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September 26, 2016

Chairman Jim Parker
Board of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

RE: Proposed changes to Chapter 200 rules

Dear Chairman Parker and members of the Board of Environmental Protection:

I am submitting these supplemental written comments on behalf of Maine Audubon and our 30,000 members and supporters in opposition to the proposed Chapter 200 rules. We are offering constructive suggestions for amendments that would strengthen the proposed rules and the governing statute.

Improvements to Statute

The governing statute, the Maine Mining Act, has a number of flaws that we urge the Board recommend the Legislature fix:

1. Clearly ban metallic mineral mining in, on or under publicly owned lands, great ponds, rivers, streams and coastal wetlands.
2. Disallow the siting of mining operations in, on or under flood hazard areas and flood plains.
3. Clarify that the "mining areas" within which groundwater may be contaminated should be as discrete as possible. The statutory language should be tightened because, as written, the language is vague.
4. Eliminate the language allowing contamination of groundwater. Groundwater and surface water are connected. If groundwater is contaminated, surface water will be contaminated even though the statute attempts to protect surface water from contamination.

Improvements to Rules

1. Prohibit open pit mining. As we continue to learn more about metallic mineral mining, it's become clear to us that open pit mining poses substantially greater environmental risk than shaft or tunnel mining.
2. Ban the use of wet mine waste units during the operation of the mine. Most accidents that occur with tailings impoundments or wet mine waste units occur during the life of the mine, not after it's been closed down. If wet mine waste units are barred after closure, they really need to be banned from the start. Dry storage should be utilized from the start and should be utilized throughout the life of the mine. Dry storage, together with a prohibition on open pit mining, would go a long way towards protecting Maine's natural resources from harm.
3. Ban metallic mineral mining in, on or under publicly owned lands, great ponds, rivers, streams and coastal wetlands.
4. Disallow the siting of mining operations in, on or under flood hazard areas and flood plains.
5. The definition of mining area needs further finessing. DEP's diagram that it employs to demonstrate what it means by mining area doesn't sufficiently match the language of the definition. Without changes, the language could allow mining areas much larger than illustrated in the diagram. We support Trout Unlimited's suggested language amending the definition of "Mining Area" and adding a definition for "Mining Activity Unit" to resolve this issue.
6. Protections found within the rules for rivers, great ponds, streams and brooks are undermined by a clause that should be eliminated:
7. Subchapter 5, 20, B (4): "~~Subsurface mining shall not be allowed within 1 mile, and underground mining within ¼ mile of the jurisdictional limits of the following unless the Applicant can demonstrate to the satisfaction of the Department that there are topographical features that provide sufficient protection of the resource, the environment and public health and safety. These setbacks shall apply unless and until another state or federal agency with management authority determines that mining is allowed in, on or under the following:~~
8. Financial Assurance. As written, the proposed rules do not provide sufficient protection for Maine's taxpayers. Applicants must be required to provide a third-party estimate of the potential worst case failure at each mine site and provide sufficient funds up front to cover the clean-up and other costs of such worst case disaster.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Jenn Burns Gray". The signature is written in a cursive, flowing style.

Jennifer Burns Gray
Staff Attorney and Advocate