

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1471

S.P. 590

In Senate, April 5, 2023

An Act to Amend Provisions of the Maine Metallic Mineral Mining Act

Reference to the Committee on Environment and Natural Resources suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator BENNETT of Oxford.

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

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

3 B-1. A human health impact assessment for the proposed mining operation that
4 identifies all potential emissions and effects from the mining operation in a proposed
5 mining area and affected area that can reasonably be expected to cause or threaten harm
6 to human health, including, but not limited to, harm caused by air emissions,
7 contamination of groundwater or surface water, noise pollution, light pollution and the
8 effects of blasting and vibrations from the mining operation. The human health impact
9 assessment must define the mining area and affected area and include practicable
10 alternatives to address identified potential human health risks. The department shall
11 review the human health impact assessment and may approve, reject or require
12 modifications to the assessment;

13 **Sec. 2. 38 MRSA §490-OO, sub-§2, ¶E,** as enacted by PL 2011, c. 653, §23 and
14 affected by §33, is amended to read:

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

16 **Sec. 3. 38 MRSA §490-OO, sub-§4, ¶E-1** is enacted to read:

17 E-1. The mining operation will not involve or result in the release of perfluoroalkyl
18 and polyfluoroalkyl substances into the air, soil, groundwater or surface water within
19 any mining area or affected area. As used in this paragraph, "perfluoroalkyl and
20 polyfluoroalkyl substances" has the same meaning as in Title 32, section 1732,
21 subsection 5-A.

22 **Sec. 4. 38 MRSA §490-OO, sub-§4, ¶J-1** is enacted to read:

23 J-1. The mining operation will not involve the use of explosives or other blasting
24 materials that contain perchlorate.

25 **Sec. 5. 38 MRSA §490-OO, sub-§4, ¶K-1** is enacted to read:

26 K-1. The mining operation meets all applicable setback requirements specified by the
27 department by rule. The department shall by rule establish minimum setback
28 requirements for mining operations, which must include, but are not limited to,
29 setbacks from schools, day care facilities, residences, hospitals and national and state
30 parks.

31 **Sec. 6. 38 MRSA §490-OO, sub-§4, ¶N-1** is enacted to read:

32 N-1. The applicant has made adequate provision for and demonstrated specific plans
33 to provide for and, in accordance with section 490-RR, subsection 2, paragraph A, fund
34 the perpetual treatment and monitoring of mine waste and tailings in the event that the
35 applicant fails to satisfy applicable mine waste or tailings management requirements,
36 applicable closure and post-closure monitoring requirements or other applicable
37 requirements resulting in the need for perpetual treatment of mine waste or tailings
38 following closure.

39 **Sec. 7. 38 MRSA §490-OO, sub-§4, ¶P** is enacted to read:

40 P. The applicant has made adequate provision for and demonstrated specific plans to
41 address natural events that may affect mining operations, including, but not limited to,

1 fires, earthquakes, droughts, tidal waves and floods, and for the implementation of
2 climate adaptation measures in accordance with rules adopted by the department.

3 **Sec. 8. 38 MRSA §490-OO, sub-§4, ¶Q** is enacted to read:

4 Q. The applicant has demonstrated specific plans for ensuring that the mining
5 operation, to the greatest extent practicable, will use clean energy measures and
6 technologies, as identified by the department by rule, including, but not limited to,
7 generation of electricity for the mining operation through the use of solar, wind or other
8 clean energy technology; use of electric vehicles and electric-powered equipment in
9 the mining operation; and implementation of carbon capture technology for carbon
10 emissions from the mining operation.

11 **Sec. 9. 38 MRSA §490-QQ, sub-§3-A** is enacted to read:

12 **3-A. Air quality monitoring.** Through rulemaking the department shall establish
13 standards for monitoring air quality as close as practicable to any mining area that may
14 pose a threat to air quality. A permittee shall conduct air quality monitoring in accordance
15 with the provisions of a mining permit during mining operations, during suspension of
16 mining operations and during closure.

17 A. The permittee shall establish compliance with applicable air quality standards and
18 requirements through direct measurement of emissions and not by estimating emission
19 concentrations. The permittee shall conduct air emissions monitoring for pollutants as
20 required by the department pursuant to chapter 4 and for other hazardous air pollutants
21 specified by the department by rule, which must include, but are not limited to, volatile
22 organic compounds, polycyclic aromatic hydrocarbons, other pollutants associated
23 with the use of petroleum-based products and other pollutants that are heavy metals.

24 B. The permittee shall install and operate fenceline monitoring equipment for air
25 emissions from any stack, flue, chimney, vent or other potential source of air pollution
26 within a mining area and shall ensure the monitoring and measurement of fugitive air
27 emissions within a mining area, including, but not limited to, emissions from vehicles
28 and other equipment operated or used within the mining area.

