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## Comments on Proposed Chapter 200 Rule

These comments will address the specified notations in the proposed rule. At the onset it is important to note that the Maine Metallic Mining Act should be revised before any rule is proposed based on the Act. There are also substantive errors and inconsistencies in the proposed Chapter 200 rules that are not marked for revision.

### **Section 1. Definitions.** Wet Mine Waste Units

The proposed changes in the definition of Wet Mine Waste Unit engenders one of the crucial issues of metallic mining, the safety and treatment of the massive volumes of toxic waste. The definition of wet mine waste unit should retain the redacted phrase “wet mine waste unit shall not be used for storage or treatment of mine waste after closure”. Since the definition is being revised, it should be revised to not allow the unit to be used for storage or treatment **before** closure.

Wet mine waste units and tailings impoundments are very dangerous at any time in the life of a mining operation, both before and after closure. Importantly, this devastating risk is recognized in the rules in Section 3 (F) where “tailings impoundments that use water as a cover” are prohibited.

The distinction between tailings impoundments and wet mine waste units is a substantive inconsistency. The use of “water as a cover to minimize oxygen advection and diffusion to Group A waste” is a fundamental constituent to both. Due the extreme dangers involved with covering toxic waste with water, such as in the recent catastrophic Mount Polley Dam failure and Animas River spill, the prohibition that applies to “all ... mining activities” in section 3 (F) should prevail. Wet mine waste units should not be allowed either after closure or before mine closure.

This citation is directly pertinent. “It is now generally realized that closure of waste storages [sic] does not mean abandonment, but having to ensure no increased risk to community health or to the environment for hundreds or even thousands of years.” Page 17, *Geotechnical Engineering for Mine Waste Storage Facilities*, <https://www.scribd.com/document/97342886/Geotechnical-Engineering-for-Mine-Waste-Storage-Facilities>, 2010.

### **Section 17 Financial Assurance and Insurance Requirements. 17(B)(1)(a)**

The Overview of the Proposed Changes to the Chapter 200 Rulemaking Proposal 11/16/16

states "Section 17(B)(1)(a) has been revised to explicitly require a worst-case cost analysis."

The concept of a worst case scenario is an essential addition in view of the recent and costly mining disasters such as Mount Polley, the Animas River Gold King Mine and the Rio Doce in Brazil despite the use of the most advanced mining technology. It is important that medical care for acute injury and chronic exposure to pollutants is added to "Financial assurance must be sufficient to cover the cost ...". 17(B)(1)(a)

Although section 17 (H)(1 and 2) covers liability, the addition of acute and chronic medical care to financial assurance is necessary because:

- liability coverage for medical care is not specifically mandated in 17(H)(1 and 2),
- a pollution exclusion in the liability policy is not prohibited,
- the required coverage limits are totally inadequate for a worse case scenario,
- and the rules will allow a claims made liability policy should be categorically prohibited 17(H)(6).

Loss of life, limb or damage to the health is of paramount importance in a worst case scenario. The rules must explicitly guarantee that our citizens are adequately protected in the event of a worst case scenario.

#### **Section 17 Financial Assurance and Insurance Requirements. 17(C)(1)**

The 15% or greater of the financial assurance, along with all other financial insurance and assurance, must be adjusted yearly for an increase(decrease) in the Consumer Price Index. This will assure that that a later date there is adequate monetary coverage to perform all necessary actions required by this chapter. Without protection from inflation, over the course of time the value of the financial and insurance instruments can decrease significantly and not provide the financial benefit that was originally intended.

#### **Section 17 Financial Assurance and Insurance Requirements. 17(F)(6)(b)**

Prior to release of financial assurance, a public hearing should be held. This will ensure transparency of the process. As with the Callahan Corporation Mine, improper remediation and closure can detrimentally affect the taxpayers of Maine on a state and national level. Citizens of the state have the right to ensure that all permit requirements are satisfactorily met since they are at risk of ultimately being a responsible party. A public hearing will help ensure that the health and the environment that the citizens live in is not at risk.

As stated on page 17 of *Geotechnical Engineering for Mine Waste Storage Facilities*, op. cit. "It is now also recognized that a mine storage waste facility is not a temporary asset, that can be disposed of at the end of its useful life. If not decommissioned and closed in an environmentally and socially acceptable manner, including a viable after use, it will constitute an ongoing liability not only to the operating company, and its successors, but also to the local community, the country in which it is situated and the rest of the world."

**Section 17 Financial Assurance and Insurance Requirements. 17(H)**

Non-sudden occurrence insurance must be required for the entire life of all mining operations, including post closure. The "may" should be redacted and the original "shall" retained. Since non-sudden insurance shall be required, the Department ruling on a case by case basis is not needed and should be deleted.

**Section 20 Performance Standards. 20(B)(3)**

There should be no mining under great ponds, rivers, brooks and streams, and coastal wetlands. Sub surface activities can be very damaging to the surface especially at the more shallow depths that will be employed for mining ore in Maine. Further, the concomitant noise, vibration, exhaust and vehicular traffic in close proximity to these bodies of water will have a detrimental effect on the environment and people in it.

**Section 20 Performance Standards, 20(L)**

The lowest achievable emissions rate (LAER) should be required for ALL air emissions, not just for fugitive emissions. Emitted pollutants subject to LAER should include, but not limited to, PM2.5, sulfur dioxide, and metals. In particular PM2.5, sulfur dioxide and metals should be speciated and quantified.

Thank you for your consideration of these comments.

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