



Comments submitted to the Board of Environmental Protection

By Thomas Abello, Director of External Affairs for The Nature Conservancy

September 26, 2016

Re: Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining – Draft

Chairman Parker and members of the Board, my name is Tom Abello and I am the Director of External Affairs for The Nature Conservancy in Maine. I appreciate this opportunity to comment on the Department of Environmental Protection's draft rules for Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining. The Conservancy believes these rules are an improvement over the 2014 provisionally adopted rules and we thank the Department for its hard work, but we believe several important concerns remain with the rules as drafted.

The Nature Conservancy is a science-based international, nonprofit organization dedicated to conserving the lands and waters on which all life depends. We work in all 50 states and in 69 countries and are supported by approximately one million members. The Conservancy has been working in Maine for 58 years and is the 12th largest landowner in the state, owning and managing some 300,000 acres. We also work across the state to restore rivers and streams to support healthy fish populations important to sport fishermen and with commercial fishermen in the Gulf of Maine to rebuild groundfish populations.

The Conservancy appreciates the time spent, and hard work, of Department staff in revising the 2014 provisionally adopted rules. We believe this time and effort has led to many improvements. In particular, we appreciate that the Department:

1. Defined "monitoring" (section 2) and added a requirement for continuous surface water monitoring for pH levels and other parameters (section 22). Monitoring serves as a critical, consistent first line of defense in protecting Maine's water and wildlife resources. In 2014, we requested that the Department tighten monitoring requirements and define monitoring, and we appreciate that the Department has done so. We believe these draft rules could be strengthened even more if continuous monitoring for pH levels and other parameters were required for groundwater as they are for surface water, rather than being at the discretion of the Department.
2. Incorporated existing air and water quality standards into the requirements for performance standards (section 20) and defined "performance-based standards" (section 2). In general, the Conservancy supports the concept of performance standards as they often provide flexibility and opportunities to adapt to new, emerging science and techniques. However, the 2014 provisionally adopted rules omitted a definition for performance-based standards and did not

clarify how a mine operator would tie its performance standards to specific environmental standards. These changes to the draft rules are appreciated.

3. Changed the definition of “perpetual treatment” to mean active treatment for more than 10 years post-closure rather than 30 years post-closure (section 2), thereby prohibiting waste management plans that require treatment for more than 10 years after a mine is closed. This provision substantially reduces the risk that a mine operator will run out of money for treatment and consequently reduces the risk of contamination of Maine’s waters.

As an organization, The Nature Conservancy works to ensure that when mining is conducted, it is carried out in appropriate places and that the right processes are taken to ensure effective permitting with appropriate safeguards. In the places like the western United States, Mongolia and Brazil, the Conservancy is working to ensure that strong ecological protections are in place as mining projects are sited and undertaken.

With that in mind, the Conservancy believes there are concerns remaining with these draft rules sufficiently important that they should not be adopted as written. These concerns include:

1. **Water quality** – Section 20.B.3 prohibits “Removal of ore in, on or under great ponds, rivers, brooks and streams, and coastal wetlands...” The Conservancy strongly supports this provision. Maine’s inland waterways provide extensive habitat for a wide variety of fish and offer some of the best sport fishing opportunities in the world, as well as potential commercial fishing opportunities for alewives, shad, and other species. Our waters also provide habitat for myriad other wildlife species—many of which, such as moose, draw sightseers and sportsmen to the North Woods—and high-quality drinking water for Maine citizens. Protecting our water quality should be one of the state’s highest priorities.

However, section 20.B.4 contradicts section 20.B.3. It states that mining is allowed in, on or under certain rivers and great ponds and other areas containing waterways and bodies of water with the approval of another state or federal agency. It also suggests that if another agency allows mining in one great pond, mining might be allowed in all great ponds. The Department should address these inconsistencies and explicitly state where mining is not allowed. Specifically, the Conservancy recommends striking the following sentence from section 20.B.4: “These setbacks shall apply unless or until another state or federal agency with management authority determines that mining is allowed in, on or under the following:”

As they currently read, the draft rules also allow mining to occur in a floodplain (section 20.B.1). Regardless of the precautions taken, the Conservancy believes the risks to water resources from mining in a floodplain are too great. We encourage the department to rewrite section 20.B.1 to prohibit all mining operations in a floodplain with the exception of the building and operation of roads to and from a mining site if the road-building activity is found to otherwise meet the standards of the Natural Resources Protection Act.

The Conservancy understands that the Department may be constrained in the scope of its rulemaking by the 2012 Mining Law and other statutes that limit the Department’s jurisdiction over mining regulations. If that is the case, we recommend that the Department propose legislation to make the necessary statutory adjustments that would allow for the changes suggested above.

2. **State and federal land** – The 2016 draft rules would allow mining (with the approval from another agency) in areas that were considered important enough to receive a one-quarter- to one-mile buffer from mining in the 2014 provisionally adopted rules: national and state parks, national wilderness areas, national wildlife refuges, state-owned wildlife management areas, state or national historic sites, the Allagash Wilderness Waterway, 346 great ponds and public reserved lands. The 2014 provisionally adopted rules recognized the high value Maine’s citizens place on these areas, which provide unparalleled multi-use opportunities, including hunting, fishing, hiking and camping. Mining is an activity that precludes multiple use of these lands, potentially well out into the future even when active mining has ceased. Explicit mining prohibitions for these areas should be reincorporated into the 2016 draft rules. As above, the Conservancy recommends striking the following sentence from section 20.B.4: “These setbacks shall apply unless or until another state or federal agency with management authority determines that mining is allowed in, on or under the following:”

Again, we understand that the Department may face statutory constraints in this case and, if so, we recommend that the Department propose legislation to make the necessary statutory adjustments that would allow for this change.

3. **Applicability of standards** – As written, the standards enumerated in Subchapter 5 apply only to mining. The Conservancy believes these standards should apply to advanced exploration as well. Advanced exploration is a substantial undertaking with concomitant risks, and as such it should receive the same safeguards put in place for mining operations. We recommend revising the subchapter title to read “Subchapter 5: ADVANCED EXPLORATION AND MINING STANDARDS” and adding a clause at the beginning of section 19 as follows: “**A. Applicability.** Subchapter 5 standards apply to advanced exploration and mining except where the Department makes a finding that certain standards in Subchapter 5 are not relevant to a specific advanced exploration activity.”

The 2016 draft rules are an improvement over the 2014 provisionally adopted rules and we thank the Department for its time and hard work. However, The Conservancy urges the Board to make the changes listed above before considering adoption of the Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining draft rules. Thank you again for this opportunity to participate in the commenting process.