29 **Sec. 10. 38 MRSA §490-RR, sub-§2, ¶A**, as enacted by PL 2017, c. 142, §9, is
30 amended by amending subparagraph (1) to read:

31 (1) The cost to investigate all possible releases of contaminants at the site, monitor
32 all aspects of the mining operation, close the mining operation in accordance with
33 the closure plan, conduct treatment activities of all expected fluids and wastes
34 generated by the mining operation for a minimum of 100 years, implement
35 remedial activities for all possible releases and maintenance of structures and waste
36 units as if these units have released contaminants to the groundwater and surface
37 water, conduct corrective actions for potential environmental impacts to
38 groundwater and surface water resources as identified in the environmental impact
39 assessment and conduct all other necessary activities at the mine site in accordance
40 with the environmental protection, reclamation and closure plan. The amount of
41 the financial assurance must be sufficient to provide for the perpetual treatment
42 and monitoring of mine waste and tailings in the event that the permittee fails to
43 satisfy applicable mine waste or tailings management requirements, applicable
44 closure and post-closure monitoring requirements or other applicable requirements

1 resulting in the need for perpetual treatment of mine waste or tailings following
2 closure; and

3 **Sec. 11. 38 MRSA §490-RR, sub-§6** is enacted to read:

4 **6. Insurance requirement.** In accordance with rules adopted by the department, a
5 permittee must provide proof of and maintain comprehensive general liability insurance
6 for the mining operation for the same duration as financial assurance is required under
7 subsection 1. The insurance must provide sufficient coverage to address potential harm to
8 members of the public located adjacent to or in proximity to mining areas or affected areas,
9 including, but not limited to, harm resulting from fires, explosions or flooding originating
10 at or caused by the mining operation and harm resulting from exposure to air, water or soil
11 pollution caused by the mining operation. The insurance may not include any provisions
12 or clauses that exclude coverage for harm or losses caused by pollution.

13 **Sec. 12. 38 MRSA §490-TT, sub-§2**, as enacted by PL 2011, c. 653, §23 and
14 affected by §33, is amended to read:

15 **2. Imminent endangerment.** ~~If the department determines that a violation under~~
16 ~~subsection 1~~ mining operation is causing or resulting in, or has the potential to cause or
17 result in, an imminent and substantial endangerment to the public health or safety,
18 environment or natural resources, regardless of whether a violation under subsection 1
19 exists, the department shall take action necessary to prevent, abate or eliminate the
20 endangerment. Such action may include one or more of the following:

- 21 A. Revoking the mining permit as authorized by section 342, subsection 11-B;
- 22 B. Issuing an order to the permittee requiring immediate suspension of mining
23 activities, including, but not limited to, the removal of metallic product from the site;
- 24 C. Issuing an order to the permittee to undertake such other corrective or response
25 actions as may be necessary to prevent, abate or eliminate the endangerment; and
- 26 D. Issuance of an emergency order as authorized by section 347-A, subsection 3.

27 **SUMMARY**

28 This bill amends the Maine Metallic Mineral Mining Act as follows.

29 1. In addition to other requirements provided by that Act, the bill requires an applicant
30 for a mining permit to:

- 31 A. Submit a human health impact assessment for the proposed mining operation that
32 identifies all potential emissions and effects from the mining operation in a proposed
33 mining area and affected area that can reasonably be expected to cause or threaten harm
34 to human health;
- 35 B. Demonstrate specific plans to provide for and fund the perpetual treatment and
36 monitoring of mine waste and tailings in the event that the applicant fails to satisfy
37 applicable mine waste or tailings management requirements, applicable closure and
38 post-closure monitoring requirements or other applicable requirements resulting in the
39 need for perpetual treatment of mine waste or tailings following closure;

1 C. Demonstrate specific plans to address natural events that may affect mining
2 operations and for the implementation of climate adaptation measures as specified by
3 rule; and

4 D. Demonstrate specific plans for ensuring that the mining operation will use clean
5 energy measures and technologies to the greatest extent practicable.

6 2. In addition to other restrictions provided by that Act, the bill prohibits the
7 Department of Environmental Protection from issuing a mining permit for a mining
8 operation that:

9 A. Will involve or result in the release of perfluoroalkyl and polyfluoroalkyl
10 substances into the air, soil, groundwater or surface water within any mining area or
11 affected area;

12 B. Will involve the use of explosives or other blasting materials that contain
13 perchlorate; or

14 C. Does not meet all applicable setback requirements specified in rule, which must
15 include, but are not limited to, minimum setbacks from schools, day care facilities,
16 residences, hospitals and national and state parks.

17 3. In addition to other requirements provided by that Act, the bill requires a mining
18 permittee to:

19 A. Establish compliance with applicable air quality standards and requirements
20 through direct measurement of emissions and not by estimating emission
21 concentrations; to conduct air emissions monitoring for the pollutants described in the
22 State's ambient air quality standards laws and for other hazardous air pollutants
23 specified in rule; to install and operate fence-line monitoring equipment for air
24 emissions from any stack, flue, chimney, vent or other potential source of air pollution
25 within a mining area; and to ensure the monitoring and measurement of fugitive air
26 emissions within a mining area; and

27 B. Provide proof of and maintain comprehensive general liability insurance for the
28 mining operation for the same duration as financial assurance is required by law, which
29 must provide sufficient coverage to address potential harm to members of the public
30 located adjacent to or in proximity to mining areas or affected areas.

31 4. The bill amends the provisions of the mining law regarding imminent endangerment
32 to provide the department with authority to take action necessary to prevent an imminent
33 and substantial endangerment to the public health or safety, environment or natural
34 resources that a mining operation has the potential to cause or result in, regardless of
35 whether a violation exists.