

**Chapter 200: METALLIC MINERAL EXPLORATION, ADVANCED EXPLORATION  
AND MINING**

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**06-096 Chapter 200: METALLIC MINERAL EXPLORATION, ADVANCED EXPLORATION AND MINING****Subchapter 1: GENERAL PROVISIONS****1. Applicability.**

- A. To all metallic mineral exploration, advanced exploration and mining activities after the effective date of this Chapter.

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**NOTE:** Persons seeking to conduct exploration activities in the unorganized or deorganized areas of the State should contact the Maine Land Use Planning Commission.

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- B. The following activities are prohibited, and no permit shall be issued under this Chapter to a mining operation that includes:
- (1) Heap, percolation or in-situ leaching.
  - (2) Mining for thorium or uranium ore.
  - (3) Block caving.
  - (4) Open-pit mining.
  - (5) Wet mine waste units and tailings impoundments are prohibited, except that a mining operation may place into a mine shaft waste rock that is neutralized or otherwise treated to prevent contamination of groundwater or surface water.

**2. Definitions.** As used in this Chapter, unless the context otherwise indicates, the following terms have the following meanings:

- A. **Acid Potential.** “Acid potential” or “acid generating potential” means the ability of a rock or geologic material to produce acid leachates.
- B. **Acid Rock Drainage.** “Acid rock drainage” means the drainage that occurs as a result of oxidation of sulfide minerals contained in rock which is exposed to air and water.
- C. **Act.** “Act” means the *Maine Metallic Mineral Mining Act* at 38 M.R.S. §490-LL *et seq.*
- D. **Active Treatment System.** “Active treatment system” or “active treatment” means a system that treats water or wastewater with the active addition of chemical reagents or the application of external energy. Active treatment does not include periodic inspections and routine maintenance such as the mowing of vegetation.
- E. **Administratively Complete.** “Administratively complete” means an application for a mining permit under this Chapter that is determined by the Department to contain all of the documents and information required to initiate processing under this Chapter.

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- F. **Advanced Exploration.** “Advanced exploration” or “advanced exploration activity” means any metallic mineral bulk sampling or exploratory activity that exceeds those activities that are exploration activities, but removes 10,000 tons or less of mine waste. Samples taken as part of “exploration” are not considered bulk sampling.
- G. **Advanced Exploration Mining Permit.** “Advanced exploration mining permit” means a mining permit to conduct metallic mineral advanced exploration activities.
- H. **Advanced Exploration Site.** “Advanced exploration site” means the area and facilities within which advanced exploration or activities incidental to it occur, or may reasonably be expected to occur.
- I. **Adverse Impact or Adverse Effect.** “Adverse impact” or “adverse effect” means an unreasonable impact or effect on the associated attribute, as determined by the Department based on an evaluation of information that considers the value of the resource and the degree of impact or effect, on an associated existing attribute such as environment, scenic character, natural resource, or public health and safety.
- J. **Affected Area.** “Affected area” means an area outside of a mining area where the land surface, surface water, groundwater, air resources, soils, or existing uses are potentially affected by mining operations as determined through an environmental impact assessment.
- K. **Air Contaminants.** “Air contaminants” or “air contaminant” includes, but is not limited to dust, fumes, gas, mist, particulate matter, smoke, vapor, or any combination thereof.
- L. **Applicant.** “Applicant” means any person who applies to the Department for a mining permit.
- M. **Approved Suspension.** “Approved suspension” means a temporary suspension of mining issued pursuant to section 29 of this Chapter and approved in writing by the Department.
- N. **Aquifer.** “Aquifer” means a geologic formation composed of rock or sand and gravel that stores and transmits significant quantities of recoverable water as identified by the Division of Geology, Natural Areas and Coastal Resources, Maine Geological Survey within the Department of Agriculture, Conservation and Forestry.
- O. **Assurance Instrument.** “Assurance instrument” means a financial instrument executed in favor of the Department in a form approved by the Department and which is insured by an agency of the United States government or whose letter of credit operations are overseen or are regulated and examined by a federal or state agency.
- P. **Baseline Conditions.** “Baseline conditions” or “baseline site conditions” means pre-mining conditions for a specific location and shall include, but not be limited to characterization of the following resources: wildlife; surface water and groundwater quality and quantity; vegetation, including the presence or absence of rare, threatened or endangered species; and air quality.
- Q. **Beneficiation.** “Beneficiation” means the treatment of ore to liberate or concentrate its valuable constituents. “Beneficiation” includes, but is not limited to, crushing, grinding, washing, dissolution, crystallization, filtration, sorting, sizing, drying, sintering, pelletizing, briquetting, calcining, roasting in preparation for leaching to produce a final or intermediate product that does not undergo further beneficiation or processing, gravity concentration, magnetic separation,

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electrostatic separation, flotation, ion exchange, solvent extraction, electrowinning, precipitation, amalgamation, and dump, vat, tank and in situ leaching.

- R. **Blasting.** “Blasting” means the use of explosives to break up or otherwise aid in the extraction or removal of a rock or other consolidated natural formation.
- S. **Block Caving.** “Block caving” is an underground hard rock mining method that involves undermining an ore body and allowing it to progressively collapse under its own weight. In block caving, a large section of rock is undercut, creating an artificial cavern that fills with its own rubble as it collapses. This broken ore falls into a pre-constructed series of funnels and access tunnels underneath the broken ore mass.
- T. **Board.** "Board" means the Board of Environmental Protection.
- U. **Buffer.** “Buffer” means actions or structures used to separate, shield, screen, or lessen the effect of the mine operation on the surrounding area by reducing noise or dust, improving aesthetics, controlling stormwater, and protecting the public health, safety, and welfare.
- V. **Bulk Sampling.** “Bulk sampling” means the removal of samples for the purpose of testing to determine the feasibility, method, or manner of extraction and/or processing of metallic minerals. Such testing may include milling or grinding tests and/or pilot plant and processing tests. Methods of bulk sampling may include, but are not limited to, drilling and boring, digging of shafts and tunnels, or digging of pits and trenches. For purposes of this Chapter, bulk sampling of metallic mineral deposits is included in advanced exploration and is limited to the removal of no more than 10,000 tons of mine waste.
- W. **Closure.** “Closure” means activities undertaken to manage a mining area and, if necessary, an affected area, pursuant to the mine plan approved by the Department. “Closure” includes, but is not limited to, actions taken to contain metallic mineral wastes on site and to ensure the integrity of waste management structures and the permanent securement of pits, shafts, and underground workings.
- X. **Coastal Wetlands.** “Coastal wetlands” means all tidal and subtidal lands; all areas with vegetation present that is tolerant of salt water and occurs primarily in a salt water or estuarine habitat; and any swamp, marsh, bog, beach, flat, or other contiguous lowland that is subject to tidal action during the highest tide level for the year in which an activity is proposed, as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.
- Y. **Commencement of construction.** “Commencement of construction” means that a Permittee or other person has physically altered a mining area or proposed mining area including, but not limited to, the clearing of trees and other vegetation, site preparation work, bulk sampling, and the construction of roads and other infrastructure upgrades.
- Z. **Commissioner.** “Commissioner” means the Commissioner of the Maine Department of Environmental Protection.
- AA. **Containment Structure.** “Containment structure” is an engineered structure or system designed to prevent the release of materials or substances from a designated area. Containment structures may be utilized to prevent releases from a variety of stored materials including, but not

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limited to overburden, ore, tailings and hazardous substances. Hazardous substances must be stored in accordance with the federal *Resource Conservation Recovery Act (RCRA)* and state laws and regulations.

**BB. Contamination**

- (1) As applied to groundwater, “contamination” means nonattainment of water quality standards, the cause of which is attributable to a mining operation, as:
  - (a) Specified in rules relating to primary drinking water standards adopted pursuant to 22 M.R.S. §2611; or
  - (b) Demonstrated by a statistically significant change in measured parameters that indicates deterioration of water quality determined through assessment monitoring.
- (2) As applied to surface water, “contamination” means a condition created by any direct or indirect discharge that causes or contributes to nonattainment of applicable water quality or licensing standards under 38 M.R.S. §§ 414-A or 420. The nonattainment may be attributable to the mining operation either by itself or in combination with other discharges.

**CC. Contemporaneous Reclamation.** “Contemporaneous reclamation” means mining in a manner that creates areas that can be reclaimed continuously and as soon as practicable after the commencement of construction and throughout the life of the operation as described in the mine plan.

**DD. Contingency Plan.** “Contingency plan” means the contingency plan required by subsection 9(K) of this Chapter for all permit applications and mining operations.

**EE. Corrective Action.** “Corrective action” means action taken by the Permittee to correct a violation or to meet a performance requirement in a mining permit or advanced exploration mining permit, or other applicable rule or law.

**FF. Cumulative Impact.** “Cumulative impact” means the environmental impacts that result from the proposed mining activities when added to other past, present, and reasonably foreseeable future activities.

**GG. Department.** “Department” means the Maine Department of Environmental Protection.

**HH. Designated Chemical Materials.** “Designated chemical materials” means toxic or acidic chemicals used within the mining area in extractive metallurgical processing, the use of which, at certain concentrations, represents a potential threat to human health, property, or the environment.

**II. Drilling.** “Drilling” means the making of holes with a drill for exploration, development of a metallic mineral deposit, evaluating water quality, or collecting hydrogeological and geotechnical data.

**JJ. Drill Hole.** “Drill hole” means the cavity created by drilling.

**KK. Dry Stack Tailings Management.** “Dry stack tailings management” means the process of disposing of dewatered, compacted mine tailings into a freestanding, stable structure on an area with an impervious liner designed to shed water to a water collection and treatment system.

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**LL. Endangered or Threatened Species.** “Endangered or threatened species” means any species of fish or wildlife designated as endangered or threatened under 12 M.R.S. §12803 or the federal *Endangered Species Act*.

**MM. Environmental Protection, Reclamation and Closure Plan.** “Environmental protection, reclamation and closure plan” means the portion of the mine plan that relates to the environmental protection, reclamation and closure activities required by subsection 9(I) of this Chapter for all permit applications and mining operations.

**NN. Event of Force Majeure.** “Event of Force Majeure” means an event beyond the control of the Department and the Permittee, including but not limited to:

- (1) An act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods);
- (2) War, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilization, requisition, or embargo;
- (3) Rebellion, revolution, insurrection, or military or usurped power, or civil war;
- (4) Riot, commotion, strikes, go slows, lock outs, or disorder; or
- (5) Acts or threats of terrorism.

**OO. Exploration.** “Exploration” or “exploration activity” means activities conducted in accordance with this Chapter for the purpose of determining the location, extent, and composition of metallic mineral deposits, test boring, test drilling, hand sampling, the digging of test pits, trenching or outcrop stripping for the removal of overburden having a maximum surface opening of 300 square feet per test pit or trench, or other test sampling methods determined by the Department to cause minimal disturbance of soil and vegetative cover.

**PP. Exploration Site.** “Exploration site” means the area within which exploration or activities incidental thereto occur, or may reasonably be expected to occur.

**QQ. Financial Assurance.** “Financial assurance” means an assurance instrument or statement of financial responsibility provided by an Applicant or Permittee to ensure compliance with the Act, this Chapter, mining permit conditions, instructions, or orders of the Department.

**RR. Financial Interest.** “Financial interest” means:

- (1) If the Applicant is a business entity:
  - (a) any officers, directors and partners;
  - (b) all other persons or business concerns having managerial or executive authority over the Applicant or Permittee and holding more than 5 percent of the equity in or debt of that business unless the debt is held by a chartered lending institution;

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- (c) all other persons or business concerns other than a chartered lending institution holding 25 percent or greater of the equity in or debt of that business unless the debt is held by a chartered lending institution; and
  - (d) the managerial person with operational responsibility for the facility; or
- (2) If the Applicant is a public entity, all persons having managerial or executive authority over the mining operation.
- SS. Floodplain.** “Floodplain” or “floodplain wetland” means lands adjacent to a river, stream, or brook that are inundated with floodwater during a 100-year flood event and that under normal circumstances support a prevalence of wetland vegetation typically adapted for life in saturated soils.
- TT. Groundwater.** “Groundwater” means all the waters found beneath the surface of the earth which are contained within or under this State or any portion thereof, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State.
- UU. Groundwater Basin.** “Groundwater basin” is the underground volume of an aquifer or aquifer system that is separated and defined by geologic or hydrologic boundaries.
- VV. Group A Waste.** “Group A waste” means a mine waste having an acid-generation potential or exhibiting a characteristic of hazardous waste as defined in 06-096 C.M.R. ch. 850.
- WW. Group B Waste.** “Group B waste” means a mine waste having no acid-generation potential that may release soluble pollutants at concentrations which exceed performance requirements for groundwater or surface water.
- XX. Group C Waste.** “Group C waste” means a mine waste that does not have the potential to violate water quality standards other than sedimentation or turbidity.
- YY. Heap or Percolation Leaching.** “Heap or percolation leaching” means a process used for the primary purpose of recovering metallic minerals in an outdoor environment from a stockpile of crushed or excavated ore by percolating water or a solution through the ore and collecting the leachate.
- ZZ. Historic Site.** “Historic site” means any site listed in the National Register of Historic Places or judged eligible for national register listing by the Maine Historic Preservation Commission.
- AAA. Intervenor.** “Intervenor” or “general intervenor” means a person who, in accordance with the *Maine Administrative Procedure Act*, 5 M.R.S. §§ 9054(1) and (2), and Department rules governing hearings, has been granted leave to participate as a party in a license application or appeal proceeding where a decision has been made to hold a hearing.
- BBB. Lean Ore.** “Lean ore” means rock containing metallic mineralization that is not profitable to process using technologies that exist at the mining operation.
- CCC. Life of Mine.** “Life of mine” means the period from issuance of a mining permit through post-closure of the mine.

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**DDD. Metallic Mineral.** “Metallic mineral” means any ore or material to be excavated from the natural deposits on or in the earth for its metallic mineral content to be used for commercial or industrial purposes. “Metallic mineral” does not include ores of thorium or uranium.

**EEE. Metallic Mineral Operator.** “Metallic mineral operator” means a Permittee or other person who is engaged in, or who is preparing to engage in, mining operations for metallic minerals, whether individually or jointly or through agents, employees, or contractors.

**FFF. Metal Leaching.** “Metal leaching” means the dissolution and removal of metals and metalloids as a result of chemical processes commonly associated with minerals containing sulfides.

**GGG. Metallic Product.** “Metallic product” means a commercially salable mineral or metal produced primarily for its metallic mineral content in its final marketable form or state.

**HHH. Mine Plan.** “Mine plan” means all aspects of the plan to develop a mine including, but not limited to, siting, design, development, operation, reclamation, closure, post-closure, and corrective action activities throughout the life of a mine.

**III. Mine Shaft.** “Mine shaft” means a vertical, inclined or horizontal excavation, including all underground workings, with a surface opening not exceeding 1,000 square feet.

**JJJ. Mine Waste.** “Mine waste” means all material, including, but not limited to, overburden, rock, lean ore, leached ore, or tailings, that in the process of mining and beneficiation has been exposed or removed from the earth during advanced exploration and mining activities.

**KKK. Mine Waste Unit.** “Mine waste unit” means any land area, structure, location, equipment, or combination thereof on or in which mine wastes are managed. A structure or area of land does not become a mine waste unit solely because it is used to store nonreactive mine wastes generated on the site, such as soil or overburden, for 90 days or less.

**LLL. Mine Workings.** “Mine workings” means the system of pits, shafts and underground workings in a mine.

**MMM. Mining.** “Mining,” “mining operation,” or “mining activity” means activities, facilities or processes necessary for the extraction or removal of metallic minerals or overburden or for the preparation, washing, cleaning or other treatment of metallic minerals and includes the bulk sampling, advanced exploration, extraction or beneficiation of metallic minerals as well as waste storage and other stockpiles and reclamation activities, but does not include exploration.

**NNN. Mining Area.** “Mining area,” or “metallic mineral mining area” means an area of land described in a permit application and approved by the Department, including, but not limited to, land from which earth material is removed in connection with mining, the lands on which material from that mining is stored or deposited, the lands on which beneficiating or treatment facilities, including groundwater and surface water management treatment systems, are located, or the lands on which water reservoirs used in a mining operation are located. Each mining activity or operation shall establish a separate mining area. The Applicant shall propose, and the Department shall approve the location and extent of each mining area.

**OOO. Mining Permit.** “Mining permit” means a permit issued pursuant to 38 M.R.S. §490-LL *et seq.* and this Chapter for conducting advanced exploration or mining operations.

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- PPP. **Monitoring.** “Monitoring” means activities including, but not limited to, observation, sampling, collection, analysis, recording, and reporting necessary for siting, development, operation, corrective action, suspension of operation, closure, or post-closure activities or to demonstrate compliance with a mining permit including any special permit conditions and approved plans. The Department shall approve the quality assurance plans for all monitoring activities.
- QQQ. **Municipal or County Commissioner Intervenor.** “Municipal or County Commissioner Intervenor” means an intervenor status granted to the municipal officers, or their designees, from each municipality in which the mining area or affected area may be located, or in the unorganized territory, the county commissioners, or their designees, for each county in which the mining area or affected area may be located pursuant to 38 M.R.S. §490(OO)(6)(D).
- RRR. **Open-Pit Mining.** “Open-pit mining” means, for any single mining operation permitted under 38 M.R.S. §490-LL *et seq.* and this Chapter, the process of mining a metallic mineral deposit by use of surface pits or excavations having greater than 3 acres of surface area in aggregate or by means of a surface pit excavated using one or more horizontal benches.
- SSS. **Ore.** “Ore” means rock containing sufficient metallic mineralization to process using technologies that exist at the mining operation.
- TTT. **Overburden.** “Overburden” means soil, rock or other materials which lie above or between the natural mineral deposits to be mined.
- UUU. **Passive Treatment System.** “Passive treatment system” means the process of removing metals or acidity or both, through the use of chemical, biological, and physical removal processes that occur naturally in the environment such as topographical gradient, microbial metabolic energy, photosynthesis and chemical energy that do not require power or chemicals after construction and operates successfully over its design life with regular but infrequent maintenance.
- VVV. **Performance-Based Standards.** “Performance-based standards” means a regulatory approach that establishes defined results and measurable outcomes without specific direction regarding how those results are to be obtained.
- WWW. **Permittee.** “Permittee” means a person to whom a mining permit is issued.
- XXX. **Perpetual Treatment.** “Perpetual treatment” means active treatment for more than 10 years post-closure.
- YYY. **Person.** “Person” means an individual, firm, partnership, association, company, limited liability company, corporation, joint venture, municipality, state agency, federal agency, or other legal entity.
- ZZZ. **Post-closure Maintenance.** “Post-closure maintenance” means an activity that may be required to sustain reclamation after cessation of a mining operation, as well as all activities undertaken at a closed mine waste unit, to maintain the integrity of containment features and to monitor compliance with applicable performance standards and permit conditions.

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**AAAA. Post-closure Monitoring Period.** “Post-closure monitoring period” means a period following closure during which a Permittee is required to conduct monitoring of groundwater and surface water and other monitoring as specified in a mining permit.

**BBBB. Practicable.** "Practicable" means available and capable of being implemented after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

**CCCC. Probable Maximum Flood.** “Probable maximum flood” means the largest flood that may reasonably be expected to occur at a given point on a stream from the most severe combination of critical meteorologic and hydrologic conditions that are reasonably possible on a particular watershed. This term identifies estimates of hypothetical flood characteristics (peak discharge, volume, and hydrograph shape) that are considered to be the most severe that are reasonably possible at a particular location, based on comprehensive hydrometeorological analyses of critical runoff-producing precipitation (and snowmelt, if pertinent) and hydrologic factors favorable for maximum flood runoff.

**DDDD. Protected Location.** The locations described in 06-096 C.M.R. ch. 375, §10(G)(16) constitute protected locations.

**EEEE. Qualified Professional.** “Qualified professional” or “qualified person” means a scientist, engineer, or professional in a technical discipline with sufficient training and experience to enable the individual to make sound professional judgments regarding conducting technical analyses or regarding the design, construction, and operation of regulated units and ancillary structures who, if accreditation is the norm in the profession, is accredited in the State of Maine, or subject to review and approval by the Department, is accredited in another jurisdiction.

**FFFF. Reactive Mine Waste.** “Reactive mine waste” means any natural geologic formation or mined material that, when exposed to air and water, may develop acid rock drainage, or any other natural geologic or mined material that is shown through characterization studies to release substances that may adversely impact natural resources and the environment.

