



**Written Comment in Opposition to Draft Chapter 200 Metallic Mineral Mining Rules**  
September 26, 2016

Chairman Parker and Members of the Maine Board of Environmental Protection:

Thank you for the opportunity to comment on the Department of Environmental Protection's draft rules for Chapter 200 Metallic Mineral Exploration, Advanced Exploration, and Mining. I represent the Appalachian Mountain Club, the nation's oldest outdoor recreation and conservation organization. AMC is dedicated to promoting the protection, enjoyment, and understanding of the mountains, forests, waters, and trails. In Maine, we manage 70,000 acres of land in Piscataquis County, and focus our initiatives on outdoor recreation, resource protection, sustainable forestry, and community partnerships.

AMC appreciates all of the time and effort the Department spent in revising and improving the 2014 provisionally adopted Chapter 200 rules. We are pleased with many of the changes in this version of the rule that improve protections for land and water. **We specifically support the following provisions:**

- The new definition of "perpetual treatment" which limits active treatment to no more than 10 years post-closure rather than 30 years post closure. Many who participated in the public comment period for the 2014 version asked for shorter timeframe for post-closure treatment, and this addresses those concerns and reduces the risks associated with longer term treatment.
- The added requirement for continuous surface water monitoring for pH levels and other parameters (Section 22). These additional and clear technical monitoring standards serve to further protect the land and environment.

AMC still has several concerns with the proposed rule as drafted and ultimately will only support a regulatory framework that is clear and protective of the state of Maine.



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## **Protections for Public Lands & Waters**

As a conservation and outdoor recreation organization, AMC is especially concerned about the provisions of the rules that threaten public lands and waterbodies. The protection of Maine's state and federal conservation lands have been a cornerstone issue throughout the entire proceedings around updating Maine's metallic mineral mining rules. Previous versions of the Chapter 200 rules have provided clearer protections for many state and federal conservation areas, but it seems at this point there is confusion over the Department's authority related to the statute and other agencies.

### **AMC believes mining should be prohibited on all public lands and public reserved lands.**

These lots are managed by the state to serve public interest, but would be open to mining development if these rules are passed. If there is confusion in the legal authority, the Department should seek clarification and make it clear that they oppose mining on public lands. We urge the BEP to recommend that the Department ask the Legislature for authority to prohibit mines in, on, or under public lands, floodplains, great ponds, rivers, streams, and coastal wetlands.

It is important to remember that while Maine's public lands are managed for multiple uses, they are still held in public trust. For example, three of these vulnerable public reserve lots fall within the Moosehead Lake region where AMC owns and manages 70,000 acres. The State of Maine invested \$6 million dollars of public money in the Katahdin Iron Works Conservation Project, and manages it for conservation and public access. These public lots fall wholly or partially within this conservation property, and have been managed for decades for remote recreation, deer wintering habitat and sustainable timber management. Opening these parcels to mining development directly contradicts and undermines decades of careful management by the state and millions of dollars of investment by Maine citizens on the conservation of these lands. **These public reserve lots are scattered all across the state, and should not be jeopardized by the risk of mining development.**



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## **Water Quality Risks**

AMC appreciates the changes to the draft rules before you that help protect Maine's water bodies and natural environment by limiting post-closure treatment to 10 years and eliminating the loophole that would allow for perpetual treatment. We also support the new draft's prohibition on using wet mine waste units as storage or treatment post mine closure. Even with these positive changes, AMC still has several concerns with the risks to water quality.

**We continue to oppose the provision in both the 2012 Statute and the draft rules before you that specifically allows contamination of groundwater within the "mining area".** The Department has evolved their definition of "mining area" but the actual written definition in the rule still needs clarification. AMC believes discharges to groundwater should be prohibited due to the risk of widespread ground and surface water contamination. We understand that there may be limitations due to the directive from the 2012 Statute, but see this as a key issue that needs to be resolved.

In addition, the draft rules allow tailings impoundments or "wet mine waste units" during the life of the mine, but not after. The rules prohibit these facilities for post closure treatment, but we believe they should be prohibited outright. If the Department's intent is to end up with an alternative waste management plan post closure, they should require the applicant to plan and design their waste management from the beginning with that in mind. Wet mine waste facilities are the most dangerous type of mine waste disposal and processing – eighty percent of tailings impoundment dam failures occur during the active life of mines. **We encourage the BEP to prohibit the use of tailings impoundments.**

We also are concerned that mining operations will be permitted in flood plains or flood hazard areas. **We understand that there may be some aspects of the mining operation that may be suitable for flood risk areas, but prefer that all mining activity be prohibited in areas**



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**vulnerable to flooding.** It seems that this type of industrial activity can be sited and permitted in other locations.

### **Financial Assurance Requirements**

Finally, AMC believes the draft Chapter 200 mining rules do not adequately ensure that a mining company will have the financial resources up front to cover any potential damages or cleanup costs associated with mining development. The parts of the rules that describe the financial assurance requirements are complicated, and allow unnecessary flexibility around how these requirements are calculated on a case by case basis. **An applicant should be required to secure the full amount of financial assurance – including the resources to cover a potential “worst case failure” - in a trust fund up front.**

Ultimately, it is important to recognize that there continue to be points of inconsistency, confusion, and questions about regulatory authority. Without substantial clarity around many of these issues, the AMC and many others continue to oppose these draft rules and push the Department and Board to develop protective rules. If there needs to be a statutory change, the Department or Board should work with the Legislature to correct the directive set in 2012. While we appreciate all of the effort that has gone into this process, we remain opposed to a regulatory framework that would put Maine’s natural resources at risk.

Thank you for the opportunity to submit comments and participate in this process.

Sincerely,

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Appalachian Mountain Club