminate or compensate for any actual or potential adverse impact on the significant wildlife habitat, including the following:

- A. Avoiding an impact altogether by not taking a certain action or parts of an action;
- B. Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity;
- C. Rectifying an impact by repairing, rehabilitating or restoring the affected environment;
- D. Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or
- E. Compensating for an impact by replacing the affected significant wildlife habitat.

Commentary: This section amends 38 MRSA 480-D(3) to provide that the DEP must presume under the NRPA that there is no practicable alternative to the mining activity, given the need to locate the mine where the metal minerals are located.

Sec. 12. 38 MRSA §482, subsection 2, is amended to read:

2. Development of state or regional significance that may substantially affect the environment. "Development of state or regional significance that may substantially affect the environment," in this article also called "development," means any federal, state, municipal, quasi-municipal, educational, charitable, residential, commercial or industrial development that:

- A. Occupies a land or water area in excess of 20 acres;
- B. Is a ~~metallic mineral mining or advanced exploration activity as defined in this section~~ or an oil or gas exploration or production activity that includes drilling or excavation under water;
- C. Is a structure as defined in this section;
- D. Is a subdivision as defined in this section;
- F. Is an oil terminal facility as defined in this section; or
- J. Is an offshore wind power project with an aggregate generating capacity of 3 megawatts or more.

Commentary: This section amends 38 MRSA 482(2) to remove metallic mineral mining from the projects subject to the Site Law, so that the new Mining Act will consolidate state-level mine permitting in a single location (with the exception of NRPA, air, and wastewater).

Sec. 13. 38 MRSA §482, subsection 2-B, is repealed.

Commentary: This section repeals 38 MRSA 482(2-B), which defines “metallic mineral mining or advanced exploration activity” under the Site Law. This definition is no longer needed under the Site Law, because the Site Law will no longer regulate metallic mineral mining. This definition is restated in new Section 490-CCC(6).

Sec. 14. 38 MRSA §482, subsection 4-B, is repealed.

Commentary: This section repeals 38 MRSA 482(4-B), which defines “reclamation” under the Site Law. This definition is no longer needed under the Site Law, because the Site Law will no longer regulate metallic mineral mining. This definition is restated in new Section 490-CCC(14).

Sec. 15. 38 MRSA §484, subsection 4-A, is amended to read:

4-A. Storm water management and erosion and sedimentation control. The proposed development, ~~other than a metallic mineral mining or advanced exploration activity,~~ meets the standards for storm water management in section 420-D and the standard for erosion and sedimentation control in section 420-C. ~~A proposed metallic mineral mining or advanced exploration activity must meet storm water standards in department rules adopted to implement subsections 3 and 7.~~ If exempt under section 420-D, subsection 7, a proposed development must satisfy the applicable storm water quantity standard and, if the development is located in the direct watershed of a lake included in the list adopted pursuant to section 420-D, subsection 3, any applicable storm water quality standards adopted pursuant to section 420-D. For redevelopment projects only, the standards for storm water management in section 420-D are met if the proposed development is located in a designated area served by a department-approved management system for storm water as described in section 420-D, subsection 2, as long as the owner or operator of the parcel upon which the proposed development will be located enters into or obtains and remains in compliance with all agreements, permits and approvals necessary for the proposed development to be served by such management system for storm water.

Commentary: This section amends 38 MRSA 484(4-A) to remove references to metallic mineral mining from the Site Law’s stormwater and erosion control provisions.

Sec. 16. 38 MRSA §485-A, subsection 1-C, is amended to read:

1-C. Long-term construction projects. The department shall adopt rules identifying requirements for a long-term construction project that allow approval of development within a specified area and within specified parameters such as maximum area and groundwater usage, although the specific nature and extent of the development or timing of construction may not be known at the time a permit for the long-term construction project is issued. The location and parameters of the development must meet the standards of this article. ~~This subsection does not apply to metallic mineral mining or advanced exploration activities.~~

Commentary: This section amends 38 MRSA 485-A(1-C) to remove a reference to metallic mineral mining from the Site Law.

Sec. 17. 38 MRSA §488, subsection 9, is amended to read:

9. Development within unorganized areas. A development located entirely within an area subject to the jurisdiction of the Maine Land Use Regulation Commission, other than ~~a metallic mineral mining or advanced exploration activity~~, an oil terminal facility or an offshore wind power project with an aggregate generating capacity of 3 megawatts or more that is not a community-based offshore wind energy project as defined in Title 12, section 682, subsection 19, is exempt from the requirements of this article.

Commentary: This section amends 38 MRSA 488(9) to remove a reference to metallic mineral mining from the Site Law.

Sec. 18. 38 MRSA §488, subsection 11, is amended to read:

11. Farm and fire ponds. A pond that is used for irrigation of field crops, water storage for cranberry operations or fire protection determined to be necessary in that location by the municipal fire department is exempt from review under this article. This provision does not provide an exemption for ~~mining or advanced exploration activity or excavation for borrow, clay, topsoil or silt.~~

Commentary: This section amends 38 MRSA 488(11) to remove a reference to metallic mineral mining from the Site Law.

Sec. 19. 38 MRSA §490 is repealed.

Commentary: This section repeals 38 MRSA 490, which relates to reclamation of mines. This section is replaced by Section 490-GGG(4) and other provisions in the Mining Act.

Sec. 20. 38 MRSA §1319-E, subsection 1, paragraph F, is repealed.

Commentary: This section repeals 38 MRSA 1319-E(1)(F), which authorized an expenditure of \$100,000 from the Maine Hazardous Waste Fund to develop the 1991 mining rules, and which requires new mining applications to pay a fee to reimburse the Hazardous Waste Fund for that expenditure.

SUMMARY

This bill creates a comprehensive statutory framework to replace current mining laws and rules and establishes the Department of Environmental Protection as the agency responsible for permitting and regulating the development, operation, and closure of metallic mining in the State.