**GGGG. Reclamation.** “Reclamation” or “reclamation operation” means the rehabilitation of a mining area, affected area, and any other area of land or water body affected by mining under a mine plan approved by the Department. “Reclamation” includes, but is not limited to, stabilization of slopes, creation of safety benches, planting of forests, seeding of grasses and legumes for grazing purposes, planting of crops for harvest, and enhancement of wildlife and aquatic resources.

**HHHH. Related Person.** “Related person” means any person with a financial interest in a proposed mining operation.

**III. Remediation.** “Remediation” means the cleanup, removal or containment of contaminants or contamination within a mining area or an affected area. Remediation may include, but is not limited to, removing contaminants or contamination, containing or treating waste on site, and identifying and removing sources of groundwater contamination and halting further migration of contaminants.

**JJJ. Responsible Officer.** “Responsible officer” means:

- (1) A person holding a principal executive position in a corporation as established by the charter or by-laws of the corporation;

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- (2) A general partner or the proprietor, as appropriate, of a partnership or sole proprietorship; or
- (3) A principal executive officer or ranking elected official of a municipal, state, federal, or other public agency.

**KKKK. Storage Pile.** “Storage pile” means a manmade landform used for the temporary storage of material generated during mining, such as overburden, waste rock, lean ore, ore, or topsoil, provided that these materials have an identified final destination in the facility’s mine plan or are part of the materials to be processed through beneficiation.

**LLLL. Statistically Significant Change.** “Statistically significant change” is a change that is likely the result of causes other than random variation as determined by statistical testing methodologies.

**MMMM. Surface Water Resources.** “Surface water resources” are coastal and freshwater wetlands, great ponds, rivers, streams, and brooks as defined in 38 M.R.S. §480-B.

**NNNN. Tailings.** “Tailings” means the product resulting from the milling and mineral concentration process remaining after extraction of minerals by physical or chemical means.

**OOOO. Tailings Impoundment.** “Tailings impoundment” means a surface area, contained by dike or dams, on which is deposited the slurry of material that is separated from a metallic product in the beneficiation or treatment of minerals, including any surrounding dikes constructed to contain such material. “Tailings impoundment” does not include a lined surface area on which dewatered tailings are stacked.

**PPPP. Topsoil.** “Topsoil” means the material at the earth’s surface which has been so modified and acted upon by physical, chemical, and biological agents that it will support rooted plants.

**QQQQ. Underground Mine Openings.** “Underground mine openings” or “mine openings” means all openings and voids in the earth created in the process of mining, during development, or operation of the site.

**RRRR. Unusual Natural Area.** "Unusual natural area" means any land or water area, usually only a few acres in size, which is undeveloped and which contains natural features of unusual geological, botanical, zoological, ecological, hydrological, other scientific, educational, scenic, or recreational significance. By way of illustration, and not limitation, these may include: rare or exemplary plant communities; individual plant species of unusual interest because of size, species or other reasons; unusual or exemplary bogs; unusually important wildlife habitats, particularly those of rare or endangered species; unusual land forms; fossils and other deposits of importance to geologists; outstanding scenic areas; and others of similar character.

**SSSS. Upper and Lower Predictive Limits.** “Upper and lower predictive limits” are the statistically determined bounds of the prediction interval which is an estimate of an interval where future observations will fall.

**TTTT. Visual Resources.** “Visual resources” means the composite of basic terrain, geologic features, hydrologic features, vegetative patterns, and land use effects that make up the scenic character of the site and the area surrounding the site, especially as viewed from a protected natural resource.

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UUUU. **Waste Rock.** “Waste rock” means rock material removed to access the ore body that may or may not contain metallic mineralization, but that is not processed to extract metallic minerals.

VVVV. **Watershed.** “Watershed” means the land that drains, via overland flow, drainageways, waterbodies, or wetlands to a given waterbody or wetland.

WWWW. **Waters of the State.** “Waters of the State” means any and all surface and subsurface waters that are contained within, flow through, or under, or border upon this State, or any portion of the State, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State, but not excluding waters susceptible to use in interstate or foreign commerce, or whose use, degradation or destruction would affect interstate or foreign commerce.

XXXX. **Wellhead Protection Area.** “Wellhead protection area” means a specific geographic area which is approved by the Department, and if applicable, the Department of Health and Human Services, as the surface and subsurface area surrounding a water well or well field that supplies a public water system and through which contaminants are reasonably likely to move toward and reach the water well or well field.

YYYY. **Wet Mine Waste Unit.** “Wet mine waste unit” means a mine waste unit in which mine wastes are placed under water to minimize sulfide oxidation, acid formation or particulate pollution.

**3. General Prohibitions.** This section applies to all exploration, advanced exploration and mining activities.

A. It shall be unlawful for any person to engage in any exploration, advanced exploration or mining activity, or initiate the construction of such, except as authorized pursuant to this Chapter.

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NOTE: Qualified exploration activities conducted pursuant to the standards established in section 7 of this Chapter do not require a mining permit.

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B. The Department may not approve a mining permit in an unorganized or deorganized area of the State unless the Maine Land Use Planning Commission certifies to the Department that:

(1) The proposed mine is an allowed use within the subdistrict or subdistricts in which the project is located; and

(2) The proposed mine meets any land use standard established by the Maine Land Use Planning Commission applicable to the project that is not considered in the Department’s review.

C. The Department may not authorize a discharge of pollutants as defined at 38 M.R.S. §361-A(4-A) to waters of the State under this Chapter.

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**NOTE:** Discharges of pollutants to waters to the state require a waste discharge license pursuant to 38 M.R.S. §413, including permits for construction and industrial discharge issued by the Department pursuant to 40 CFR §122.26.

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- D. No chemical or oil, products or waste, shall be discharged, mixed, or released onto, into, or under the ground or waters of the State. This prohibition includes, but is not limited to, discharges into or from onsite wastewater treatment plants, mine pits or tunnels, or beneficiation units. All chemicals and oils shall be managed so as to prevent their release and mishandling, including compliance with all applicable management rules and laws including 06-096 C.M.R. ch. 800, 801, 850 through 858, and 860. Chemicals or oils utilized for their intended purpose as a part of the wastewater treatment process, beneficiation process, or other mining activities may be utilized only when identified in the mining permit application or exploration work plan, documented as chemicals or oils that are the least toxic materials available for their intended purpose, being used in appropriate quantities, used solely for their intended purpose and not as a means of disposal, and as approved by the Department. The use of underground injection for disposal is prohibited.
- E. Waste rock shall not be used for roads or any other construction purpose, except for Group C waste.

**4. Relation to Other Rules.** This section applies to all exploration, advanced exploration and mining activities. Compliance with the provisions of this Chapter, the mining permit, and the Act does not:

- A. Relieve a Permittee of the obligation to comply with all other applicable state, federal, or local statutes, regulations, or ordinances, including but not limited to the regulations for air emissions, water discharges, hazardous waste management for wastes not exempted from the federal hazardous waste management requirements under 40 CFR §261.4(b)(3) or (b)(7) (July 1, 2015), and underground storage tanks; permits required under 38 M.R.S. Chapter 3, Subchapter 1, Article 5-A (*Natural Resources Protection Act*), waste discharge licenses required under 38 M.R.S. §413 for discharges of pollutants to groundwater via an underground injection well or discharges of pollutants to surface waters of the State, including permits for construction and industrial discharge issued by the Department pursuant to 40 CFR §122.26; licenses required under 38 M.R.S. Chapter 4 (Protection and Improvement of Air); hazardous waste management licenses and other permits or licenses issued pursuant to any United States Environmental Protection Agency federally delegated or authorized program.

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NOTE: Pursuant to 38 M.R.S. §490-NN(1)(A), the provisions of Chapter 3, Subchapter 1, Article 6 (Site Location of Development), Article 7 (Performance Standards for Excavations for Borrow, Clay, Topsoil or Silt), and Article 8-A (Performance Standards for Quarries); Chapter 13 (Waste Management); and 38 M.R.S. §420-D (Storm Water Management) do not apply to applications reviewed under the Act and this Chapter, except when permits or licenses are issued pursuant to any United States Environmental Protection Agency federally delegated or authorized program, as also set forth at 38 M.R.S. §490-NN(1)(A). In the case of waste management, the Department has interpreted the Act to exclude only those mine wastes that have been excluded by Subchapter 3 of the *Resource Conservation and Recovery Act*, 42 CFR §6901 *et seq.* and 40 CFR §261.4(b)(3) and (b)(7) (July 1, 2015).

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- B. Prevent a municipality from regulating or controlling mining or reclamation activities; and
- C. Prevent a municipality from regulating the routes, hours, and weights of transportation of ore, rock, tailings, and other mining-related materials on public streets and roads in order to protect the public health, safety, and welfare.

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**Subchapter 2: ENVIRONMENTAL REQUIREMENTS FOR EXPLORATION AND ADVANCED EXPLORATION**

- 5. Purpose of Exploration and Advanced Exploration Requirements.** The purpose of this subchapter is to establish environmental procedures and standards for exploration and advanced exploration activities.
- 6. Applicability of Exploration and Advanced Exploration Requirements.** This subchapter applies to any person proposing to conduct or engaging in exploration activities in the organized areas of the State and advanced exploration activities statewide.
- 7. Exploration Activities.** A mining permit is not required for exploration under this Chapter, however, the submittal of an exploration work plan is required under section 7(C)(1) prior to initiating any activities at an exploration site within the organized areas of the State. The exploration work plan must contain the submission requirements listed in subsection 7(C) of this Chapter.

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NOTE: Geophysical surveys are considered exploration for the purposes of this Chapter and the submissions and standards under section 7 of this Chapter if they involve some disturbance of soil or vegetation, such as cutting or clearing of vegetation along a survey grid. Non-intrusive methods, such as aeromagnetic surveys or other remote-sensing methods that do not involve any disturbance of soil or vegetation are not considered exploration for the purposes of this Chapter. The submission of an exploration work plan is not required for hand sampling activities (soil sampling with auger or shovel, stream sediment sampling, and rock chip sampling); however, these activities may require approval under other laws and regulations administered by the Department (e.g., the *Natural Resource Protection Act*, 38 M.R.S. §480-C).

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NOTE: Persons seeking to conduct exploration activities in the unorganized or deorganized areas of the State should contact the Maine Land Use Planning Commission.

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- A. **Other Applicable Permit Requirements.** Depending upon the location, type and extent of activity, a permit may be required under other statutes or rules of the Department and the Maine Geological Survey. Persons seeking to conduct exploration activities should check with the appropriate agencies to determine applicable requirements. Requirements for exploration activities may include, but are not limited to, the following:
  - (1) Bureau of Resource Information and Land Use Planning. See *Mining on State Lands*, 12 M.R.S. §549, *et seq.*; and
  - (2) Natural Resources Protection Act Permit. See *Natural Resources Protection Act*, 38 M.R.S. §480-A, *et seq.*
- B. **Standards.** The following minimum standards must be met for exploration activities in the organized areas of the State:
  - (1) Existing access ways shall be maintained to ensure that runoff is delivered immediately to stable ditches and vegetated buffer areas. Clearing of the vegetative cover shall be limited to the minimum necessary to allow for the movement of equipment.

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- (2) Access way approaches to stream channels shall be located and designed so as to divert water runoff from the way in order to prevent such runoff from directly entering the stream. With the exception of crossings, an undisturbed buffer strip of at least 75 feet must be maintained between access ways and streams.
- (3) Erosion control measures must be implemented to prevent unreasonable erosion of soil or sediment beyond the exploration site or into a protected natural resource as defined in 38 M.R.S. §480-B; these measures must be in place before exploration activity, or related activities including, but not limited to, clearing and road construction, begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken and the site must be maintained to prevent unreasonable erosion and sedimentation.
- (4) For stream crossings and activities involving the disturbance of soil adjacent to a wetland or water body in organized areas, a permit under the *Natural Resources Protection Act* may be required. See 38 M.R.S. §480-C and the Department's *Permit by Rule Standards*, 06-096 C.M.R. ch. 305, §10.
- (5) Topsoil which is stripped or removed must be stockpiled for use in reclaiming disturbed land areas. Soil stockpiles shall be seeded, mulched, and anchored or otherwise stabilized.
- (6) The exploration site shall be restored to a physical state that is similar to, and compatible with, that which existed prior to any exploration. Within 30 working days following completion of exploration at an exploration site, any person conducting exploration activities shall accomplish the following:
  - (a) Disposal of all debris in accordance with applicable state laws and regulations;
  - (b) Grading of the surface of the site so that the final graded slope conforms with the original contour of the land; and
  - (c) Placement of topsoil and reseeded and stabilization of graded topsoil with vegetation native to the area.
- (7) Within 30 working days after completion of exploration, all excavations including trenches, test pits, and mud pits shall be capped, refilled or secured. All settling ponds or sumps must be backfilled, covered with topsoil, and seeded.
- (8) Drill pump stations must be located at least 25 feet from a river, stream, brook, great pond, or an area of open water of one-half acre or more within a freshwater wetland.
- (9) All drill additives should be non-toxic as indicated by the manufacturer's product publications, such as Safety Data Sheets, and biodegradable to the extent reasonably possible. Drill fluids, additives and cuttings may not be released and must be confined to the drill site by the use of storage tanks or sumps unless an alternative disposal method is approved by the Department. All excavation sites and resulting waste must be managed to ensure no untreated water is released to the environment and released volumes will not adversely impact existing stream flows. The discharge of pollutants to surface and groundwater during exploratory mining is prohibited without prior approval pursuant to 38 M.R.S. §413.
- (10) No bulk sampling may take place under an exploration work plan.

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- (11) Sealing of all drill holes, whether temporary or permanent, shall be completed within 30 days of cessation of drilling or testing activities such as “down-the-hole” geophysical surveys or other similar activities. All artesian wells shall be capped or sealed within 48 hours after cessation of drilling or the onset of artesian conditions. No drill hole may be temporarily sealed for more than 3 years unless the drill hole is being used during the time it is temporarily sealed for sampling or other studies related to a mineral deposit or general hydrological conditions of the area. A drill hole that has remained temporarily sealed for more than 3 years and is not being used for sampling or other studies shall be sealed permanently.

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NOTE: For guidance on sealing drill holes, see “Guidance for Well and Boring Abandonment,” produced by the Department’s Bureau of Remediation and Waste Management, Division of Technical Services, dated January 7, 2009.

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- (a) Within 30 working days after permanent sealing of a drill hole, any person conducting exploration activities shall submit to the Department a report including, but not limited to, the following information for each drill hole:
- (i) Location and identification of the drill hole;
  - (ii) Dimensions of the drill hole;
  - (iii) Identification of depth, static elevation, and estimated flow of any groundwater encountered, if known; and
  - (iv) Methods of sealing the drill hole, demonstrating compliance with subsection 7(B)(11).
- (12) All facilities and equipment shall be promptly removed from the exploration site when they are no longer needed for exploration, except for those facilities and equipment which the Department has determined may remain on-site in order to:
- (a) Provide additional environmental quality data;
  - (b) Detect, reduce or control the onsite or offsite effects of the exploration activities; or
  - (c) Facilitate future mining and restoration operations by the person conducting the exploration, under a work plan described in subsection 7(C) below.
- (13) The Department may enter any exploration site, take samples, and conduct tests in order to determine compliance with any provision of this Chapter or other applicable requirements. The Department may require the submission of annual self-inspection reports, signed by a qualified professional, on exploration activities conducted by the Permittee.
- (14) Any person conducting exploration activities shall notify the Department and/or the Land Use Planning Commission orally within 24 hours and in writing within 5 working days of any activity or occurrence during the course of exploration or reclamation which results in a discharge or has the potential to damage public health or the environment.

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NOTE: Other reporting requirements may exist under federal laws and the laws administered by the Department of Environmental Protection and the Land Use Planning Commission. For oil spills, call 1-800-482-0777 which is available 24 hours a day. For spills of toxic or hazardous material, call 1-800-452-4664 which is available 24 hours a day. For more information, visit the Department's website at: <http://www.maine.gov/dep/spills/emergspillresp/>

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(15) Beneficiation is prohibited under an exploration work plan.

**C. Submission Requirements.**

(1) At least 30 days prior to the commencement of any exploration activities, an exploration work plan shall be submitted to the Department on forms provided by the Department, prepared and signed by a qualified professional, which provides the following information, at a minimum:

- (a) Documentation of the property boundaries, landowner information, and description of the area to be explored;
- (b) Evidence of the applicant's title, right, or interest in the pertinent property for access to the area to be explored and to conduct exploration activities and restoration;
- (c) A site plan showing the proposed access routes and exploration areas;
- (d) Identification of any existing roads or clearings;
- (e) A site plan with wetlands or other protected natural resources as defined under the *Natural Resources Protection Act* and other sensitive environmental features identified;
- (f) A sediment and erosion control plan, including a stormwater management plan consistent with the Department's standards for stormwater management for access roads, excavation and stockpile areas, and other areas affected by the activity;
- (g) A description of proposed drilling and excavation activities and methods, including petroleum products and chemical handling procedures and spill management, estimated quantities of material that must be removed to obtain samples, and best management practices to be employed in conducting the exploration activities;
- (h) A plan for backfill and restoration of exploration sites which will address subsidence, drill holes, structural safety, water management, restoration of disturbed areas including access roads, and the abatement of any physical hazards; and
- (i) A plan showing the exploration drilling area, maximum number of drill holes, and the maximum total linear drilling footage.

(2) Within 60 days of the completion of the exploration activities the Applicant shall submit a report, prepared and signed by a qualified professional documenting that all of the requirements of the restoration plan were completed.

D. If specified by the Department, additional measures to protect the environment shall be adopted by the person engaged in exploration activities.

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**8. Advanced Exploration.** A person may not engage in advanced exploration without an advanced exploration permit issued by the Department. Advanced exploration activity permits are divided into two categories: Tier One and Tier Two. Under a Tier One approval, bulk sampling may not exceed two thousand tons of mine waste. Under a Tier Two approval, bulk sampling may not exceed ten thousand tons of mine waste. Under an advanced exploration permit, on-site processing of bulk samples is limited to mechanical size alteration and sorting. Any additional on-site testing and characterization must occur within enclosed, portable facilities. Any waste generated from this additional on-site testing and characterization must be transported off-site for disposal.

**A. General Standards and Requirements.** Applications for all advanced exploration activities must demonstrate compliance with the standards for exploration listed under subsection 7(B) of this Chapter. Tier One advanced exploration activities must also meet the requirements of subsection 8(C), and Tier Two advanced exploration activities must meet the criteria for approval of mining activities in section 11 of this Chapter together with any additional site-specific conditions required under the advanced exploration permit.

- (1) The Department may enter any advanced exploration site, take samples, and conduct tests in order to determine compliance with any provision of this Chapter or other applicable requirements.
- (2) The Department may require the submission of quarterly self-inspection reports, signed by a qualified professional, on the advanced exploration activities conducted by the Permittee.

**B. Submission Requirements.** Applications for advanced exploration activities must comply with all applicable requirements in section 9 of this Chapter. A pre-application meeting is required prior to submission to the Department of a new application for any advanced exploration activity pursuant to this Chapter. The Applicant must meet the requirements in section 10 of Rules Concerning the Processing of Applications, 06-096 C.M.R. ch. 2. A pre-submission meeting is required unless waived as provided in 06-096 C.M.R. ch. 2, §10(D).

**C. Tier One Advanced Exploration.** To qualify for Tier One advanced exploration, exploration activities may exceed those permitted under section 7, "Exploration," of this Chapter, but bulk sampling shall not remove in excess of 2,000 tons of mine waste from the exploration site for mineral testing or extraction. These activities may include: larger scale trenching or blasting than permitted under "Exploration" (i.e., greater than 300 sq. ft. for each test pit, trench or outcrop stripping site) but no more than one acre in total area in the area of exploration; road building/reconstruction; and temporary camp construction. Baseline monitoring or environmental assessment pursuant to section 9 of this Chapter is not required to obtain approval under Tier One for advanced exploration, but the Department may require water quality monitoring or other monitoring and sampling as described in paragraph (3) below. In addition, an adjudicatory hearing is not required for a Tier One Advanced Exploration.

- (1) Application. Prior to commencement of any Tier One advanced exploration activities, an application shall be submitted for review and approval on forms provided by the Department. This application shall provide all information required by subsection 7(C) of this Chapter, evidence of the applicant's mining experience as it relates to advanced exploration activities, and evidence to demonstrate that the proposed activity meets the standards set forth in subsection 8(C)(2).
- (2) Standards. The standards for Tier One advanced exploration activities include the minimum exploration standards listed under subsection 7(B), the blasting standards in subsection 20(K),

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the performance standards in subsection 20, and the reclamation standards in subsections 23(I), 23(J), 23(M), and 23(N) of this Chapter. The Applicant must also demonstrate and maintain financial assurance in accordance with the requirements of section 17 of this Chapter.

