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**To:** [DEP, MiningComments2016](#)  
**Cc:** [Mercer, Paul](#); [Livesay, Nicholas](#); [Crawford, Jeff S](#); [Stebbins, Mark N](#); [Loyzim, Melanie](#); [Burns, Dave E](#); [Senator Tom Saviello](#); [Attorney General](#); [Sauer, Mary](#)  
**Subject:** South Australia Guidelines on Tailings Storage & Management  
**Date:** Saturday, September 24, 2016 9:54:30 AM

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RE Chapter 200 Mining Rules

DATE: September 26, 2016

Dear Members of the Board of Environmental Protection:

By way of comparison with the rule before you now for review and an excellent example of what could be accomplished even within the existing very bad statute. I offer you this excellent South Australia Tailings Management rule. There is nothing in this excellent guideline, (which has the full force and effect of regulation) that "ties the departments hands" . This entire guidance could be adopted with no changes at all in statute.

( I am not advocating that although it provides a very complete place to start)

[http://www.pir.sa.gov.au/\\_data/assets/pdf\\_file/0004/65533/MG05\\_tailings.pdf](http://www.pir.sa.gov.au/_data/assets/pdf_file/0004/65533/MG05_tailings.pdf)

MAPA requires that the DEP seek out the best knowledge, best science and best understanding in drafting any implementing rules. This guideline on Tailings Management, one of the most critical public safety/public interest aspects of any mine, has been available to DEP since 2009 even for example with reference to the existing 1991 rules. At any time even before the mining statute was enacted DEP could have updated to the 1991 rule to include better informed modern guidance on tailings management of particular and essential relevance here in Maine.

Please note in particular the two provisions that (1) no application will be considered without a complete tailings management plan and that (2) above ground tailings impoundments of any kind are precluded in certain environmentally sensitive areas.

Important to note that the entire area on which Bald Mountain Sits and its immediate environs are zoned in a way that expressly prohibits mining and some of the immediate vulnerable downstream areas are highly protected natural resources. Under the South Australia rule that would lead to not allowing any earthen build as you go tailings facility at Bald Mountain.

Important to note that even though the statute allows on site groundwater contamination there is nothing in statute that precludes the Department setting responsible protective no go technical criteria for any aspect of mining that in known science, known good practice, established best

knowledge is highly indicative of extensive off site damage. There is , in fact, a concomitant requirement in statute that no off site contamination is allowed. It makes no sense to allow practices with a near certainty of prohibited off site contamination and just wait and see . The statutory requirement that monitors be placed as near as possible to mine activities does not limit the Department in any way to a wait and see approach as this third rule provides.

Given the immediate adjacency, in the example of Bald Mountain, to such highly protected natural resources there is nothing in statute which compels DEP to allow high risk mine plans and nothing in statute precludes DEP from setting appropriate conditions of approval that protect off site areas pro actively through the kind of guidance n this South Australia rule.

Important also to note that though acid mine drainage is a guaranteed high risk issue challenging any known methods of management and containment at the levels we have here in Maine at any presently known or yet unknown massive sulfides, DEP has not referenced or included any portion of the extensive MEND guidelines that serve as an international standard for insuring neutral drainage. Nothing in the terrible statute "ties DEP's hands" from citing that as the guidance with force of law here in Maine.

Indeed, once again, MAPA specifically requires that DEP affirmatively seek best knowledge and science applicable to all rulemaking, even routine technical rules. DEP has not satisfied that standard for many many years now. It is not meeting this standard in this reckless rule.

You are our watchers and protectors. Put your finger in the dyke on behalf of public health, environmental security and sound governance. Stop the clock on this rule Demand a better better informed process and a better informed statute..

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