Maine’s New Mining Rules Are Dangerously Weak

The Legislature should reject the provisionally adopted Chapter 200 Metallic Mineral Exploration, Advanced Exploration and Mining Rules. These rules contain too many problems for the Legislature to fix, including:

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

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

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

4. **The rules allow open pit mines next to almost all of Maine’s lakes and many of our most spectacular rivers.** They require a small buffer for open pit mines of between ¼ mile and one mile for 346 of approximately 3000 Maine Lakes, the Allagash Wilderness Waterway, and Atlantic Salmon Rivers. The rest of our rivers and lakes would require no buffer for open pit mines.

5. **The rules allow mines on and next to many public lands, including Land for Maine’s Future lands purchased with taxpayer money for conservation purposes.** Despite strong objection, the BEP adopted the rules without even discussing which specific public lands fell under this category!

6. **The rules provide no buffer for underground mines.** The BEP weakened DEP’s proposed rule by eliminating the one mile buffer for underground mines next to important resources including state and national parks. The rules also allow underground mines next to and under every lake and river in Maine.

7. **The rules only allow municipal intervenors to conduct mining site visits as part of the permit review process, not citizen intervenors.** This severely limits the ability of the public to participate meaningfully in mining decisions.

8. **The rules allow injection of drilling chemicals into soil, rock, and groundwater during exploratory mining.** This was added as a “minor technical” change without discussion of what this practice is and potential negative effects.

9. **The rules exempt mining companies from compliance with Maine’s soil stabilization and erosion control guidelines.** Mining can cause severe soil instability and erosion, so these are dangerous exemptions.
10. The rules allow mining companies to hire uncertified individuals to perform the mine’s technical analyses, design, and construction. Given DEP’s lack of experience in mine permitting, it is unacceptable to set low standards for the individuals preparing mining applications. It significantly increases the likelihood of errors that DEP reviewers will not catch.

Given the length and complexity of the rules, and the haphazard way in which they were developed, there are likely many more substantive problems than the list above. The rulemaking process also had many flaws, including the following:

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

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

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

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

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

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

These rules are both substantively and procedurally flawed. The Legislature should reject them.