- (3) **Submission Requirements.** The Applicant shall submit with its application information to demonstrate that all applicable standards are met. The Applicant shall also submit with its application a reactive mine waste characterization work plan that includes the information required by subsection 20(E) of this Chapter. The plan must include, if determined to be necessary by the Department, measures to prevent or minimize adverse impacts on the environment, including, but not limited to control and monitoring of acid rock drainage, of metal leaching, and of areas impacted or potentially impacted by acid rock drainage.

**D. Tier Two Advanced Exploration.** To qualify for Tier Two advanced exploration, activities may exceed those permitted under Tier One advanced exploration activities and may include underground exploration tunnels, shaft sinking, and excavation work that disturbs more than one acre in area (which may involve multiple sites within the identified area of exploration) but not more than a total of three acres in area or a total of five percent of the advanced exploration site, whichever is less. Bulk sampling shall not remove in excess of 10,000 tons of mine waste from the advanced exploration site for mineral testing or extraction.

- (1) **Submission Requirements.** Prior to commencement of any Tier Two advanced exploration activities, an application shall be submitted for review and approval on forms provided by the Department. This application shall provide the information required by subsection 9(B) through 9(L) of this Chapter, unless waived by the Department, to demonstrate that the mining operation meets the performance standards and approval criteria of this Chapter.

**Subchapter 3: PERMITS**

**9. Application Requirements**

**A. Pre-Application Meeting**

- (1) Prior to preparing an application for a mining permit, the Applicant shall meet with the Department for a pre-application meeting and a site visit. The purpose of the pre-application meeting, as set forth in 06-096 C.M.R. ch. 2, is to help the Applicant understand the application process, to exchange information, to discuss the application fee, and to review the proposed metallic mineral mining and reclamation operation, and for the Department to provide direction on the process for preparing an application for a mining permit.
  - (a) The Applicant shall provide the Department the following information prior to the pre-application meeting:
    - (i) Identities and contact information of the persons associated with the proposed mine, including landowners, lessees, the Applicant, and other associated persons;
    - (ii) Location, including a description of town or township, range, section, and depiction of the metallic mineral mining areas and affected area on a diagram;
    - (iii) A general description of natural features including physical, geographic, hydrologic, biologic, and infrastructure description of the proposed mine and affected area

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including administrative features such as land use, zoning, surface and mineral ownership, and areas of special environmental designation;

- (iv) A description of geologic resources, including:
    - (A) Geologic map indicating known stratigraphy, structure, and fault systems with appropriate cross-sections;
    - (B) Narrative of geologic history;
    - (C) Discussion of the metallic mineral deposit including mineralogic and chemical nature of the ore and waste rock;
    - (D) Geologic stability of the affected area including regional seismicity, known landslides, and fault systems; and
    - (E) Unique geologic features;
  - (v) A description of the target mineral deposit, based on existing exploration data;
  - (vi) A conceptual advanced exploration plan, if necessary, and a conceptual metallic mineral mining, beneficiation, and reclamation plan;
  - (vii) A conceptual mine waste and designated chemical materials characterization work plan that meets the requirements of subsection 20(E) of this Chapter; and
  - (viii) A conceptual baseline characterization work plan that addresses, at a minimum, the requirements of subsection 9(C) of this Chapter.
- (b) At the pre-application meeting the Department will provide an overview of:
- (i) The Act, applicable rules, and the permit application process;
  - (ii) The fees for metallic mineral mining and the maximum fee for processing an application; and
  - (iii) The relationship of the Act and rules to other laws and regulations.
- (2) Public Information Meeting. A public information meeting is also required pursuant to 06-096 C.M.R. ch. 2.

**B. Application Contents.** The Applicant shall provide all submissions that the Department determines are necessary to evaluate the application under the criteria for a permit under the applicable laws and rules. The Applicant shall prepare and submit to the Department an application for a mining permit, which shall at a minimum contain:

- (1) Applicant Information. Information about the Applicant and the proposed activity must be provided including, but not limited to, the following:
  - (a) The name, mailing address, and phone number of the Applicant and principal representative of the applicant;

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- (b) The general organizational structure of the applicant, any parent companies, owners, principal stockholders, partners, and joint ventures;
- (c) Evidence of title, right, or interest in all of the property that is proposed for development or use;
- (d) All entities with a financial interest in the proposed activity;
- (e) Any managing agents or subsidiaries which are or may be involved in the proposed activity;
- (f) Organizational and legal relationships between or among joint applicants;
- (g) The Applicant's registered agent for service of process in the State;
- (h) Evidence of the Applicant's ability to undertake the proposed activity, including:
  - (i) A statement of the Applicant's prior experience and/or training as it relates to the proposed activity;
  - (ii) The names and qualifications of all key personnel who will be involved with site preparation, extraction, beneficiation, reclamation, closure, and post-closure maintenance;
- (i) A summary of the Applicant's and its responsible officers' and related persons' record of compliance with environmental and land use laws and financial requirements of Maine and other jurisdictions, as follows:
  - (i) Criminal Convictions. A listing and explanation of any criminal convictions of the State, other states, the United States, or another country of the persons required to disclose under this section;
  - (ii) Civil Violations. A listing and explanation of any adjudicated civil violations of environmental laws or rules administered by the State, other states, the United States, or another country by any of the persons required to disclose under this section in the 10 years immediately preceding the filing of the application;
  - (iii) Consent Decrees and Administrative Orders or Agreements. A listing and explanation of administrative agreements or consent decrees entered into by, or administrative orders directed at, any of the persons required to disclose under this section for violations of environmental laws administered by the Department, the State, other states, the United States, or another country in the 10 years immediately preceding the filing of the application;
  - (iv) Other Proceedings. A listing and explanation of any ongoing court proceeding, administrative consent agreement negotiation, or similar ongoing administrative enforcement action not already provided in which the Applicant or any of the persons required to disclose under this section is a party and which concerns environmental laws administered by the Department or the State.

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The Department may require the Applicant to update the list set forth in subsection 9(B)(i) subsequent to the filing of the application; and

- (j) Documentation of sufficient financial assurance and insurance required under subchapter 4 of this Chapter and proof of a comprehensive general liability insurance policy in force for the mining to provide personal injury and property damage protection in an amount adequate to compensate persons who might be damaged as a result of the mining operation or any reclamation or restoration connected with the operation.
- (2) Location. The location of the proposed activity must be provided including, but not limited to, the following:
    - (a) The location of the proposed site, including the municipality or township, and county;
    - (b) A legal description of the proposed site;
    - (c) Whether or not the proposed site is within the jurisdiction of the Land Use Planning Commission, and if so, the land use district(s) encompassing the site; and
    - (d) The names and addresses of abutting property owners.
  - (3) Evidence of Legal Authority. Evidence of the Applicant's legal authority to conduct business in the United States and the State of Maine must be provided in the form of the Information Summary sheet from the Bureau of Corporations, Elections and Commissions.
  - (4) Other Permits. A list must be provided of all other federal, state, and local permits, licenses, and approvals required for the proposed activity, including the status of such permits, licenses, and approvals or applications for such approvals that are pending.
  - (5) Mining Experience. A list must be provided of all mines controlled or operated, in whole or in part, by the applicant, parent companies, subsidiaries, predecessors, or related persons, in the United States and abroad. This list shall include mine site addresses, nature and duration of affiliation with the site, a brief description of each mine, and the compliance record with regard to applicable mining permits, authorizations, rules, and laws of the applicable jurisdiction.
  - (6) Reactive Mine Waste Report. The Applicant shall submit with its application a reactive mine waste report that includes the information required by subsection 20(E) of this Chapter consisting of all test data concerning waste analysis for each type of mine material, waste and designated chemical material, the testing program objective together with an interpretation of the results, and options for the control of acid generation and metal leaching.
- C. **Baseline Site Characterization Report.** A baseline site characterization report shall be included as part of the application. This report must define existing conditions within the proposed mining areas and affected areas prior to commencement of the proposed activity. Baseline studies must provide sufficient data to allow qualitative and quantitative analysis of the study areas under a baseline work plan approved by the Department. All data collection and analyses must be performed by qualified professionals in the relevant disciplines. The use of already available (or pre-existing) data may be allowed subject to prior review and approval by the Department. All pre-existing data shall be clearly marked "pre-existing data" within the baseline plan. The Applicant shall discuss the manner and time in which the data were acquired, the analytical or

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investigative methods used and any other factors relevant to the quality and applicability of the data. The Department shall accept or reject the use of pre-existing data prior to the acceptance of the baseline work plan. All pre-existing data must be supplemented with new data collected within the mining areas and affected areas. The proposed baseline site characterization report must include, if required by the Department, each of the following:

- (1) Documentation of aquatic and terrestrial flora and fauna species presence, distribution and abundance including the existence of endangered or threatened species and significant wildlife habitats and may include analyses of fish tissue, fish population, invertebrate population and abundance, and any other measure of ecological health the Department deems necessary to gauge potential impacts.
- (2) A water balance of the metallic mineral mining and affected area including, but not limited to, consideration of precipitation, evapotranspiration, infiltration, runoff, surface and groundwater flow, hydraulic gradients, velocity, flowpaths, elevations, and groundwater/surface water interactions;
- (3) An ambient water quality monitoring plan and monitoring results that provide baseline water quality information for any surface or groundwater that potentially may be impacted as a result of the mining activity. Surface and groundwater baseline monitoring is required for (1) metallic elements for which maximum contaminant levels (MCLs) have been established by the United States Environmental Protection Agency (EPA) under the Safe Drinking Water Act, or for which applicable Effluent Guidelines and Standards for Ore Mining and Dressing Point Source Categories have been established pursuant to 40 CFR §440; and (2) for any toxics for which criteria have been developed by EPA under Section 304(a) of the *Clean Water Act* or by the Department under 38 M.R.S. §420, and other indicators that could adversely impact water quality. In addition, the Department may require testing which includes, but is not limited to, the following:

acidity	magnesium
alkalinity	manganese
aluminum	mercury
ammonia	molybdenum
antimony	nickel
arsenic	nitrate-nitrite
barium	pH
beryllium	phenols
biochemical oxygen demand	potassium
boron	radium 226 and 228
bicarbonates	selenium
cadmium	silver
calcium	silica
carbonates	sodium
cation-anion balance	sulfate
chemical oxygen demand	sulfide
chloride	temperature
chromium	thallium
conductivity	total dissolved solids
copper	total Kjeldahl nitrogen
cyanide	total organic carbon
dissolved oxygen	fluoride total phosphorus

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hardness	total suspended solids
iron	vanadium
lead	volatile organic compounds
zinc	total petroleum hydrocarbons

Baseline water quality monitoring shall include at least 2 years' data collected over 24 or more consecutive months unless pre-existing data are approved for use by the Department, and shall generate the information necessary to:

- (a) Determine upper and lower predictive limits, with 95% level of confidence, for baseline physical hydrologic conditions (water levels, stream stage, and discharge) at each monitoring location, for each parameter, and for each hydrologic season. Storm frequency, intensity and flow/volume analyses shall be conducted for 2, 10, 25, 100, and 500-year storms;
  - (b) Provide a basis to evaluate future operational, reclamation, corrective action, closure, and post-closure monitoring data for the presence of a statistically significant change from baseline conditions;
  - (c) Characterize baseline water quality and sediment in streams, ponds, and wetlands for parameters representative of mine materials, wastes, and designated chemical materials, and associated reaction and transformation products that present a potential risk of release during metallic mineral mining;
  - (d) Characterize baseline water quality and sediment in streams, ponds, and wetlands for parameters that likely serve as general indicators of baseline conditions; and
  - (e) Provide a groundwater flow numerical model for baseline, operational, and post closure conditions that will be used for determining potential hydrogeological impact;
- (4) Documentation of baseline climatological and meteorological conditions including temperature, precipitation, precipitation forms, wind speed, wind direction, solar radiation, relative humidity, barometric pressure, atmospheric gas composition, and atmospheric dust;
  - (5) Documentation of all watersheds, groundwater basins and aquifers, and an inventory of wells, springs, and seeps within mining areas and affected areas;
  - (6) A study documenting soils and other surficial deposits present, including descriptions of type, extent, thickness, and physical and chemical properties; and
  - (7) Documentation of cultural, historic, and scenic resources.

**D. Mining Operation Plan.** A mining operation plan shall be included as part of the application. The mining operation plan shall provide a detailed metallic mineral mining feasibility study including, but not limited to, designs, plans and specifications, analyses, and schedules along with supporting data and information, as applicable, of the following:

- (1) Type and method of metallic mineral mining proposed, and the expected operating life of the mine, including a mining and production schedule;

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- (2) Area, volume, type, and mineralogy of ore to be excavated, and schedule of metallic mineral mining and stockpiling of ore;
- (3) Area, volume, and characteristics of topsoil, overburden, lean ore, ore, and waste rock to be excavated, including plans and schedules for excavating, segregating, processing, storing, and stabilizing these materials. All mine waste must be characterized according to their potential to generate acid rock drainage or otherwise discharge contaminants to the environment, and plans for excavation, segregation, processing, storage, and stabilization of each type of material must specifically address the nature of the material identified by this characterization;
- (4) Locations, designs, schedules of development, proposed use, and dimensions of stockpiles;
- (5) Location, extent, depth, dimensions, and elevation contours of excavations, underground mine openings and workings, shafts, portals, and other openings to the land surface, including a schedule of development;
- (6) Locations, dimensions, and proposed use of buildings, facilities, and structures including those used for storage and transfer of chemicals, and location, dimensions, and proposed use of fuel and explosives storage, washdown, and maintenance areas;
- (7) Transportation plan, including off-site ore concentrate or metallic product hauling;
- (8) Plan for providing necessary general infrastructure requirements to the mining operation including electrical power requirements, water, wastewater, and general solid waste disposal, and access roads for transportation of equipment, materials, and labor required for the mining and restoration operation. This plan shall include details on the addition of the mining operation to existing civil infrastructures within the metallic mineral mining and affected areas;
- (9) Beneficiation plan describing type, methods, extent and sequences, as well as associated materials, reagents, wastes, products, equipment, and processes;
- (10) Tailings management plan, including a description of the quantity, method, location, sequence, and schedule;
- (11) Water management plan for storm water, surface water, groundwater, potable water, and process water describing:
  - (a) Withdrawal sources, quantities, rates, and duration of use;
  - (b) Expected hydrologic impacts on water supply sources, groundwater, wetlands, and other surface water resources;
  - (c) Purpose, location, size, capacities, design, operating procedures of all ponds, impoundments, dewatering systems, diversions, and other water control structures and treatment facilities;
  - (d) Location and estimated volumes, rates, quality, and duration of discharges; and
  - (e) Anticipated wastewater treatment methodology, design, and procedures;

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NOTE: For some activities in, on, over or adjacent to a wetland or waterbody, a permit under the *Natural Resources Protection Act* may be required. See 38 M.R.S. §480-B and the Department's *Wetlands and Waterbodies Protection* rule, 06-096 C.M.R. ch. 310. Any discharge to the Waters of the State requires a permit pursuant to 38 M.R.S. §413.

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- (12) Waste management plan including descriptions by waste stream type, source, anticipated volumes, characteristics, provisions for minimization, treatment, on-site storage, containment, management, transportation, and disposal endpoints. Waste management plans shall not include perpetual treatment methodologies; and
- (13) Dust management plan for the control of dust and other fugitive emissions.
- E. **Engineering Report.** An engineering report shall be included as part of the application. The engineering report for the mine facility must present the basis for the engineering design and the proposed construction procedures. The engineering report must discuss site-specific factors considered during design and address design selection for engineered structures. The report must also include a narrative evaluating the potential modes and significance of failures in engineered systems. All calculations and assumptions used in the evaluation and design of the proposed facility must be submitted. Engineering designs, reports, plans and other technical engineering documents must be signed by a qualified professional.
- F. **Quality Assurance Plan (QAP).** A QAP must be established and included as part of the application to assure that design specifications and performance requirements for all mining operations are met during construction, operation, reclamation, and closure. The QAP must include, but is not limited to, the following:
- (1) A description of the Construction Quality Assurance (CQA) measures to be implemented;
  - (2) A description of the relationship between the QAP, construction quality control, and the construction contract bid documents. The construction contract bid documents must also clearly define this relationship;
  - (3) A description of the extent and scope of the responsibility and authority of organizations and/or personnel involved in permitting, designing, constructing, and certifying construction, operation, reclamation and closure of the mining operation. This must also include a description of a construction problem resolution process that incorporates the roles and responsibilities of all parties, including the Applicant /Permittee, CQA personnel, contractors, and the Department;
  - (4) The required qualifications of the CQA personnel and testing laboratories. Personnel qualifications must include recognized industry certifications where available and applicable. Testing laboratories must be certified by the appropriate state and national accreditation programs for the tests to be performed;
  - (5) The inspections and tests to be performed to ensure that the mining operation conforms to the requirements of the mining permit, this Chapter and the Act;
  - (6) The sampling activities, sample size, methods for determining sample locations, frequency of sampling, acceptance and rejection criteria, and methods for ensuring that corrective measures are implemented;

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- (7) Record keeping and reporting requirements for CQA and inspection activities;
- (8) A list and description of all items requiring CQA certifications, including identification of the engineer(s) responsible for these certifications; and
- (9) A description of the process for evaluating CQA and inspector performance, and for terminating CQA personnel and inspectors, including notification to the Department.

**G. Environmental Impact Assessment.** An environmental impact assessment shall be included as part of the application. Preparation of an environmental impact assessment must include the public participation requirements described in section 10 of this Chapter. The environmental impact assessment report shall include:

- (1) Project Description. The project description shall include:
  - (a) A map showing the metallic mineral mining areas and affected areas, including a rationale and basis supporting the proposed mining area boundaries and affected area boundaries and locations of protected natural resources as defined at 38 M.R.S. §480-B(8) within, adjacent to, or potentially impacted by the mining areas or affected area. Each mining activity must have a defined mining area;
  - (b) A statement of purpose and need for the proposed mine and mining activity components; and
  - (c) A summary of the mine plan.
- (2) Resource and Setting. A description of and documentation of the metallic mineral mining areas, affected areas, natural and artificial features, and where applicable, anticipated seasonal and longer term variations of those features using data and information from the baseline characterization, the reactive mine waste and designated chemical materials characterization, as well as other site-specific information, credible regional studies, and studies of other sites having documented similar conditions. This assessment must include the quality, flora, fauna, hydrology, geology, geochemistry, and baseline conditions for these features, including, but not limited to:
  - (a) Topography and land use;
  - (b) Climate;
  - (c) Visual resources;
  - (d) Geology, including, but not limited to, the areal extent, thickness, lithology, permeability, and geochemistry of soils, overburden, and the bedrock and ore body;
  - (e) Water resources including, but not limited to, the hydrologic attributes of surface water and groundwater resources and the physical and spatial attributes of aquifers, groundwater basins, watersheds, and natural and artificial surface water resources;
  - (f) Locations of designated or recorded administrative features including:

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- (i) Hydrologic features such as wild, scenic or recreational rivers, wellhead protection areas, floodplains, and wetlands;
  - (ii) Towns, villages, counties, and other civic jurisdictions;
  - (iii) Recreational, historical, cultural, archeological, scientific, and natural areas or similar features such as parks, refuges, wilderness areas, and state and national monuments; and
  - (iv) Public rights of way, zoning, and associated land use plans for the metallic mineral mining areas;
- (g) Biologic resources including, but not limited to, the presence of, or recorded locations of rare, endangered, and threatened species, the presence or absence of species of special concern, significant wildlife habitats, deer wintering areas, aquatic and terrestrial flora and fauna species and abundance, and ecological systems; and
- (h) Manmade structures, including descriptions, locations, and uses of:
- (i) Water supply sources for drinking, cooling, irrigation, geothermal, industrial, and other purposes;
  - (ii) Dwellings, places of business or worship, schools, hospitals, government buildings, and other buildings used for human occupancy;
  - (iii) Private, public, and institutional infrastructure such as utilities, transportation corridors, dams, bridges, and tunnels;
  - (iv) Past metallic mineral mining facilities including storage piles, tailings basins, pits, underground workings, and beneficiating plants; and
  - (v) Waste disposal facilities or sites of environmental contamination.
- (3) Impact Analysis. The environmental impact assessment must identify potential impacts to the resources and setting identified in subsection 9(G)(2), above.
- (4) Use of Federal Permit Submissions. An Environmental Impact Statement or equivalent document prepared as part of Federal permitting requirements for an application under this activity may be accepted in lieu of the State's required environmental impact assessment, at the discretion of the Department. The Department may require these documents to be supplemented to meet the requirements of the Chapter.
- (5) Environmental impact assessment results, analyses, and findings and supporting information and data shall be submitted in a report to the Department as part of the application for a mining permit.

**H. Alternatives Analysis.** An alternatives analysis shall be included as part of the application and must include the following information and analysis. This analysis will be incorporated into the Department's determination of whether the proposed project would unreasonably adversely affect existing uses, scenic character, air quality, water quality, and other natural resources.

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- (1) The alternatives analysis must demonstrate the consideration of siting alternatives as well as alternative technologies, modified scale or magnitude, and alternatives incorporating practicable mitigation measures for portions of a metallic mineral mining operation ancillary to the removal of material in connection with the commercial production of metallic minerals, and for which there is some flexibility in site selection, such as storage piles, water reservoirs, beneficiation operation processing plants, chemical and fuel storage and handling areas, wastewater treatment plants and disposal alternatives, offices, roadways, and auxiliary facilities.
  - (2) The alternatives analysis for removal of material must demonstrate minimization including location, removal techniques, and reasonable mitigation measures.
  - (3) Alternatives that were considered but eliminated based on information developed through the environmental impact assessment must be discussed and the reason for their elimination must be stated.
  - (4) Data and analysis shall be commensurate with the importance of the impact and the relevance of the information to a reasoned choice among alternatives and to the consideration of the need for mitigation measures.
  - (5) Impact Analysis. There shall be an analysis of potentially significant adverse or beneficial environmental effects generated, directly, indirectly, or cumulatively for the proposed mine and each major alternative.
  - (6) Mitigation. Measures that could reasonably eliminate or minimize any adverse environmental effects, of the proposed project shall be identified, including, but not limited to:
    - (a) Minimizing an impact by not taking a certain action or parts of an action;
    - (b) Rectifying an impact by repairing, rehabilitating, or restoring the affected environment;
    - (c) Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; and
    - (d) Compensating for an impact by replacing the affected significant wildlife habitat.
- I. **Mine Plan.** A mine plan shall be included as part of the application. The mine plan shall describe the metallic mineral mining operation plan and include the siting, design, development, operation (including beneficiation operations), reclamation, closure, post-closure, and corrective action methods to be used during construction, operation, reclamation, remediation, closure and post-closure to avoid, minimize and mitigate actual and potential adverse impacts to natural resources, the environment, and public health and safety. The mine plan must include an environmental protection, reclamation, and closure plan. The mine plan must address the unique issues associated with mining and must include, at a minimum, the following:
- (1) A description of each aspect of the mine siting, design, development, operation, reclamation, closure, post closure, and corrective actions, and the potential adverse impacts to natural resources, the environment, and public health and safety that are avoided, minimized, and/or mitigated;

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- (2) Detailed designs, plans, specifications, techniques, methods, materials, standard operating procedures, construction methods, and schedules for each aspect of the mine plan;
- (3) The basis for the applicant's contention that the proposed plan for each of these aspects prevents adverse impacts to natural resources, the environment, and public health and safety;
- (4) A description of the reclamation plan, including, at a minimum:
  - (a) A reclamation plan as required in section 23 of this Chapter;
  - (b) A plan for contemporaneous reclamation activities along with an explanation if contemporaneous reclamation will not be practicable in certain aspects of the project;
  - (c) Closure and post-closure maintenance, identifying reclamation activities that would be taken by the Applicant if operations cease or are suspended. The plan shall address all of the components stipulated in section 24 of this Chapter and be updated annually; and
  - (d) A schedule for expected reclamation activities;
- (5) A detailed written cost estimate and cost rationale for each category of the mine plan, including, at a minimum:
  - (i) The cost of designing and constructing the mine and operational costs for the first 5 years of operation;
  - (ii) The cost to investigate all possible releases of contaminants at the site, monitor all aspects of the mining operation, close the mining operation in accordance with the closure plan, conduct treatment activities of all expected fluids and wastes generated by the mining operation for a minimum of 100 years, implement remedial activities for all possible releases and maintenance of structures and waste units as if these units have released contaminants to the groundwater and surface water, conduct corrective actions for potential environmental impacts to groundwater and surface water resources as identified in the environmental impact assessment and conduct all other necessary activities at the mine site in accordance with the environmental protection, reclamation and closure plan; and
  - (iii) The cost to respond to a worst-case catastrophic mining event or failure, including, but not limited to, the cost of restoring, repairing and remediating any damage to public facilities or services, to private property or to the environment resulting from the event or failure.

All cost estimates shall be in current dollars, shall include at least a 20% contingency, and shall assume the hiring by the Department of a third party to complete all tasks. Cost estimates shall include Department oversight costs equal to 30% of the cost of hiring a third party to complete all tasks. No salvage value of products, waste, mine structures, equipment, land, or other assets associated with the mining operations shall be included in the cost estimate.

- J. Monitoring Plan.** A monitoring plan must be included as part of the application. The contents of the monitoring plan must meet the requirements described in section 22 of this Chapter.

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- K. **Contingency Plan.** A contingency plan must be included as part of the application. The contingency plan shall include all of the following:
- (1) An assessment of the risk to public health and safety associated with potential accidents or failures involving the following:
    - (a) Release or threat of release of reactive mine waste or toxic materials;
    - (b) Storage, transportation, and handling of explosives;
    - (c) Fuel storage and distribution;
    - (d) Fires;
    - (e) Wastewater collection and treatment system failure or upset;
    - (f) Settling pond, dry stack tailings management structure, or embankment failure;
    - (g) Air emissions;
    - (h) Spills of hazardous substances;
    - (i) Other specific natural risks defined by the environmental impact assessment;
    - (j) Power disruption;
    - (k) Unplanned subsidence; and
    - (l) Leaks from containment systems for stockpiles, storage, or disposal facilities.
  - (2) A description of the detection and warning systems to be used in alerting the Applicant or the Department of the accidents or failures above.
  - (3) A complete Spill Prevention, Control and Countermeasures Plan if required by 40 CFR Part 112 or other federal or state statutes and regulations.
  - (4) Response measures that will be followed for each potential accident or failure.
  - (5) The procedure for notifying the general public, public authorities, and safety agencies in the event of an emergency including:
    - (a) A list, by title, of employees of the Permittee to be contacted and their duties and responsibilities;
    - (b) The actions to be taken to restrict access of nonessential personnel to the area;
    - (c) If evacuation of the public is necessary, the procedure for conducting the evacuation;
    - (d) A list of emergency equipment and its location;
    - (e) A list of emergency telephone numbers for the following people or entities:

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- (i) Representatives of the Permittee;
- (ii) The local municipality emergency management coordinator;
- (iii) Local ambulance services;
- (iv) Local hospitals;
- (v) Local fire and police departments;
- (vi) Department of Environmental Protection;

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NOTE: Other reporting requirements may exist under federal laws and the laws administered by the Department of Environmental Protection and the Land Use Planning Commission. For oil spills, call 1-800-482-0777 which is available 24 hours a day. For spills of toxic or hazardous material, call 1-800-452-4664 which is available 24 hours a day. For more information, visit the Department's website at: <http://www.maine.gov/dep/spills/emergspillresp/>

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- (vii) Pollution emergency alerting system;
  - (viii) Federal regulatory agencies, as appropriate;
  - (ix) Department of Agriculture, Conservation and Forestry; and
  - (x) Local unit of government.
- (6) A plan for testing the contingency plan to assure its effectiveness.
- (7) The contingency plan, including contact information, shall be updated and re-submitted to the Department on an annual basis.
- (8) The Applicant shall submit a copy of the contingency plan to each emergency management coordinator having jurisdiction over the metallic mineral mining affected area at the time the application is submitted to the Department.

L. **Financial Assurance.** A description of the type or types and amounts of financial assurance to be provided that will satisfy the requirements of subchapter 4 of this Chapter and 38 M.R.S. §490-RR must be included in the application. This submittal must be adequate to demonstrate the financial ability of the Applicant in accordance with subchapter 4 of this Chapter.

**10. Public and Local Participation**

A. **Notification and Participation Requirements.** These requirements apply to an application for an advanced exploration activity or mining permit. This section details the notification and participation requirements for the pre-application phase, which includes the baseline work plan and the scoping document for the environmental impact assessment. In addition, the application phase, which includes the advance notice requirements, notice of intent to file, adjudicatory hearing and intervenor grants must meet the requirements of Chapter 2 of the Department Rules and the *Maine Administrative Procedure Act*, 5 M.R.S. chapter 375.

**B. Pre-application Phase – Publication and Notice of Baseline Work Plan.** Prior to the collection of any baseline data, the Applicant shall submit a baseline work plan to the Department. The baseline work plan shall describe methods used for acquiring data, sampling locations, sampling frequency, analytical methods, a timetable for data collection, and a quality assurance (QA) project plan. Upon submittal of a baseline work plan, the Applicant shall provide public notice of the availability of the baseline work plan for public review and comment by publishing notice in at least one newspaper of general circulation in the area where the activity is proposed, and in one newspaper with a circulation area of the entire State of Maine. Following notice of publication of the baseline work plan, there shall be 30 days for public review and comment.

- (1) **Review and Acceptance of Baseline Work Plan.** Within 30 days after the close of the public comment period, after review of the proposed baseline work plan and consideration of comments received, the Department shall either accept the baseline work plan or require revisions to the plan prior to acceptance.
- (2) After the baseline work plan has been accepted by the Department, the Applicant shall submit to the Department a proposed amendment if:
  - (a) Changes in the siting of the proposed activity necessitate an expansion of the study area;
  - (b) Changes in the scope of the proposed activity necessitate additional studies; or
  - (c) Any other information is necessary for the Department to evaluate the proposed activity under all applicable permit review criteria.

**C. Preparation of Environmental Impact Assessment Scoping Document.**

- (1) A scoping process shall be used before preparation of an environmental impact assessment (EIA) to identify environmental issues relevant to the proposed activity, determine the appropriate level of analysis and contents of the EIA, identify the factors to be assessed in the EIA, and set a timetable for preparation. At a minimum, the scope of an EIA shall encompass the environmental, human health and safety, physical, cultural, and land use impacts of a proposed activity; measures for mitigating significant impacts; the physical characteristics of the project site and design/operation alternatives.
- (2) Prior to the preparation of the EIA, a draft scoping document must be submitted to the Department by the applicant. The draft scoping document must be submitted before the application is filed, and shall include, but is not limited to, the following:
  - (a) Identification of the Applicant and the location and description of the activity;
  - (b) Identification of other reviewing agencies;
  - (c) Identification of potential environmental impacts and issues that require investigation including interconnection of the proposed mining areas to adjacent groundwater and surface water resources;
  - (d) Detailed work plan for the analysis of each potential environmental impact and issue identified above including proposed evaluations;

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- (e) Copy of the baseline work plan, if previously accepted;
  - (f) Identification of the baseline data that will be incorporated into the EIA and how it will be incorporated; and
  - (g) Preliminary outline of the EIA.
- (3) Public Notice and Availability of Draft Scoping Document
- (a) Upon submittal of the draft scoping document, the Applicant shall provide public notice of the availability of the draft scoping document for public review and comment by publishing a notice in at least one newspaper of general circulation in the area where the activity is located.
  - (b) The Applicant shall also notify, by certified mail, abutting landowners, the municipal officers of the municipality in which the activity is proposed or, if within the unorganized and deorganized areas of the State, the county commissioners with jurisdiction where the activity is proposed.
- (4) Public Comment Period. Following notice of publication of the draft scoping document, there shall be 45 days for public comment.
- (5) Public Scoping Meeting. During the comment period, the Department may hold a public scoping meeting to gather further comments on the draft scoping document if the Department determines that such a meeting is necessary or useful to the review process.

**D. Application Phase – Advanced Notice of Intent to File**

- (1) The Applicant shall notify, by certified mail, the municipal officers of each municipality in which the mining areas or affected areas may be located, or in unorganized and deorganized areas of the State, the county commissioners for each county in which the mining areas and affected areas may be located, of the Applicant's intent to file a mining permit application at least 60 days prior to submitting an application to the Department.
- (a) The notice shall contain all of the following:
    - (i) A statement of intent to apply for a mining permit;
    - (ii) The name, address, and telephone number of the applicant;
    - (iii) The name of a designated contact person;
    - (iv) The type of mine proposed and a figure clearly showing the location of the mining areas and the affected areas;
    - (v) The anticipated date of submittal of the permit application; and
    - (vi) A description of the right of the municipal officers or county commissioners to apply for intervenor grants, their right to receive grants not exceeding \$50,000 to support certain activities to intervene before the Department, and the requirement that they

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must request intervenor status within 60 days of this notification or be deemed to have waived the right to receive intervenor grants.

- (2) At the same time the Applicant shall provide a copy of this notice to the Department and the Director of the Bureau of Resource Information and Land Use Planning within the Department of Agriculture, Conservation and Forestry.

E. **Notice of Intent to File Applications.** Within 30 days prior to filing, an Applicant shall give public Notice of Intent to File an application for a new, transferred, or amended permit. An application that has been previously returned as incomplete pursuant to the Department's administrative rules must comply with these requirements if the application is not resubmitted within 30 days of the date it was returned to the applicant. The notice must be mailed by certified mail to abutters, as determined by local tax records or other reliable means, to the municipal office of the municipality(ies) where the project is located and, if the project is located in the unorganized or deorganized areas of the State, to the appropriate county commissioners. The notice must also be published once per week for four (4) successive weeks in a newspaper circulated in the area where the project is located. Copies of the published Notice of Intent to File and a list of abutters to whom notice was provided must be submitted with the application. The notice must include the following information:

- (1) Name, address, and telephone number of the applicant;
- (2) Citation of the statutes or rules under which the application is being processed;
- (3) Location of the activity;
- (4) Summary of the activity;
- (5) Anticipated date for filing the application with the Department;
- (6) A statement providing the local filing location where the application can be examined;
- (7) A statement that public comments on the application may be provided to the Department, together with the name and email address of the Department contact person and the mailing address of the Department; and
- (8) Any other information required by applicable rule or law.

F. **Application Phase – Adjudicatory Hearings.** The Department will hold an adjudicatory hearing within the municipality in which a Tier Two advanced exploration or mining operation may be located or, in the unorganized or deorganized areas of the State, in a location convenient to the vicinity of the proposed mining operation no later than 180 days after the application is accepted as complete for processing and at least 30 days prior to the issuance of a draft permit decision. This timeframe does not apply if the Board takes jurisdiction over the application. Public notice of such a hearing will be provided in accordance with the *Maine Administrative Procedure Act*, 5 M.R.S. §9051-A. The hearing will be conducted in conformance with the requirements of the *Maine Administrative Procedure Act*, 5 M.R.S. §§ 9051-9063, and the Department's *Rules Governing the Conduct of Licensing Hearings*, 06-096 C.M.R. ch. 3.

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**G. Application Phase – Intervenor Status**

- (1) Petitions for General Intervenor Status. A request for general intervenor status may be filed in any application proceeding for an advanced exploration mining permit or a mining permit under this Chapter. Petitions for intervenor status are governed by the Department's Rules Governing the Conduct of Licensing Hearings, 06-096 C.M.R. ch. 3, except as otherwise provided in subsection 10(G)(2) of this Chapter.
- (2) Requests for Municipal and County Intervenor Status. As provided in 38 M.R.S §490-OO(6)(D), the municipal officers, or their designees, from each municipality in which the mining areas or affected areas may be located or, in the unorganized or deorganized areas of the State, the county commissioners or their designees, for each county in which the mining areas or affected areas may be located have intervenor status if they request it within 60 days after notification under subsection 10(D). Immediately upon the Commissioner's receipt of a request for intervenor status from such a municipality or county, the intervenors have all rights and responsibilities commensurate with this status.

**H. Assistance Grants for Municipal and County Intervenor Status.** The Commissioner shall reimburse or make assistance grants for the direct expenses of intervention by municipalities and county commissioners granted intervenor status.

- (1) Grant Agreements. The Department shall draft a grant agreement as soon as possible after a qualified municipality or county commissioner has requested intervenor status. This agreement will formalize the type of services to be used; the frequency and conditions of billing, grant payment or reimbursement; the required documentation of costs and work output; and audit and grant repayment conditions.
  - (a) The Applicant shall pay the Department an amount sufficient for the Department to reimburse or make assistance grants for the direct expenses of intervention for any municipality or county commissioner granted intervenor status under this section.
  - (b) The amount of any such grant may not to exceed \$50,000 per project per intervenor.
  - (c) The Department shall coordinate, evaluate, and approve or deny in writing all requests by intervenors for grants or project expense reimbursement.
- (2) Grant Reimbursement. Allowable expenses include hydrologic studies, traffic analyses, the retention of expert witnesses and attorneys, and other related expenses. Expenses not incurred in support of direct, substantive participation in the proceedings before the Department, including attorneys' fees related to judicial appeals, are not eligible for grant funding or reimbursement under this provision. Reimbursement requests shall include the following:
  - (a) Not more often than monthly, a municipal or county intervenor seeking reimbursement for expenses shall submit detailed documentation of eligible expenses to the Department up to the maximum amount approved by the Department.
  - (b) Documentation shall include the following:
    - (i) A description of the expense incurred, the names of the person or entity performing the work or providing the testimony, and the dates on which that work was performed or the study or testimony provided; and

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- (ii) Hourly rates and the number of hours worked, if applicable, or the cost for each person providing services or testimony.
  - (3) Upon approval of a grant agreement, grant payments must be made upon the request of the municipal or county intervenor unless payment is denied for one of the following reasons:
    - (a) The work was undertaken before the municipality or county commissioners had intervenor status, after the intervenor had been notified by the Applicant that the application was withdrawn, or after withdrawal of the intervenor;
    - (b) False statements were made in the grant submission; or
    - (c) Expenses are ineligible for payment under section 10(H)(2).
  - (4) The municipal or county intervenor shall maintain all documentation of expenses pertaining to costs incurred under the grant agreement. These materials must be provided upon request by the Department.
  - (5) Any grant funds not spent by an intervenor for eligible costs must be returned to the Applicant within 60 days of the Department's final disbursement to the municipal or county intervenor, but in no case later than 120 days after approval or denial of the application.
- I. Access to the Site by Intervenors.** Both general intervenors and municipal officers and county commissioner intervenors shall have access to the proposed mining site at reasonable times for purposes of inspection and investigation, as follows:
- (1) An intervenor must submit a request in writing for entry to the site to the Department explaining the dates and times of requested entry, names of persons to gain entry, specific location of proposed work, and a detailed description of work to be conducted.
  - (2) The intervenor shall provide a copy of the written request for access to all other intervenors and the applicant.
  - (3) If the Applicant and the requesting intervenor are unable to reach agreement within a reasonable time for the intervenor's access to the site, the Department will arrange for the site access for the intervenor.
  - (4) A designated representative of the mining permit Applicant shall accompany the intervenor on at least the first site visit and may approve non-accompanied future intervenor visits.
- J. Public Information Website.** The application, review comments, and supplemental application materials shall be made available on the Department's website. The Applicant shall reimburse the Metallic Mining Fund for all costs associated with development and maintenance of this website.
- 11. Criteria for Mining Permit Approval.** A person may not engage in metallic mineral mining except as authorized in a mining permit issued by the Department.
- A. Permit Approval.** The Department shall issue a mining permit whenever it finds the following:

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- (1) The Applicant has the authority and technical ability to develop the proposed mine in a manner consistent with applicable state environmental standards and with the provisions of this Chapter and the Act.
- (2) The Applicant has demonstrated that its proposed mining operation meets the requirements of all of the following:
  - (a) The Applicant has made adequate provisions for fitting the mining operation harmoniously into the existing natural environment, and the development will not unreasonably adversely affect existing uses, scenic character, air quality, water quality or other natural resources;
  - (b) The mining operation is located on soil and rock types and geological structures that are suitable to the nature of the mining operation;
  - (c) There is a reasonable assurance the mining operation will not violate applicable surface water quality standards. Notwithstanding 38 M.R.S. §§ 465-C and 470, contamination of groundwater from activities permitted under this Chapter may occur within a mining area, but such contamination must be limited and may not result in:
    - (i) Contamination of groundwater beyond the mining area;
    - (ii) Contamination of groundwater within the mining area that exceeds applicable water quality criteria for pollutants other than pH or metals;
    - (iii) Contamination of groundwater within the mining area due to pH or metals that exceeds limits set forth in the mining permit by the Department based on site-specific geologic and hydrologic characteristics;
    - (iv) Any violation of surface water quality standards under 38 M.R.S. §413 or Title 38 Chapter 3, Subchapter 1, Article 4-A (Water Classification Program) ; or
    - (v) If groundwater or surface water quality within the mining area prior to the commencement of any mining activity exceeds applicable water quality standards, further degradation of such groundwater or surface water quality.

In determining compliance with this standard, the Department shall require groundwater monitoring consistent with the standards established pursuant to 38 M.R.S. §490-OO(3) and section 22 of this Chapter.

Notwithstanding subsection 2(NNN) of this Chapter, for the purposes of this subsection “mining area” means an area of land, approved by the Department and set forth in the mining permit, not to exceed 100 feet in any direction from a mine shaft, surface pit or surface excavation, and does not include the following lands, regardless of the distance of such land from a mine shaft, surface pit or surface excavation: the land on which material from mining is stored or deposited; the land on which beneficiating or treatment facilities are located; the land on which groundwater and surface water management systems are located or the land on which water reservoirs used in a mining operation are located;

- (d) The mining operation will not result in a direct or indirect discharge that, either by itself or in combination with other discharges, will cause or contribute to nonattainment of

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applicable surface water quality standards under the Water Classification Program, 38 M.R.S. §§ 464-469;

- (e) The mining operation will not result in a direct or indirect discharge that, either by itself or in combination with other discharges, will cause or contribute to nonattainment of groundwater standards outside the mining areas under the Water Classification Program, 38 M.R.S. §§ 464, 465-C and 470;
- (f) Withdrawals of groundwater and surface water related to the mining operation will comply with the Water Withdrawal Reporting Program, 38 M.R.S. §470-A *et seq.* and 06-096 C.M.R. ch. 587;
- (g) The Applicant has made adequate provisions for utilities, water supplies, wastewater treatment facilities and solid waste disposal required for the mining operation, and the mining operation will not have an unreasonable adverse effect on the existing or proposed utilities in a municipality or area served by those services;
- (h) The mining operation will not unreasonably cause or increase flooding of the area that is altered by the mining operation or adjacent properties or create an unreasonable flood hazard to any structure. Mining operations involving the removal of metallic minerals, the storage of metallic minerals or mine waste, the processing of metallic minerals, or the treatment of mine waste may not be placed in or on floodplains or flood hazard areas;
- (i) The Applicant has made adequate provision for protection of public health and safety;
- (j) The mining operation will not use heap, percolation leaching, in-situ leaching, or block caving;
- (k) The mining operation meets the performance standards of this Chapter;
- (l) The Applicant has demonstrated a reasonable assurance of being able to meet all terms and conditions specified by the Department in a mining permit;
- (m) The Applicant has demonstrated that there is reasonable assurance that public and private water supplies will not be affected by the mining operation.;
- (n) No part of the mining operation will be located wholly or partially in, on or under any state land listed in 12 M.R.S. §549-B(7)(C-1);
- (o) The mining operation will not remove metallic minerals in, on or from a river, stream or brook, as defined in 38 M.R.S. §480-B(9); a great pond, as defined in 38 M.R.S. §480-B(5); a freshwater wetland, as defined in 38 M.R.S. §480-B(4); or a coastal wetland, as defined in 38 M.R.S. §480-B(2) is prohibited;
- (p) The mining operation will not involve placement of a mine shaft in, on or under a significant river segment, as identified in 38 M.R.S. §437; an outstanding river segment, as identified in 38 M.R.S. §480-P; an outstanding river, as identified in 12 M.R.S. §403; a high or moderate value waterfowl and wading bird habitat that is a significant wildlife habitat pursuant to 38 M.R.S. §480-B(10)(B)(2); a great pond, as defined in 38 M.R.S. §480-B(5); or a coastal wetland as defined in 38 M.R.S. §480-B(2);

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- (q) The mining operation will use dry stack tailings management and will not use wet mine waste units or tailings impoundments for the management of mine waste and tailings, except that the mining operation may involve the placement into a mine shaft of waste rock that is neutralized or otherwise treated to prevent contamination of groundwater or surface water;
  - (r) The mining operation will not use open-pit mining; and
  - (s) The financial assurance required pursuant to 38 M.R.S. §490-RR and section 17 of this Chapter has been posted and fully funded.
- B. Requirements.** The Department shall process each permit application required and submitted by the Applicant under 38 M.R.S. §490-NN(1), and identified by the Applicant in the permit application under the requirements of subsection 9(B)(4) of this Chapter in a coordinated fashion. The coordinated process shall include consolidation of public hearings and the issuance of a joint decision on all applications for permits required by the Department.
- C. Effect of Current Violation.** The Department may not issue a mining permit if the Applicant or any person in a position to control the operations of the Applicant is in violation of any state or federal law, rule, permit, or order that the Department determines in the permit decision is relevant to the issuance of a mining permit, unless the person has corrected the violation or the person has agreed in a judicially enforceable document to correct the violation.
- D. Effect of Compliance History.** The Department may not issue a mining permit if the Applicant or any person in a position to control the operations of the Applicant has documented violation(s) of state or federal land use or environmental laws, or documented violations of land use or environmental laws of a foreign country, demonstrating that the Applicant would not be capable of complying with the terms and conditions of a mining permit. An Applicant may present evidence of changed conditions or circumstances demonstrating the current ability to comply with all permit terms and conditions notwithstanding any prior violations. If that evidence is sufficient to warrant a finding by the Department that the Applicant is capable of compliance, the Department may issue a permit.
- E. Effect of Financial Assurance Defaults.** The Department may not issue a mining permit if the Applicant or any person in a position to control the operations of the Applicant has defaulted on or otherwise violated a financial assurance requirement including, but not limited to, a letter of credit, bond, trust fund, guarantee, or financial test.

**12. Permit Conditions**

- A. Standard Conditions.** The following standard conditions must be included in all mining permits.
- (1) **Relation of Permit to Application.** The plans, specifications, descriptions, and other documentation submitted by the Permittee in support of the application, and approved by the Department in issuing the permit, constitute terms of the permit. Any variation or change in the plans, specifications, descriptions, or other documentation must be approved by the Department prior to implementation. Upon completion of any construction or alteration, the Permittee must submit to the Department a written certification by a qualified professional that the site has been constructed or altered in accordance with the terms of the permit.

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- (2) Duty to Comply. The Permittee must comply with all terms and conditions of the permit. Any noncompliance constitutes a violation of law and is grounds for enforcement action, permit suspension, or revocation.
- (3) Duty to Halt or Reduce Activity. It is not a defense in an enforcement action that halting or reducing the permitted activity would have been necessary in order to maintain compliance with the conditions of the permit.
- (4) Duty to Mitigate. The Permittee shall take all steps to minimize or correct any adverse impact on the environment resulting from noncompliance with the permit.
- (5) Proper Operation and Maintenance. The Permittee shall at all times properly operate and maintain all facilities and systems which are installed or used by the Permittee to achieve compliance with the conditions of the permit.
- (6) Permit Actions. The Department, after notice and an opportunity for a hearing as required under the *Maine Administrative Procedure Act*, 5 M.R.S. §§ 10003 & 10051 and 38 M.R.S. §342(11-B), may modify a permit or may act to suspend or revoke the permit. The Department may also modify a permit in response to an application for a modification filed by the Permittee. The filing of a request by the Permittee for a permit modification does not stay any permit condition. If the Department determines that a violation of the Mining Act, this Chapter, a Department Order or this permit is causing or resulting in imminent and substantial endangerment to the public health or safety, environment or natural resources, the Commissioner may issue an order requiring immediate suspension of mining activities, including the removal of metallic product from the site.
- (7) Property Rights. The permit does not convey any sort of property right or exclusive privilege.
- (8) Duty to Provide Information. The Permittee shall furnish any information which the Commissioner requests in order to determine whether cause exists for modifying, suspending, or revoking the permit or to determine compliance with the permit. The Permittee shall also, upon request, furnish to the Department copies of records required by law or by the permit to be kept by the Permittee, and not otherwise required to be filed with the Department. The information shall be submitted in accordance with the timeframe requested by the Commissioner.
- (9) Monitoring Reports. All monitoring results shall be reported to the Department according to this Chapter, the mining permit, and the Act within 60 days of the sampling event unless an alternative time is requested or approved by the Department.
- (10) Noncompliance and Occurrence Reporting. The Permittee shall report to the Department any noncompliance, any unpermitted or otherwise unlawful release or discharge of pollutants including accidents and failures specified in the approved Contingency Plan. Information shall be provided in accordance with the approved Contingency Plan or, if not addressed in the Contingency Plan, orally within 2 hours of the time the Permittee becomes aware of the circumstances, and in writing within 5 working days. If the noncompliance, release or discharge of pollutants, or cause of fire or explosion has not been corrected, the anticipated time it is expected to continue must be given, together with the steps taken or planned to reduce, eliminate and prevent recurrence. The written submission must include the following:
  - (a) Name, address, and telephone number of the owner or operator;

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- (b) Name, address, and telephone number of the facility, if applicable;
  - (c) Date, time, type, and description of incident;
  - (d) Name and quantity of any waste(s) involved;
  - (e) The extent of injuries, if any;
  - (f) An assessment of actual or potential hazards to the environment and human health inside and outside the site, when applicable; and
  - (g) Estimated quantity and disposition of any pollutants released or discharged.
- (11) Other Information. When the Permittee becomes aware that it has failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department including any sampling data evaluating the site, the Permittee shall promptly submit such facts or information to the Department.
- (12) Signatory Requirement. All applications, reports, or information submitted to the Department shall be signed by a responsible officer. Such responsible officer shall make the following certification:
- “I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate, and complete. I am aware there are significant penalties for submitting false information.”
- (13) Construction/Operation within 4 Years. After public notice, the Department may terminate or request surrender of a mining permit if the Permittee has not commenced construction of mining facilities or conducted mining activities covered by the mining permit within 4 years after the effective date of the mining permit, unless the Permittee is issued an extension pursuant to section 14 of this Chapter. If the mining permit is terminated or surrendered, the Applicant may reapply to the Department for a permit. No construction or operation may be undertaken until a new permit is granted. A new application filed for a project previously approved must state the reasons why construction or operation was not begun within 4 years from the granting of the initial permit, and the reasons why construction or operation will be able to begin within 4 years from the granting of the new permit. The new application may incorporate, by reference, information submitted in the initial application, but must include all information required by law or rule at the time the new application is submitted.
- (14) Commencement of Operations. Prior to the commencement of operations:
- (a) The Permittee shall submit to the Department, by certified mail or hand delivery, a letter signed by the Permittee and a State of Maine Licensed Professional Engineer stating that the site has been constructed, altered, or modified in compliance with the permit; and
  - (b) The site must be inspected by the Department and found to be in compliance with the conditions of the permit.

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- (15) Other Permits and Licenses. The Applicant and Permittee shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, approvals, conditions, agreements, and orders prior to and during construction, alteration, modification, operation, reclamation, and closure as appropriate.
- (16) Bid Specification. A copy of the Permit approval must be included in or attached to all contract bid specifications for the site.
- (17) Contractor Copy. The Permittee may not direct or allow any work within the scope of the permit to be done by a contractor until the contractor(s) has been given a copy of the mining permit. The Permittee shall certify to the Department that the contractor(s) has received a copy of the permit.
- (18) Annual Fee. The Applicant or Permittee shall pay an annual fee as required by 38 M.R.S. §352(4-A)(E). The permit is not effective until, and unless, the annual fee has been paid.
- (19) Inspection and Entry. Employees and authorized representatives of the Department must be allowed access to the site and affected area during business hours, and at such other times as the Department deems necessary, for the purpose of performing tests, collecting samples, conducting inspections, examining records relating to the site, or developing or enforcing any rule, statute or order.
- (20) As a condition of a mining permit, the Permittee shall retain the services of a qualified third-party independent inspector to monitor compliance with permit conditions during construction, operations and closure. More than one inspector may be needed to obtain the qualifications necessary to monitor different activities. An inspector retained under this section cannot also serve as a qualified professional under section 25 of this Chapter.
- (a) Inspector selection. At least 30 days prior to starting any permitted activity on the site, the applicant must submit the names of at least two inspector candidates to the Department. Each candidate must meet the minimum qualifications listed below. The inspector may not be an employee, partner, or contracted consultant involved with the permitting of the project or otherwise employed by the same company or agency except that the Department may accept subcontractors who worked for the project's primary consultant on some aspect of the project such as, but not limited to, completing wetland delineations, identifying significant wildlife habitats, or conducting geotechnical investigations, but who were not directly employed by the applicant, as independent inspectors on a case by case basis. The Department will have 15 days from receiving the names to select one of the candidates as the inspector or to reject both candidates. If the Department rejects both candidates, then the Department shall state the particular reasons for the rejections. In this case, the applicant may either dispute the rejection to the Commissioner, or start the selection process over by nominating two new candidates.
- (i) The Permittee may not terminate the services of a qualified third-party independent inspector without prior Department approval.
- (ii) In the event the qualified third-party independent inspector is terminated or voluntarily resigns, the Permittee must select and retain the services of a replacement inspector within 30 days.

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- (b) Inspector Qualifications. A qualified third party independent inspector must be a qualified professional and must have the following minimum qualifications:
- (i) A degree from an accredited program in environmental science, civil engineering, mining engineering, geology, or other demonstrated expertise;
  - (ii) A practical knowledge of mining principles, stormwater control, and waste management;
  - (iii) Experience in management or supervision on large construction projects;
  - (iv) The ability to understand and articulate permit conditions to contractors;
  - (v) The ability to clearly document activities being inspected;
  - (vi) Appropriate facilities and, if necessary, support staff to carry out the duties and responsibilities set forth in subsection (4), below, in a timely manner; and
  - (vii) No ownership or financial interest in the permitted activities other than that created by being retained as the third-party inspector.
- (c) Inspector Duties and Responsibilities. The inspector's work shall include the following duties and responsibilities:
- (i) Prior to construction, the inspector will become thoroughly familiar with the project plans and specifications, including those for containment structures and impoundments, mine operations buildings and structures associated with ore handling and processing, detention basins, those for installing the erosion control measures to be used on the site, and those for stabilizing disturbed soils.
  - (ii) During construction, the inspector will monitor activities required by the permit and contained in the approved construction documents.
  - (iii) The inspector will keep logs recording activities on the site, discussions with contractor(s) and/or mine operations personnel, and possible violations of the approved construction documents or the permit terms and conditions.
  - (iv) The inspector will inspect the site at least twice per week from the commencement of construction until closure. The site must be inspected at least monthly during the post-closure monitoring period.
  - (v) The inspector will notify the designated person at the Department immediately of potential violations of the mining permit.
- (d) Inspection Reports. The inspector will submit written reports, including photographic documentation, in a format approved by the Department to the designated person at the Department. Reports shall be submitted to the Department in accordance with a schedule determined by the Department.
- (i) The report will state the start and end dates for the reporting period.

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- (ii) The report will state the date(s) and time(s) when the inspector was on the site making inspections.
  - (iii) The report will describe the Permittee's activities over the reporting period.
  - (iv) The report will summarize the inspection results, identify and describe any deficiencies noted, and provide recommendations for correcting deficiencies.
- (21) Preconstruction. All preconstruction terms and conditions must be met before any construction begins.
- (22) Advertising. Advertising relating to matters included in the permit application may refer to the Permit approval only if it notes that the approval has been granted with conditions, and indicates where copies of the permit may be obtained.
- (23) Transfer of Ownership. Unless otherwise provided in the permit, the Permittee may not sell, lease, assign, or otherwise transfer the site or any portion thereof, or cause or allow any other action where the purpose or consequence is to transfer any of the obligations of the Permittee as incorporated in the permit, without prior written approval of the Department pursuant the 06-096 C.M.R. ch. 2(21).
- (24) Deed Notation. Whenever any site, or portion thereof, previously used for mining or advanced exploration is transferred by deed, the following must be expressly stated in the deed:
- (a) The type(s) of waste unit(s) located on the site, the dates of establishment and closure of each, and a description of the location, composition, extent, and depth of waste deposited in each; and
  - (b) The heading and date of issuance of the permit, the identification number of the permit, and the fact that it was issued by the Department of Environmental Protection.
- (25) Event of Force Majeure. The Permittee's responsibility for meeting all requirements of the Act, this Chapter and the mining permit shall not be discharged due to an Event of Force Majeure.
- B. **Special Conditions.** The Department may place special terms and conditions on a permit issued under this Chapter as necessary to ensure that the construction, operation, and reclamation of the proposed mining operation is implemented in compliance with the law and terms of the permit and to protect the environment and public health and safety. However, terms and conditions must specify particular means of satisfying minor or easily corrected problems, relating to compliance with this Chapter and with the applicable law, and may not substitute for or reduce the burden of proof on the Applicant to affirmatively demonstrate to the Department that each of the applicable standards has been met.

**13. Duration of Permit**

- A. If construction and/or operation commences within 4 years after the effective date of a mining permit, a permit granted pursuant to this Chapter continues in effect as long as:

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- (1) The Commissioner or a court has not issued an order terminating or revoking the permit pursuant to section 32 of this Chapter, 38 M.R.S. §342(11-B), and the *Maine Administrative Procedure Act*, 5 M.R.S. §10051(1); or
  - (2) There is a Department approved suspension of mining operations as provided in section 29 of this Chapter.
- B. All other permits associated with the mining activities and mine waste site expire in accordance with their terms and conditions.
- C. The Department shall conduct annual reviews of the mining operations and assess compliance with the permit terms. If the Department determines at any time that the Permittee is in noncompliance with the Act, rules, permit, or order, and determines that the violation is causing an imminent and substantial endangerment, the Commissioner may issue an order requiring that the Permittee cease mining for metallic metals, and cease the removal of metallic metals from the site until the compliance issues are corrected to the Department's satisfaction. In addition to requiring the correction of the violations, the Department may pursue enforcement action including the termination or revocation of the permit.

**14. Termination of Permit**

**A. Requirements**

- (1) After public notice the Department may terminate or request surrender of a mining permit if the Permittee has not conducted mining activities covered by the mining permit within 4 years after the effective date of the mining permit.
  - (2) The Permittee may file a written request with the Department for approval of an extension of time to conduct mining activities covered by the mining permit prior to Department ordered termination or surrender of a mining permit. The request must set forth:
    - (a) The reasons for the delay in the construction of mining facilities or commencement of mining activities;
    - (b) The date of anticipated construction of mining facilities or commencement of mining activities; and
    - (c) The factors that will influence the decision for construction of mining facilities or commencement of mining activities.
- B. The Department may approve an extension of time to commence construction of mining facilities or conduct mining activities covered by the mining permit if the Permittee demonstrates that the mining operations are expected to commence within a reasonable period of time as determined by the Department.
- C. The Department may terminate or request surrender of a mining permit if the following conditions have been achieved:
- (1) The Permittee has requested termination of the mining permit and has demonstrated that:
    - (a) The requirements of the mine plans have been satisfied;

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- (b) Final reclamation of the mining areas and, as necessary, the affected areas have been completed, including post-closure monitoring; and
  - (c) The mine is in compliance with all requirements of the permit, this Chapter, and the Act; and
- (2) The Department has:
- (a) Determined that the documentation provided by the Permittee is complete and adequate to make a determination that the conditions required to terminate a mining permit have been achieved;
  - (b) Completed a field inspection of the mine and determined that:
    - (i) The Permittee has complied with all requirements of the permit, applicable rules, and the Act;
    - (ii) Air, water, or other natural resources are not contaminated or impaired from the mining operation;
    - (iii) The Permittee has fulfilled all conditions determined to be necessary by the Department to protect the public health, safety and welfare, and the environment; and
    - (iv) Requirements for the post-closure monitoring period have been satisfied; and
  - (c) Completed public notice requirements pursuant to 38 M.R.S. §490-PP(4).

**15. Transfer of Permit.** No permit issued pursuant to the Act and these rules may be transferred without prior written approval of the Department. Prior to the transfer of a mining permit to another person, the acquiring person, the Transferee, shall submit to the Department a request for the transfer of the mining permit.

- A. A Transferee shall submit to the Department a request for the transfer of the mining permit on a form provided by the Department.
- B. A Transferee shall provide the following to the Department as part of the request:
  - (1) Evidence of title, right, or interest in all of the property that is proposed for development or use;
  - (2) An update to the contingency plan;
  - (3) A demonstration of financial capacity and technical ability;
  - (4) A summary of the Transferee's and its responsible officers' and related corporations' record of compliance with environmental and land use laws and financial requirements of Maine and other jurisdictions, as follows:

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- (a) Criminal Convictions. A listing and explanation of any criminal convictions of the State, other states, the United States, or another country of the persons required to disclose under this section;
- (b) Civil Violations. A listing and explanation of any adjudicated civil violations of environmental laws or rules administered by the State, other states, the United States, or another country by any of the persons required to disclose under this section in the 10 years immediately preceding the filing of the application;
- (c) Consent Decrees and Administrative Orders or Agreements. A listing and explanation of administrative agreements or consent decrees entered into by, or administrative orders directed at, any of the persons required to disclose under this section for violations of environmental laws administered by the Department, the State, other states, the United States or another country in the 10 years immediately preceding the filing of the application; and
- (d) Other Proceedings. A listing and explanation of any ongoing court proceeding, administrative consent agreement negotiation, or similar ongoing administrative enforcement action not already provided in which the Applicant or any of the persons required to disclose under this section is a party and which concerns environmental laws administered by the Department or the State.

The Department may require the Applicant to update the list set forth in this subsection subsequent to the filing of the request to transfer a mining permit;

- (5) An update to the financial assurance plan;
  - (6) Documentation stipulating acceptance of all aspects of the mining permit and a commitment to adhere to the requirements of this Chapter and the Act;
  - (7) Any proposed changes to the mining operation plan or the mine plan ;
  - (8) Transfer fee; and
  - (9) The Transferee shall complete the public notice requirements specified in subsection 10(E) of this Chapter.
- C. The Department shall hold a public meeting pursuant to 06-096 C.M.R. ch. 2 for all mining permit transfers.
- D. The Department shall inspect the mining operation and determine whether the existing Permittee is in compliance with the mining permit, this Chapter, and the Act. If a Permittee is determined by the Department to be in violation of the mining permit, this Chapter, or the Act, the mining permit of the mine subject to the transfer may not be transferred until the Permittee has completed the necessary corrective actions or the person acquiring the mining permit has agreed in a legally enforceable document to correct the violation pursuant to a compliance schedule approved by the Department.
- E. The Department may not transfer a mining permit if the Transferee or any person in a position to control the operations of the Transferee has documented violation(s) of state or federal land use or environmental laws, or documented violations of land use or environmental laws of a foreign

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country, demonstrating that the Transferee would not be capable of complying with the terms and conditions of a mining permit. A Transferee may present evidence of changed conditions or circumstances demonstrating the current ability to comply with all permit terms and conditions notwithstanding any prior violations. If that evidence is sufficient to warrant a finding by the Department that the Transferee is capable of compliance, the Department may transfer the permit.

F. A permit transfer is not effective until:

- (1) The Department is satisfied that the Transferee has provided evidence of the financial assurance required by the mining permit, this Chapter, and the Act;
- (2) All other applicable permits and authorizations have been transferred to the acquiring Permittee; and
- (3) A Transferee has demonstrated to the Department's satisfaction the intent to:
  - (a) Comply with all terms and conditions of the mining permit, this Chapter, and the Act; and
  - (b) Satisfy all applicable statutory and regulatory criteria.

G. A Permittee may not convey authority to operate a mine to another person until a mining permit is granted to the Transferee by the Department.

**16. Amendment of Permit.** A mining permit may be amended in accordance with the requirements of this section to address changes in the mining operation, natural or human-made conditions, technology, deficiencies in the reasonable protection of the environment, natural resources or public health and safety, or to correct an oversight.

**A. Requirements**

- (1) A Permittee may submit to the Department a request to amend a mining permit to address anticipated changes in the mining operation.
- (2) The Department may require the Permittee to submit a request to amend a mining permit if the Department determines that the terms and conditions of the mining permit are not providing reasonable protection of the environment, natural resources or public health and safety.
- (3) The Permittee shall provide revisions of any of the following that are, or reasonably could be, affected by the proposed amendment:
  - (a) Environmental impact assessment;
  - (b) Mine plan;
  - (c) Contingency plan;
  - (d) Mining operation plan;
  - (e) Financial assurance provisions;

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- (f) Other applicable federal, state, and local permits and licenses that are anticipated to be required; and
  - (g) Other terms and conditions of the mining permit.
- (4) The Permittee shall pay all costs incurred by the Department in processing an application.
- (5) The Permittee shall comply with the public notice requirement specified in 38 M.R.S. §490-00(6)(B).
- B. Within 15 working days after receiving a request to amend a mining permit, the Department shall determine whether the request constitutes a significant change from conditions of the approved mining permit, and whether the submitted documentation is administratively complete.
- C. In the event that the Department determines that an amendment is a minor revision, the Department shall consider the request for amendment automatically approved within 60 working days of an administratively complete submittal, unless the Department requests additional information or the application is denied.
- D. In the event that the Department determines that an amendment is not a minor revision, the Applicant shall submit an application for permit amendment, including any applicable fees. Applications for permit amendment will be processed in accordance with *Rules Concerning the Processing of Applications*, 06-096 C.M.R. ch. 2. In addition, the Department may require any additional application requirements specified section 9 of this Chapter. The Applicant will not be required to submit any information which duplicates applicable previous submittals. The Applicant shall clearly describe where the information not included in the amendment application, but necessary to render the amendment technically adequate, may be found in the original application and supporting documents.

**Subchapter 4: FINANCIAL ASSURANCE AND INSURANCE**

**17. Financial Assurance and Insurance Requirements**

- A. **Requirements.** Financial assurance and insurance is required for all advanced exploration and mining activities and must be posted and fully funded prior to the issuance of a mining permit.
- (1) The Permittee shall continuously maintain financial assurance, as a condition of the mining permit, until the Department determines that all reclamation, closure, post-closure maintenance and monitoring, and corrective actions have been completed.
  - (2) The Permittee shall be required to maintain financial assurance for as long as the Department determines that the mining operation and any associated waste material could create an unreasonable threat to public health and safety or the environment.
  - (3) Financial assurance must be available and made payable to the Department when requested by the Department.
  - (4) Financial assurance may not be canceled by the Permittee unless it is replaced by alternative mechanisms in the appropriate amount and with the express written consent of the Commissioner after 30 days public notice in a paper of statewide coverage.

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- (5) Financial assurance must be fully valid, binding, and enforceable under state and federal law.
- (6) All financial assurances obtained under this Chapter must be in a form such that it would not be subject to discharge under any and all provisions of the *Bankruptcy Reform Act of 1978*, as amended by the *Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, Pub. L. No. 109-8, 119 Stat. 23, 11 U.S.C. §101 *et seq.* (as may be further amended from time to time) (the “United States Bankruptcy Code”) and must be in a form such that it will not be considered property of the bankruptcy estate under any and all provisions of the United States Bankruptcy Code in the event that a bankruptcy petition is filed by or against the Permittee.
- (7) All forms of financial assurance and terms and conditions of financial assurances must be approved by the Department and must be analyzed by individuals with documented experience in material handling and construction, mining costs, and financial analysis. If the Department does not have adequate in-house expertise, the Department shall hire third-parties with documented experience in material handling and construction, mining costs, risk analysis, and financial analysis to analyze and evaluate the proposed terms and conditions of financial assurance required for the Applicant or Permittee. The individuals and company hired to perform this function shall have no conflict of interest with the applicant, related persons, applicant’s consultants, attorneys or any of their employees. All costs of the third-party evaluation must be paid by the Applicant pursuant to 38 M.R.S. §352(4-A).
- (8) Failure of financial providers. The financial assurance shall provide a mechanism for a bank or guarantor to give prompt notice by certified mail to the Department and the Permittee of any administrative or judicial action filed or initiated alleging the insolvency or bankruptcy of the bank or the Permittee, or alleging any violations which could result in suspension or revocation of the bank charter or license to do business.
- (9) Upon incapacity of a bank or guarantor by reason of bankruptcy, insolvency, suspension or revocation of charter or license for any other reason, the Permittee shall be deemed to be without financial assurance coverage and shall cease mining and immediately begin to conduct reclamation, closure, post-closure maintenance and monitoring, and corrective actions measures in accordance with the mine plan. The Department may, for good cause shown, grant up to two 30-day extensions prior to the initiation of reclamation and closeout measures. Mining operations shall not resume until the Department has determined that an acceptable replacement financial assurance has been provided.
- (10) Advance notice
  - (a) The Permittee shall notify the Department within 30 days thereof if its and/or its parent company’s credit rating falls below investment grade as determined by Moody’s Investor Services, Standard & Poor, or other comparable ratings service.
  - (b) If the Permittee’s and/or its parent company’s credit rating falls below investment grade, within 30 days of such determination the Permittee shall secure an irrevocable standby letter of credit in an amount and form approved by the Commissioner.
  - (c) The Permittee shall notify the Department of the availability on line of quarterly financial statements (filed by it and/or its parent company) within 30 days of when such statements are filed with the United States Securities and Exchange Commission (SEC). If quarterly financial statements become unavailable on line, the Permittee shall submit these

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statements in writing to the Department within 30 days of when such statements are filed with the SEC.

**B. Coverage of Financial Assurance**

- (1) Financial assurance under this section applies to mining, including advanced exploration, and reclamation operations that are subject to a mining permit. The amount of financial assurance must be sufficient to cover the cost for the Department to administer, and hire a 3rd-party to implement all necessary investigation, monitoring, closure, post-closure, treatment, remediation, corrective action, reclamation, operation and maintenance activities under the environmental protection, reclamation and closure plan, including, but not limited to:
  - (a) The cost to investigate all possible releases of contaminants at the site, monitor all aspects of the mining operation, close the mining operation in accordance with the closure plan, conduct treatment activities of all expected fluids and wastes generated by the mining operation for a minimum of 100 years, implement remedial activities for all possible releases and maintenance of structures and waste units as if these units have released contaminants to the groundwater and surface water, conduct corrective actions for potential environmental impacts to groundwater and surface water resources as identified in the environmental impact assessment and conduct all other necessary activities at the mine site in accordance with the environmental protection, reclamation and closure plan; and
  - (b) The cost to respond to a worst-case catastrophic mining event or failure, including, but not limited to, the cost of restoring, repairing and remediating any damage to public facilities or services, to private property or to the environment resulting from the event or failure.
- (2) An Applicant for a mining permit must include with its application a review of the proposed financial assurance amounts required under 38 M.R.S. §490-RR(2) and this Chapter as performed by a qualified, independent 3rd-party reviewer approved by the Department. The costs of the 3rd-party reviewer must be paid by the Applicant. Estimates of the costs of a worst-case catastrophic mining event or failure under subsection 17(B)(1)(b) provided by the applicant may not include costs to the applicant associated with the loss of use of any mining operation or facility or the costs of repairing any damaged mining operation or facility to restore operations or other functions.
- (3) The Applicant or Permittee must provide detailed documentation of the estimated cost to implement the activities in the mine plan and the provisions of subsection 9(I)(5) of this Chapter with the application for permit, in the corrective action plan, and in other submittals as follows:
  - (a) Cost estimates must be in current United States dollar value;
  - (b) No salvage value attributed to the sale of products, wastes, facility structures, equipment, land or other assets may be used for estimating purposes; and
  - (c) Cost estimates must be re-evaluated and updated at any time that the Department requires a corrective action, a change to the mining permit or changes to the cost estimates, and the financial assurance amount must be adjusted accordingly within 30 days of the filing of a new or modified corrective action plan, mine plan or when the permit or cost estimates are changed.

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- (4) The Applicant or Permittee must provide financial assurance in the amount determined by the 3rd-party reviewer under subsection 17(B)(2) to be sufficient for the Department to conduct all activities listed under subsection 17(B)(1). Financial assurance estimates provided by the Applicant and reviewed by the 3rd-party reviewer under this section must use the highest cost option for all estimates, include a minimum 20% contingency to account for unexpected expenses, assume that all activities are to be completed concurrently, and base cost estimates on the maximum permitted quantities and volumes.
- (5) The financial assurance must be updated annually and adjusted using the implicit price deflator for gross national product as published by the United States Department of Commerce, Survey of Current Business, and must be submitted to the Department on or before March 15 of each year. The financial assurance shall not be adjusted downward in the event of a negative implicit price deflator.
- (6) The financial assurance must not include funds from the Maine Mining Oversight Fund as established at 36 M.R.S. §2866.
- (7) Without limitation, changes in the financial assurance may be required due to modifications of the permit, changed financial or site conditions, technology changes, inflation, anticipated changes in mining activity and waste unit utilization, or changes in requirements for closure, post-closure maintenance, corrective action or reclamation. The Permittee shall annually report to the Department, subject to the Department's approval, an estimate of cost changes as provided in this Chapter on or before March 15. The permit remains in effect only if all required deposits or increases are made within 30 days of the due date provided in this rule. The obligation to make deposits or increases ceases only upon approval from the Department.

**C. Allowable Forms of Financial Assurance.** The financial assurance must consist of a trust fund that is secured with any of the following forms of negotiable property, or a combination thereof as approved by the Department:

- (1) A cash account in one or more federally insured accounts;
- (2) Negotiable bonds issued by the United States, a state or municipality having a Standard and Poor's credit rating of AAA or AA, or an equivalent rating from a national securities rating service; or
- (3) Negotiable certificates of deposit in one or more federally insured depositories.

The financial assurance must be in a form that cannot be canceled, withdrawn, revoked, or otherwise reduced without the express written consent of the Department.

**D. General Terms and Conditions of Financial Assurance**

- (1) Trust fund requirements. The Permittee must deposit the required financial assurance in a trust fund prior to the issuance of a mining permit. The trust fund must be fully funded with one or more of the instruments identified in subsection 17(C) above.
  - (a) The Department shall be a party to the trust agreement as beneficiary and shall have the right to withdraw and use part or all of the funds in the trust fund or to require the liquidation of the assets of the trust fund, at its sole discretion, to carry out the Act

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requirements including all associated regulations, permit, and other requirements as the Department determines necessary. The trust agreement must provide that there shall be no withdrawals from the trust fund except as authorized in writing by the Department.

- (b) The trust fund must not constitute an asset of the trustee or Permittee, and must be established in such a manner so as to ensure the funds in the account will be available to the Department and not any creditor, including in the event of bankruptcy or reorganization of the trustee or Permittee. The Permittee shall pay all costs of managing the fund and compensating the trustee.
- (c) The trustee must not invest assets of the trust fund in any real estate or real estate investment trust, any contract for the future sale or delivery of commodities or foreign currency, any state, municipal or corporate bond, or any other equity instrument or security, except that assets of the trust fund may be invested in securities issued by the United States Treasury.
- (d) The trustee shall notify the Department immediately in the event that any payment from the Permittee is not remitted by the due date.
- (e) The trustee shall submit to the Department an annual statement of deposits, letters of credit, investments, and any income and principal in the trust fund, and changes in the same over the prior year.
- (f) The financial institution serving as a trustee is subject to Department approval and is limited to the following:
  - (i) A bank or trust company chartered by the State of Maine;
  - (ii) A national bank chartered by the Office of the Comptroller of Currency; or
  - (iii) An operating subsidiary of a national bank chartered by the Office of the Comptroller of Currency.

**E. Financial Assurance Mechanisms.**

- (1) Cash accounts and Certificates of Deposits. When the Department has authorized the Applicant or Permittee to meet its financial assurance obligations through the establishment of a trust fund secured with a cash account or certificate of deposit, the following requirements apply:
  - (a) Any interest paid on a cash account must be retained in the account and applied to the account; and
  - (b) The Department shall require that certificates of deposit be made payable to or assigned to the Department, both in writing and upon the records of the bank issuing the certificates. If assigned, the Department shall require the banks issuing these certificates to waive all rights of setoff or liens against the certificates prior to the Department's acceptance.

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- (2) Negotiable bonds. The Department may authorize the Applicant or Permittee to meet its financial assurance obligations through the establishment of a trust fund secured with negotiable bonds.
  - (a) Negotiable bonds shall have a fair market value at the time of permit approval in excess of the financial assurance amount by at least 10%. The amount of such excess shall reflect changes in value anticipated over a period of 5 years, including depreciation, appreciation, marketability, and market fluctuation. In any event, the Department shall require a margin for legal fees and costs of disposition of the bonds in the event of forfeiture.
  - (b) The financial assurance value of the negotiable bonds used to secure a trust fund may be evaluated at any time by the trustee or the Department. The Permittee shall increase the assets in the trust fund as necessary. In no case shall the value attributed to the negotiable bonds exceed market value.

**F. Release of Financial Assurance**

- (1) When requesting release of financial assurance funds, the Permittee shall submit to the Department:
  - (a) An environmental evaluation of the mining operation, mining site, affected areas, waste units, reclamation, and any required corrective action to ensure that any remaining problems are identified and corrected before financial assurance funds are released;
  - (b) A detailed cost breakdown of the expended funds and the amount of money requested by the Permittee to be released from the trust fund; and
  - (c) A detailed cost breakdown of the funds needed to complete the actions contained in subsection 17(F)(1)(a) above.
- (2) At the time the financial assurance release request is filed with the Department, the Permittee shall submit proof that notice of the request has been mailed by certified mail to abutters, as determined by local tax records or other reliable means, to the municipal office of the municipality(ies) where the project is located and, if the project is located in the unorganized or deorganized areas of the State, to the appropriate county commissioners. The notice must also be published once per week for 4 successive weeks in a newspaper with statewide circulation. Copies of the published notice must be submitted with the application. The notice must include the following information:
  - (a) The Permittee's name;
  - (b) Permit number and approval date;
  - (c) The precise location of the real property affected;
  - (d) The number of acres;
  - (e) The type and amount of financial assurance;

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- (f) The type and appropriate dates of reclamation, closure, post-closure maintenance, monitoring, and corrective actions;
  - (g) A description of compliance with the Permittee's approved permit and mine plan; and
  - (h) The name and address of the Department contact, to whom written comments, objections, or requests for public hearings on the financial assurance release request may be submitted.
- (3) The Department shall provide notice of the receipt of the request for release of financial assurance to the Department of Inland Fisheries and Wildlife, Department of Agriculture, Conservation and Forestry, and other state and federal agencies deemed appropriate.
- (4) The Department shall post the public notice on the Department webpage dedicated to this permit.
- (5) Release inspection by the Department. Upon receipt of the complete request for release of financial assurance, the Department shall conduct a release inspection and evaluation of the reclamation, closure, post-closure maintenance and monitoring, and corrective actions completed at the mine site. The surface owner or lessor of the real property, other state and federal agencies as listed in this section, and any persons who have requested advance notice of the inspection shall be given notice of the release inspection and may be present at that inspection as may other members of the interested public to the extent reasonably practicable. The Department may arrange with the Permittee to allow access to the permit area, upon request, by any person with an interest in the financial assurance release, for the purpose of gathering information relevant to the proceeding. Nothing in this subsection prevents the Department from making additional inspections of the reclamation, closure, post-closure maintenance and monitoring, and corrective actions completed at the mine site
- (6) Public Hearing
- (a) The Department shall hold a public hearing on all requests for release of the financial assurance, and the Department shall inform all persons who have requested notice of hearings and persons who have filed written objections in regard to the request of the time and place of the hearing at least 30 days in advance of the public hearing. The hearing shall be held in the area of the permitted facility.
  - (b) The date, time, and location of the public hearing shall be advertised by the Department in a newspaper of statewide circulation once a week for two consecutive weeks. All persons who have submitted a written request in advance to the Department to receive notices of hearings shall be provided notice at least 30 days prior to the hearing. The hearing procedures of 06-096 C.M.R. ch. 3 will be followed.
  - (c) Within 90 days after a public hearing has been held pursuant to this section, the Department shall notify in writing the Permittee, trustee or other persons with an interest in collateral, and the persons who either filed objections in writing or participants in the hearing proceedings who supplied their contact information to the Department, if any, of the decision to release the financial assurance. The Department does not release the Permittee from any mining obligations, reclamation, closure, post-closure, or corrective action requirements or third party liability as a result of releasing any funds.

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(d) If the Department denies the release application or portion thereof, the Department shall notify the Permittee and any person with an interest in collateral, in writing, stating the reason for denial.

**G. Forfeiture of Financial Assurance to the Department.** If a Permittee refuses or is unable to conduct or complete reclamation, closure, post-closure maintenance and monitoring, and corrective actions of the mining operation, if the terms and conditions of the permit are not met, or if the Permittee fails to comply with the conditions under which the financial assurance was accepted, the Department shall take the following action to require forfeiture of all or part of the financial assurance for the mine or an increment of the mine.

(1) Send written notification by certified mail, return receipt requested, to the Permittee and the Trustee informing them of the determination to forfeit all or part of the financial assurance, including the reasons for the forfeiture, and the amount to be forfeited. The amount shall be based on the estimated total costs of completing reclamation, closure, post-closure maintenance and monitoring, and corrective actions.

(2) Upon failure to comply with the conditions under which the financial assurance was accepted, the Department may cause the forfeiture of any and all financial assurances to complete reclamation, closure, post-closure maintenance and monitoring, and corrective actions for which the financial assurance was provided. Financial assurance liability shall extend to the entire mining site under conditions of forfeiture.

**H. Insurance Requirement.** The Applicant must include, as part of its application, and the Permittee must provide annually thereafter as part of the mining and reclamation report required under subsection 26(B) of this Chapter, proof of comprehensive general liability insurance for the site for sudden and accidental occurrences. Non-sudden occurrence insurance may be required by the Department on a case by case basis and, and shall be required whenever there are land disposal units, land storage units, or mine waste units. The insurance underwriter(s) must be approved by the Department. Requirements include, but are not limited to, the following:

(1) Liability insurance coverage must be provided during operation, reclamation, corrective actions, closure, and, where mine wastes will remain on the site after closure, during the post-closure maintenance period;

(2) The level of coverage for sudden and accidental insurance must be at least \$10 million per occurrence and \$20 million annual aggregate, unless because of a greater risk, a higher minimum is required by the Department for a particular site;

(3) The level of coverage for non-sudden insurance must be at least \$6 million per occurrence and \$12 million annual aggregate, unless because of a greater risk, a higher minimum is required by the Department for a particular site;

(4) All liability insurance coverage amounts must be exclusive of legal defense costs;

(5) An Applicant/Permittee may not self-insure. If liability insurance is unavailable, an irrevocable letter of credit drawn upon a reputable bank which meets the following criteria may be utilized in lieu of liability insurance for sudden and accidental and non-sudden occurrences:

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- (a) Letters of credit must meet the terms below, and be unconditional, irrevocable, issued for a period of at least 1 year, and otherwise be in a form satisfactory to the Department.
  - (i) Any irrevocable letter of credit must be issued by a separate financial institution from the trust fund financial institution.
  - (ii) A letter of credit must be issued by:
    - (A) A bank chartered by the State of Maine;
    - (B) A national bank chartered by the Office of the Comptroller of Currency; or
    - (C) An operating subsidiary of a national bank chartered by the Office of the Comptroller of Currency; and
  - (b) When a letter of credit is used as liability insurance, the issuing financial institutions must be acceptable to the Department and the institution must have sufficient resources and assets to demonstrate that there is certainty the money will be available should the Department need to draw the funds;
  - (c) The Permittee and the letter of credit institution must be independent of one another; and
  - (d) The letter of credit must be modeled after the respective instrument language in 40 CFR 264.151 as modified to cover mining activities and meet the needs of this Chapter.
- (6) The liability insurance policy may not be written as a “claims made” policy unless approved by the Department.

**18. Failure to Maintain Financial Assurance.** A failure to provide financial assurance in accordance with this Chapter constitutes grounds for the Commissioner to order the immediate suspension of mining activities including, but not limited to, suspending the extraction of metallic product or removal of metallic product from the site.

**Subchapter 5: STANDARDS FOR ADVANCED EXPLORATION AND MINING**

**19. General Provisions**

- A. **Compliance.** A Permittee or Applicant shall comply with all applicable standards and requirements under the Act, the provisions of the mining permit, and this Chapter.
- B. **Performance-Based Standards.** To the extent feasible, standards contained in this Chapter are performance-based. To the extent that this Chapter includes standards that are not performance-based, a Permittee or Applicant may propose an alternative means of compliance that achieves equivalent performance. If the Applicant proposes a control device or measure, it must demonstrate that there is reasonable assurance that the device or measure will achieve the performance standard. The Department is not required to approve any alternative means of compliance. Control devices or measures may be reassessed at any time, and if the Department determines that the control device or measure no longer achieves the performance standard, the Department may require remedial actions, including but not limited to, the implementation of additional control devices or measures, a corrective action work plan, temporary suspension of mining activity, and the cessation of all mining activity.

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- C. **Burden.** The Permittee or Applicant shall affirmatively demonstrate that all proposed or undertaken actions, devices, or measures will meet the minimum requirements of this Chapter, the Act, and the mining permit.
- D. **Disclosure.** The Permittee or Applicant must disclose fully all relevant facts applicable to the provisions of this Chapter, the Act, and the mining permit.
- E. **Required Information.** The Permittee or Applicant must provide the information necessary to demonstrate that the methods, materials, and techniques proposed to be used are capable of accomplishing their stated objectives in protecting the environment and public health and safety. The information may consist of results of actual testing, modeling, documentation by credible independent testing and certified organizations, or documented applications in similar uses and settings.
- F. **Certification.** All submitted information must be accurate, complete, and acknowledged as such by the signature of an authorized agent of the Permittee or Applicant. Documents, plans, and reports submitted in support of applications must be signed and stamped by qualified professionals as required.
- G. **Qualified Professional.** All data collection, analyses, modeling, design, inspection, operation, monitoring, data synthesis, and documentation and reporting shall be conducted by qualified professionals.
- H. **Independent Reviewer.** The Department may retain an independent reviewer to assist in the review of documents, plans, models, designs, studies, analysis, characterizations, applications, amendments, financial assurance mechanisms, field operations, and any other submission.
- I. **Additional Information.** If required by the Department to establish that the Applicant has met the minimum requirements of the rule, Act and mining permit, the Applicant or Permittee shall provide any additional data, monitoring, testing, modeling, characterization, or additional synthesis and interpretation of submitted data, analysis, and information required by the Department.
- J. **Public Health and Safety.** The Permittee and Applicant shall make adequate provisions for the protection of public health and safety.

**20. Performance Standards**

- A. **General Requirements.** All mine operations and waste units shall be designed, constructed, operated and maintained during the development, operation, closure, and post-closure maintenance period in a manner that:
  - (1) Meets the performance requirements for groundwater, surface water, air, soils, or surficial materials established under this Chapter;
  - (2) Minimizes acid generation, metal leaching, and acid rock drainage within the mining areas;
  - (3) Provides structural stability;

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- (4) Protects public health and the environment including all applicable air and water quality standards and criteria;
- (5) Otherwise complies with applicable federal, state, county and municipal laws, regulations and ordinances; and
- (6) Eliminates the need for perpetual treatment following closure.

**B. Siting**

- (1) Mining operations involving the removal of metallic minerals, the storage of metallic minerals or mine waste, the processing of metallic minerals, or the treatment of mine waste may not be placed in or on floodplains or flood hazard areas. The Applicant must demonstrate that all development not prohibited in these areas is secure from flooding and erosion under flood height and velocity conditions equal to or greater than the 500-year flood.
- (2) Buffers. Mining operations shall be designed, constructed, and monitored so that the operation is compatible with surrounding non-mining uses.
  - (a) Existing terrain and vegetation or vegetated berms must be used to diminish impacts of mining activities.
  - (b) Buffers must be marked or otherwise established in any area of the site where their construction is determined by the Department to be necessary to mitigate sound or visual impact, provide water quality treatment or for any other purpose before beginning operations.
  - (c) Mine waste units and beneficiation facilities must be set back a minimum of 1,000 feet from a property boundary of lands not owned or controlled by the Permittee or a public or private drinking water supply. Mine waste units and beneficiation facilities may not be located in the wellhead protection areas or source water protection areas of public water supplies.
  - (d) The limit of excavation must be set back a minimum of 1,000 feet from a public water system and 300 feet from a private water system and a property boundary of lands not owned or controlled by the Permittee. Upon receipt of written permission from the abutting property owners and all owners of property whose wells are located within 300 feet of the limit of excavation, the 300-foot setback may be reduced to 100 feet.
  - (e) All activities, other than mine waste units and beneficiation facilities and the limit of excavation, must be set back a minimum of 300 feet from a property boundary of lands not owned or controlled by the Permittee, a public or private drinking water system, or a public road. Upon receipt of written permission from the abutting property owner, the 300-foot property boundary setback may be reduced to 100 feet.
  - (f) The minimum setback requirements described above apply to any mining project; however, the Department may require a greater setback if submission materials or other information demonstrate an increased setback or buffer is necessary to protect the environment and public health and safety.

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- (3) The removal of metallic minerals in, on or from a river, stream or brook, as defined in 38 M.R.S. §480-B(9); a great pond, as defined in 38 M.R.S. §480-B(5); a freshwater wetland, as defined in 38 M.R.S. §480-B(4); or a coastal wetland, as defined in 38 M.R.S. §480-B(2) is prohibited, except that gold panning and recreational motorized gold prospecting are permitted pursuant to 38 M.R.S. §§ 480-Q(5) and 480-Q(5-A) and are exempt from the requirements of this Chapter.
- (4) Surface 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 or on the following:
  - (a) National and state parks;
  - (b) National wilderness areas;
  - (c) National wildlife refuges;
  - (d) The Allagash Wilderness Waterway;
  - (e) State-owned wildlife management areas pursuant to 12 M.R.S. §10109(1);
  - (f) State or national historic sites;
  - (g) Any river designated pursuant to the federal *Endangered Species Act* as critical habitat for Atlantic salmon;
  - (h) One of the 66 great ponds located in the State's organized area identified as having outstanding or significant scenic quality in the "Maine's Finest Lakes" study published by the Executive Department, State Planning Office in October 1989; and
  - (i) One of the 280 great ponds in the State's unorganized or de-organized areas designated as outstanding or significant from a scenic perspective in the "Maine Wildlands Lakes Assessment" published by the Maine Land Use Regulation Commission in June 1987.

The Department may require a greater setback if submission materials or other information demonstrate an increased setback is necessary to protect the environment and public health and safety.

- (5) No part of the mining operation may be located wholly or partially in, on or under any state land listed in 12 M.R.S. §549-B(7)(C-1).
- (6) The mining operation may not involve placement of a mine shaft in, on or under a significant river segment, as identified in 38 M.R.S. §437; an outstanding river segment, as identified in 38 M.R.S. §480-P; an outstanding river, as identified in 12 M.R.S. §403; a high or moderate value waterfowl and wading bird habitat that is a significant wildlife habitat pursuant to 38 M.R.S. §480-B(10)(B)(2); a great pond, as defined in 38 M.R.S. §480-B(5); or a coastal wetland, as defined in 38 M.R.S. §480-B(2).

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C. **Erosion, Stormwater, and Dust Management.** All affected areas and mining areas of the site must be designed, constructed, and operated so as to:

- (1) Effectively control erosion. The mining activity shall not cause or contribute to unreasonable erosion of soil or sediment, nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment. The erosion and sedimentation control practices must:

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NOTE: For guidance on erosion and sedimentation control practices, consult with the *Maine Erosion and Sediment Control Best Management Practices (BMPs)*.

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- (a) Maintain the stability of the site including, but not limited to, preventing unacceptable settling, subsidence, voids, caving, or slope failures. All excavated and reclaimed areas must be designed, constructed and stabilized to:
    - (i) Withstand natural geologic processes and climatic conditions without failure that would be a threat to public safety and the environment;
    - (ii) Minimize post-reclamation visual contrasts between reclamation lands and adjacent lands appropriate for the final land use specified in the reclamation plan; and
    - (iii) Either exclude humans and wildlife, or provide safe ingress and egress at selected locations, from any temporary or permanent water bodies resulting from the mining activities.
  - (b) Place overburden and other materials approved by the Department in a manner that promotes vegetation establishment.
  - (c) Stockpile and stabilize all topsoil until it can be used for reclamation.
- (2) Effectively manage stormwater. Stormwater management practices must meet the standards of 06-096 C.M.R. ch. 500.
  - (3) Effectively manage dust. Dust generated by mining operations, including dust associated with traffic to and from the mining areas and affected area, must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions. Visible emissions from a fugitive emission source may not exceed an opacity of 20% for more than 5 minutes in any one-hour period.
- D. **Underground Mine Openings.** The Applicant and Permittee shall design, construct, operate and maintain underground mine openings to prevent unauthorized entry and, to the extent feasible and practicable, to minimize the risk of unacceptable settling, subsidence, voids, or caving.
- E. **Reactive Mine Waste Characterization.** All designated chemical materials potentially encountered, used or generated during metallic mineral mining or advanced exploration must be analyzed and characterized as follows:
- (1) Testing. Mine waste and designated chemical materials characterization and analysis must identify the characteristics of the mine wastes. This analysis must evaluate the quantities, variability, physical and chemical properties of mine waste necessary for predicting the potential environmental impacts of mine waste handling, storage, treatment, and disposal, and

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for determining specific treatment, disposal, and storage design. This evaluation must be conducted prior to the issuance of a permit and thereafter as determined by the Department and must include, but not be limited to, evaluation of the following:

- (a) Changes in the character of the mine waste and designated chemical materials managed at the site; and
  - (b) Changes in the design, operation, or management at the site which may potentially alter the characterization or the stability or other characteristics of tailings and other mine waste.
- (2) Mine Waste Evaluation. Testing must be performed on representative samples of individual mine waste from the extraction and beneficiation process and of composite mine waste or other materials where mixed storage or disposal of individual mining waste is proposed. The major components of mine waste characterization and analysis must include, but are not limited to, the following:
- (a) Identification of all mine waste which will be disposed of, stored or handled at the site, or removed from the site including classification of waste types, estimation of the generation rates and volumes of each type, and an explanation of the ultimate disposition of each type;
  - (b) Chemical, petrological, and mineralogic analyses of the mine wastes;
  - (c) Description of expected particle size distributions of waste rock and analysis of particle size distribution of mill tailings;
  - (d) Determination of the potential for metal leaching and acid rock drainage for mine waste (waste rock, tailings, and mine walls). At a minimum, the characterization must consider the short- and long-term acid generating characteristics of the mine waste, considering the acid generating content of the materials, the particle size and particle form of the acid generating material, and the spatial distribution of its particles, the neutralizing effect of host materials and the effects of weathering, erosion, and sedimentation; and
  - (e) Determination of the leaching potential of the mine wastes and determination of the composition of the resulting leachate.
- (3) Mine Waste Characterization. The Applicant shall describe in detail its proposed mine waste characterization work plan including, but not limited to, the methods of obtaining samples of mine waste, sample size, sample preparation, sample shipment, testing schedule, and frequency and chain-of-custody methods employed in evaluating the mine waste characteristics, and must provide justification for the use of such methods. The metal leaching and acid generating potential for mine waste must be determined by a static test method and confirmed by a kinetic test method. The Applicant shall submit its mine waste characterization work plan to the Department for review and approval.

- F. **Mine Waste Classification.** Based on the mine waste characterization required above, the Applicant shall propose, subject to the approval of the Department, classification of each mine waste as a Group A, Group B, or Group C waste according to the following criteria:

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- (1) The mine waste has an acid-generating potential or exhibits a characteristic of hazardous waste as defined in 06-096 C.M.R. ch. 850. Such waste must be classified as Group A wastes.

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NOTE: Group A wastes may include, but are not limited to, waste rock, tailings, and leachate derived from those wastes.

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- (2) The mine waste has no acid-generating potential and may release soluble pollutants at concentrations which exceed performance requirements for groundwater or surface water. Such waste must be classified as Group B waste.
- (3) The mine waste does not have the potential to violate water quality standards other than sedimentation or turbidity. Such waste must be classified as Group C waste.

**G. Reactive Mine Waste and Designated Chemical Materials Management Systems**

- (1) Reactive mine waste and designated chemical materials management systems must provide for containment, unless the material has been neutralized or stabilized and will not cause a direct or indirect discharge of pollutants that could reasonably result in a condition of nonattainment of water quality standards or noncompliance with the performance standards of this Chapter. Mining operations must use dry stack tailings management for the management of mine waste and tailings, except that the mining operation may involve the placement into a mine shaft of waste rock that is neutralized or otherwise treated to prevent contamination of groundwater or surface water. Reactive mine waste and designated chemical materials management systems must be designed and operated to prevent the contamination of groundwater and surface water or generate acid rock drainage above the primary drinking water standards adopted pursuant to 22 M.R.S. §2611, applicable water quality-based license conditions established pursuant to 38 M.R.S. §413 and §§ 464, 465-C, and 470 or groundwater quality baseline conditions.
- (2) Reactive mine waste and designated chemical materials management systems must provide for the collection, treatment and disposal of any water containing mining activity contamination derived from reactive mine waste, designated chemical materials, or combinations of reactive mine waste and designated chemical materials with a reasonable potential of migrating beyond designated containment areas in compliance with the Act, this Chapter and the mining permit as well as other applicable state and federal standards. The collection, treatment and disposal methods must be designed to ensure that discharges to affected areas must meet water quality standards without requiring treatment as soon as practicable, but in no case greater than 10 years post-closure. The Permittee must design mine waste units capable of operating without such treatment after that time.

**H. Containment Structures**

- (1) Containment structures include waste containments, dry stack tailings management structures, water impoundments, and other on-site constructed tanks and containments.
- (2) Waste rock, dry stack tailings management structures, and waste containments must be designed based on the results of the waste classification determined through the Reactive Mine Waste requirements of this Chapter. Liner and leachate collection systems must meet the minimum design standards contained in section 21 of this Chapter.

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- (3) Containment structures must be designed, constructed, and maintained to prevent embankment overtopping, with adequate freeboard, during the Probable Maximum Flood (PMF) precipitation and snowmelt event considering maximum wind and fetch.
- (4) Containment structures must be designed and constructed to be structurally stable. The stability assessment must include analysis of potential failure planes which pass through or along: the foundation soils, the waste mass, and/or liner system components for both static and seismic conditions. The stability assessment must be supported by corroborative field and laboratory data that defines the site geology and hydrogeology, the geotechnical characteristics, the waste mass characteristics, and the geosynthetic characteristics, as applicable. If approved by the Department, projected strength gain of the foundation soils may be incorporated into the analysis provided monitoring adequate to verify the projected strength gain is proposed. Stability assessments must meet the following requirements.
  - (a) Containment structures built with an earthen component must have minimum static factors of safety of 1.30 during construction and operations and 1.50 following closure. The Department may require higher factors of safety based on the risks and consequences of failure.
  - (b) Containment structures built with an earthen component must meet the following seismic stability requirements:
    - (i) The minimum factor of safety must be 1.10 when designed to withstand the peak ground acceleration having a 10% probability of exceedance in 50 years (a 475-year return period) during construction and operations. The Department may require higher factors of safety based on the risks and consequences of failure;
    - (ii) The minimum factor of safety must be 1.00 when designed to withstand the peak ground acceleration having a 2% probability of exceedance in 50 years (a 2475-year return period) following closure. The Department may require higher factors of safety based on the risks and consequences of failure;
    - (iii) The peak ground accelerations must be determined from the National Seismic Hazard Maps published by the United States Geological Survey or a site specific seismic shaking hazard assessment and must be amplified as appropriate considering the properties of the soils underlying the containment structure, the engineered systems, and/or the waste mass; and
    - (iv) Unless otherwise approved by the Department, the seismic stability assessment must include an evaluation of permanent deformation, an evaluation of waste and soil strength loss due to cyclic loading, an evaluation of post-cyclic stability, and an evaluation of liquefaction potential.
- (6) Containment structures must contain adequate slope protection to prevent erosion.
- (6) Containment structures must be operated to place a cover over reactive mine materials as soon as practicable to isolate the reactive mine materials from precipitation and air.
- (7) Containment structures must be operated in a manner that provides for segregation of designated chemical and reactive mine materials, metallic mineral product, ore, tailings, lean

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ore, waste rock, surface overburden, and topsoil, as applicable, unless these materials are placed together for a beneficial purpose as described in the mine plan.

- (8) Containment structures must be designed, constructed, and maintained to promote contemporaneous reclamation.

**I. Storage Piles.** The Applicant and Permittee shall design, construct, operate, and maintain storage piles:

- (1) Such that the function and stability of the piles are suitable to their purpose and they do not represent a substantial threat to the environment and public health and safety;
- (2) In a manner that promotes contemporaneous reclamation;
- (3) Such that runoff water is removed by drainage control structures and receives treatment appropriate to the nature and volume of the water and the nature of the material stockpiled; and
- (4) Such that each storage pile is constructed, operated, and monitored according to standard operating procedures consistent with this Chapter and these practices are documented with detailed designs, schedules, and monitoring and operating procedures approved by the Department.

**J. Water Quality and Water Management Systems.** The Applicant and Permittee shall design, construct, operate, and maintain all mining operations and related activities:

- (1) So as to minimize disturbances to the prevailing hydrologic balance of the affected areas to the extent practicable and feasible;
- (2) In a manner that does not cause or increase the potential for injury to life or damage to property or natural resources due to hydrologic changes compared to baseline conditions;
- (3) In a manner that mining activity withdrawals of groundwater or surface water will not adversely affect existing uses or natural resources and that comply with the *Natural Resources Protection Act*, 38 M.R.S. §480-A *et seq.* and the Water Classification Program, 38 M.R.S. §§ 464-470;
- (4) Such that pollutants attributable to mining activities do not cause or contribute to non-attainment of applicable water quality criteria in surface water resources and comply with the terms and conditions of applicable waste discharge licenses issued pursuant to 38 M.R.S. §413;
- (5) Such that pollutants attributable to the mining operation do not contaminate groundwater resources of the affected areas. Notwithstanding 38 M.R.S. §§ 465-C and 470, contamination of groundwater from activities permitted under this Chapter may occur within a mining area, but such contamination must be limited and may not result in:
  - (a) Contamination of groundwater beyond the mining area;
  - (b) Contamination of groundwater within the mining area that exceeds applicable water quality criteria for pollutants other than pH or metals;

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- (c) Contamination of groundwater within the mining area due to pH or metals that exceeds limits set forth in the mining permit by the Department based on site-specific geologic and hydrologic characteristics;
- (d) Any violation of surface water quality standards under 38 M.R.S. §413 or Title 38 Chapter 3, Subchapter 1, Article 4-A (Water Classification Program); or
- (e) If groundwater or surface water quality within the mining area prior to the commencement of any mining activity exceeds applicable water quality standards, further degradation of such groundwater or surface water quality.

In determining compliance with this standard, the Department shall require groundwater monitoring consistent with the standards established pursuant to 38 M.R.S. §490-OO(3) and section 22 of this Chapter.

Notwithstanding subsection 2(NNN) of this Chapter, for the purposes of this subsection “mining area” means an area of land, approved by the Department and set forth in the mining permit, not to exceed 100 feet in any direction from a mine shaft, surface pit or surface excavation, and does not include the following lands, regardless of the distance of such land from a mine shaft, surface pit or surface excavation: the land on which material from mining is stored or deposited; the land on which beneficiating or treatment facilities are located; the land on which groundwater and surface water management systems are located or the land on which water reservoirs used in a mining operation are located;

- (6) Such that surface water and stormwater from the mining areas and affected areas are managed consistently with subsections 20(C), 20(G), and 20(H), above; and
- (7) Such that run-on/runoff control systems include:
  - (a) A run-on control system to prevent or control surface water flow onto the mine waste unit during the peak discharge from at least a 24-hour, 500-year storm;
  - (b) A runoff control system to collect, control and treat surface water from the mine waste unit of at least the water volume resulting from a 24-hour, 500-year storm; and
  - (c) Surface impoundments associated with waste units, if any, that are designed, constructed, maintained, and operated to prevent overtopping as a result of a 24-hour, 500-year storm event. An emergency overflow spillway shall be provided for storm events equivalent to the 24-hour, 500-year storm.

**K. Blasting.** The Applicant and Permittee must ensure that the blasting is conducted in accordance with applicable standards of the State Fire Marshal’s Office.

- (1) The Permittee shall use sufficient stemming, matting or natural protective cover to prevent flyrock from leaving property owned or under control of the Permittee or from entering protected natural resources or natural buffer strips. Crushed rock or other suitable material must be used for stemming when available. Native gravel, drill cuttings, or other material may be used for stemming only if no other suitable material is available.

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- (2) The maximum allowable airblast at any inhabited building not owned or controlled by the Permittee may not exceed 129 decibels peak when measured by an instrument having a flat response (+ or - 3 decibels) over the range of 5 to 200 hertz.
- (3) Monitoring of airblast levels is required in all cases for which a preblast survey is required by paragraph 4. The Department may waive the monitoring requirement if the Permittee secures the permission of affected property owners to increase allowable airblast levels on their property and the Department determines that no protected natural resource will be adversely affected by the increased airblast levels.
- (4) A preblast survey is required for all blasting and must extend a minimum radius of 1/2 mile from the blast site. The preblast survey must document any preexisting damage to structures and buildings and any other physical features within the survey radius that could reasonably be affected by blasting. Assessment of features such as pipes, cables, transmission lines and wells and other water supply systems must be limited to surface conditions and other readily available data, such as well yield and water quality. The preblast survey must be conducted prior to the initiation of blasting at the operation. The Permittee shall retain a copy of all preblast surveys for at least one year from the date of the last blast on each mining area, as applicable.
- (5) Blasting may not occur in the period between sundown and sunrise the following day or in the period between 7:00 p.m. and 7:00 a.m., whichever is greater. Routine production blasting is not allowed in the daytime on Sunday. Detonation of misfires may occur outside of these times but must be reported to the Department within 5 business days of the misfire detonation. Blasting may not occur more frequently than 4 times per day. Underground production blasting may be exempted from these requirements provided that a waiver is granted by the Department.
- (6) Sound from blasting may not exceed the following limits at any protected location:

Number of Blasts Per Day	Sound Level Limit
1	129 decibels
2	126 decibels
3	124 decibels
4	123 decibels

- (7) The Permittee shall monitor blasting for peak particle velocity using a seismograph capable of measuring three mutually perpendicular peak particle velocities. Seismic measurements shall be conducted adjacent to structures located on lands not owned or controlled by the Permittee, or other locations as determined by the Department. The maximum peak particle velocity at inhabitable structures not owned or controlled by the Permittee may not exceed the levels published by the United States Department of the Interior in "Bureau of Mines Report of Investigations 8507," Appendix B, Figure B-1, dated 1980.
  - (a) The Department may grant a variance to allow ground vibration levels greater than 2 inches per second on undeveloped property not owned or controlled by the Applicant

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if the Department determines that no protected natural resource, unusual natural area or historic site will be adversely affected by the increased ground vibration levels. If inhabitable structures are constructed on the property after approval of the development and prior to completion of blasting, the developer immediately must notify the Department and modify blasting procedures to remain in compliance with the standards of this subsection.

- (b) The Permittee may apply for a variance of the ground vibration monitoring requirement prior to conducting blasting if the Permittee agrees to design all blasts so that the weight of explosives per 8 millisecond or greater delay does not exceed that determined by the equation  $W=(D/Ds)^2$ , where W is the maximum allowable weight of explosives per delay of 8 milliseconds or greater, D is the shortest distance between any area to be blasted and any inhabitable structure not owned or controlled by the developer and Ds equals 70 ft./lb.<sup>1/2</sup>. As a condition of the variance, the Department may require submission of records certified as accurate by the blaster and may require the Permittee to document compliance with the conditions of this paragraph.
  - (c) Based upon an approved engineering study, the Department may grant a variance to allow higher vibration levels for certain buildings and infrastructure. In reviewing a variance application, the Department shall take into account that the standards in this subsection are designed to protect conventional low-rise structures such as churches, homes, and schools. In cases of practical difficulty, the Department may grant a variance from the ground-vibration standard, with written approval of the property owner, if it can be demonstrated that no adverse impacts on existing infrastructure or protected natural resources, unusual natural areas or historic sites will result, and that no practical alternative to exceeding the ground-vibration standard exists.
- (8) A record of each blast, including seismographic data, must be kept for at least one year from the date of the last blast, and must be available for inspection at the mining site or at the offices of the owner or operator if the mine has been closed, completed or abandoned before the one-year limit has passed. The record must contain at a minimum the following data:
- (a) Name of blasting company or blasting contractor;
  - (b) Location, date, and time of blast;
  - (c) Type of material blasted;
  - (d) Number and spacing of holes and depth of burden or stemming;
  - (e) Diameter and depth of holes;
  - (f) Type of explosives used;
  - (g) Total amount of explosives used;
  - (h) Maximum amount of explosives used per delay period of 8 milliseconds or greater;
  - (i) Maximum number of holes per delay period of 8 milliseconds or greater;
  - (j) Method of firing and type of circuit;

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- (k) Direction and distance in feet to the nearest dwelling, public building, school, church, or commercial or institutional building neither owned nor controlled by the Permittee;
  - (l) Weather conditions, including factors such as wind direction and cloud cover;
  - (m) Height or length of stemming;
  - (n) Amount of mats or other protection used;
  - (o) Type of detonators used and delay periods used;
  - (p) The exact location of each seismograph and the distance of each seismograph from the blast;
  - (q) Seismographic readings;
  - (r) Name and signature of the person operating each seismograph; and
  - (s) Names of the person and the firm analyzing the seismographic data.
- (9) All field seismographs must record the full analog wave form of each of the 3 mutually perpendicular components of motion in terms of particle velocity. All seismographs must be capable of sensor check and must be calibrated according to the manufacturer's recommendations.
- (10) Prior to blasting, the Permittee shall develop and implement a plan that provides an opportunity for prior notification of a planned blast for all persons located within 1,000 feet of the blast site. Notification may be by telephone, in writing, by public notice in a newspaper of general circulation in the area affected or by other means identified in the plan. The plan must be in writing and available for inspection by the Department. This plan must include descriptions of audible warnings prior to blasting and other blast safety and notification measures as may be required by other authorities.

**L. Air Quality Standards**

- (1) Ambient air quality standards. Mining operations shall not discharge air contaminants into the ambient air in such a manner as to violate the Maine ambient air quality standards or emission standards established pursuant to 38 M.R.S. §§ 585, 585-B or 585-K. Mining operations must be designed, constructed and operated in a manner that prevents adverse impacts on air quality, considering:
- (a) The volume and physical and chemical characteristics of potential sources of air emissions at the site, including their potential for volatilization and wind dispersal;
  - (b) The existing air quality, including other sources of air emissions and their cumulative impact on the air;
  - (c) The potential damage to the environment and public health and safety caused by air emissions from the site; and

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- (d) The persistence and permanence of the potential adverse effects to the environment and public health and safety.
- (2) Fugitive emissions. Best management practices and control technology shall be required to control fugitive emissions and other contamination into or upon any land. Where fugitive emissions are anticipated, the Applicant must submit a best management practices plan for control of fugitive emissions indicating the methods the applicant intends to use to minimize fugitive emissions resulting from the mining operation such that emissions and air quality standards are not exceeded. If the Department determines that emissions released from, or as a result of, the mining operation create a risk to the environment or public health and safety, a numeric performance requirement may be established for those emissions. Such risk shall be determined based on impacts including, but not limited to, direct contact, bioaccumulation in plants and animals, and foodchain concentration that may occur on or off-site.
- M. **Noise.** The Applicant and Permittee shall design, construct, operate and maintain the mining operation so as to prevent an unreasonable noise impact, and must meet the standards established by 06-096 C.M.R. ch. 375, §10.
- N. **Preservation of Historic Sites.** The Department may not issue a mining permit for a proposed mining operation that will have an adverse impact on the preservation of historic sites.
  - (1) Scope of Review. In determining whether a proposed mining operation will have an adverse effect on the preservation of historic sites either on or near the mine site, the Department shall consider all relevant evidence to that effect.
  - (2) Terms and Conditions. The Department, may as a term or condition of approval, establish any reasonable requirement to ensure that a proposed mining operation will not adversely affect preservation of any historic site.
- O. **Preservation of Unusual Natural Areas.** The Department may not issue a mining permit for a proposed mining operation that will have an adverse impact on the preservation of unusual natural areas.
  - (1) Scope of Review. In determining whether a mining operation will have an adverse effect on the preservation of unusual natural areas either on or near the development site, the Department shall consider all relevant evidence to that effect.
  - (2) Terms and Conditions. The Department may, as a term or condition of approval, establish any reasonable requirement to ensure that a proposed mining operation will not adversely affect the preservation of unusual natural areas.
- P. **No Unreasonable Effect on Scenic Character.** The Department may not issue a mining permit for a proposed mining operation that will have an unreasonable effect on scenic character.
  - (1) Scope of Review. In determining whether the proposed mining operation will have an unreasonable adverse effect on the scenic character of the surrounding area, the Department shall consider all relevant evidence to that effect, such as evidence that:
    - (a) The design of the proposed mining operation takes into account the scenic character of the surrounding area.

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- (b) A mining operation which is not in keeping with the surrounding scenic character will be located, designed and landscaped to minimize its visual impact to the fullest extent possible.
  - (c) Structures will be designed and landscaped to minimize their visual impact on the surrounding area.
  - (d) The plans for the proposed mining operation provide for the preservation of existing elements of the mining site which contribute to the maintenance of scenic character.
- (2) Submissions. Applications for approval of proposed developments must include evidence that affirmatively demonstrates that there will be no unreasonable adverse effect on the scenic character of the surrounding area, including information such as the following, when appropriate:
- (a) Sketches of the proposed mining operation indicating how the mine fits into the scenic character of the area.
  - (b) Landscaping plans for minimizing the visual impact of the parking lots, mining operations and other types of developments.
- (3) Terms and Conditions. The Department may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed mining operation will have no unreasonable adverse effect on scenic character, such as requiring that:
- (1) Illumination of the mining operation be limited.
  - (2) Vegetative or architectural screens be established.
- Q. Protection of Wildlife and Fisheries.** The Department may not issue a mining permit for a proposed mining operation that has not made adequate provisions for the protection of wildlife and fisheries.
- (1) Scope of Review. In determining whether the developer has made adequate provision for the protection of wildlife and fisheries, the Department shall consider all relevant evidence to that effect, such as evidence that:
- (a) A buffer strip of sufficient area will be established to provide wildlife with travel lanes between areas of available habitat.
  - (b) Proposed alterations and activities will not adversely affect wildlife and fisheries lifecycles.
  - (c) There will be no unreasonable disturbance to:
    - (i) High and moderate value deer wintering areas:
    - (ii) Habitat of any species declared threatened or endangered by the Commissioner, Maine Department of Inland Fisheries and Wildlife or the Director of the United States Fish and Wildlife Service:

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- (iii) Seabird nesting islands;
  - (iv) Significant vernal pools;
  - (v) High and moderate value waterfowl and wading bird habitat; and
  - (vi) Shorebird nesting, feeding, and staging areas.
- (2) Submissions. Applications for approval of a proposed mining operation shall include evidence that affirmatively demonstrates that the Applicant has made adequate provision for the protection of wildlife and fisheries, including information such as the following, when appropriate:
- (a) The location of natural buffer strips and adequate provision for their maintenance; and
  - (b) Plans to mitigate adverse effects on wildlife and fisheries through means that at a minimum include, but are not limited to, design considerations, pollution-abatement practices, the timing of construction activities, and on-site or off-site habitat improvements or preservation.
- (3) Terms and Conditions. The Department may, as a term or condition of approval, establish any reasonable requirement to ensure that an applicant has made adequate provision for the protection of wildlife and fisheries.
- (4) Wildlife Exclusion
- (a) Fencing. All open waters which contain any chemical(s) at levels harmful to wildlife shall be fenced to exclude terrestrial animals. The fence bottom shall be secured tight to the ground to prevent animals from gaining access under the fence. These fences shall be inspected and maintained to prevent wildlife access.
  - (b) Covering or Containment. All waters that contain any chemical(s) at levels harmful to wildlife must be covered or contained in a manner that shall prevent access by wildlife. All covers or containers shall be maintained in a manner that shall continue to prevent access by wildlife for as long as the pond or container could be harmful to wildlife.
  - (c) Chemical Neutralization or Isolation. Any chemical-laden fluids that are the result of any process and that are impounded in an area that is too large to cover or contain must be rendered non-harmful to wildlife prior to outside storage.
- (6) Wildlife Reports. The Permittee shall maintain a record of any wildlife mortalities that occur in association with the permitted facility. Those reports shall be provided quarterly to the Department. In addition, the Permittee shall report all wildlife mortalities that are associated with chemical containing tanks or impoundments by the beginning of the next working day following the occurrence or observation of those mortalities.

**21. Mine Waste Unit Design Standards**

- A. Requirements.** Mine waste units shall be designed to prevent the direct or indirect discharge of pollutants that could reasonably result in a condition of nonattainment or noncompliance with the performance standards of this Chapter.

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- (1) The design of waste units for the management of Group A mine waste shall provide for a liner system which includes a composite liner. A leachate collection and removal system above the composite liner shall be incorporated into the design. A composite liner shall consist of the following:
    - (a) A clay or compacted till bottom liner having a permeability of less than or equal to  $1 \times 10^{-6}$  cm/sec with a minimum 2-foot thickness; and
    - (b) A High-Density Polyethylene (HDPE) liner having a minimum thickness of 60 mils.
  - (2) The design of waste units for the management of Group B mine waste must provide for a clay or till bottom liner having a permeability of less than or equal to  $1 \times 10^{-7}$  cm/sec with a minimum 3-foot thickness. A leachate collection and removal system above the liner must be incorporated into the design.
  - (3) Leachate ponds must be provided with the composite liner system described in subsection 21(A)(1) of this Chapter except that leachate collection and removal are not required. An emergency spillway must be included in the design. Leachate ponds must have a minimum 2 feet of freeboard measured to the lowest spillway elevation or an additional capacity volume equal to 25% of the total required capacity, whichever provides greater storage volume. Additional freeboard or other measures may be required to contain wave action as necessary. Leachate ponds must have a means installed to measure leachate depth within the ponds.
  - (4) If stabilization of Group A and Group B mine waste may be ineffective in preventing pollutant release, the design must include a system for detection of leaks and leak recovery, or other engineered system as required by the Department.
  - (5) If a mine waste unit will generate leachate, the Applicant shall provide a description of the leachate management methods for the unit, including a process flow diagram for water use and reuse at the site, and a water balance for each unit. In evaluating the water balance for each unit, the volume of leachate generated must be based on the most recent historical annual precipitation data, with a minimum of a 15-year database, and the leachate storage volume must include capacity for the precipitation from a 24-hour, 500-year storm falling on the mine waste unit and the leachate storage pond.
  - (6) Leachate collection and removal systems must be designed to maintain 12 inches or less of leachate head on the liner system.
  - (7) The Department reserves the right to require additional and/or alternative waste unit design elements if necessary to protect the environment and public health and safety.
- B. Alternative Design Process.** Alternatives to the minimum design standards and requirements may be proposed by the applicant. A variance request is not required for proposals which meet the requirements of this paragraph. The Applicant shall submit the following documentation to clearly and convincingly demonstrate technical equivalency of a proposed alternative:
- (1) A discussion of the benefits of the proposed alternative technology;
  - (2) A discussion of the risks and drawbacks of the proposed alternative technology;

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- (3) An assessment of similar applications of the proposed alternative technology;
- (4) A demonstration that the alternative technology will provide equal or superior performance to the component it is proposed to replace, or that its inclusion within a system will result in equal or superior performance of that system;
- (5) An assessment of the feasibility of constructing the proposed alternative, including the ability to provide an adequate level of quality assurance and quality control. A demonstration of the feasibility of construction may be required; and
- (6) An assessment of the likelihood that the proposed alternative will perform as designed through operations, closure, and post-closure periods.

C. **Tailings Management.** All tailings must be managed in dry stack tailings management units. Notwithstanding section 21(B), no alternative tailings management designs or technologies will be approved.

**22. Monitoring and Reporting Requirements**

- A. The Permittee shall conduct monitoring in accordance with this Chapter, the mining permit, and the Act. The Applicant shall prepare an integrated environmental monitoring plan for the site.
  - (1) The plan detailing how the Applicant proposes to comply with this section must be submitted with the application and will be reviewed and approved by the Department as part of the application. All sample collection and analysis conducted under the monitoring program must specify sampling frequencies, procedures and techniques for sample collection, sample preservation and shipment, sample data sheets, analytical procedures and detection limits, chain-of-custody control, data validation and reporting methods, sampling and analytical quality assurance, quality control procedures, and include a description of sampling locations, a sampling location map, dates of sample collection, and other information determined to be necessary by the Department. The monitoring plan must be prepared by a qualified professional.
  - (2) Parameters analyzed from any samples at each monitoring point shall be based on the potential threat from the mine, mine waste or designated chemical materials used on the site, the transformation and degradation products of those materials as well as general indicator parameters of contamination associated with a release of those materials.
  - (3) Baseline conditions specific to each monitoring location and parameter identified in the monitoring plan must be established such that a statistically significant change from baseline conditions indicative of declining water quality, or other evidence of adverse environmental impact may be identified in the compliance monitoring dataset.
  - (4) All monitoring data shall be submitted to the Department in an electronic format prescribed by the Department.
- B. The monitoring plan must include the following elements:
  - (1) Groundwater. The following groundwater monitoring criteria apply to all mining operations:

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- (a) The monitoring system must have a sufficient number of groundwater wells, at appropriate depths and locations, to detect contamination of groundwater. Downgradient monitoring wells must be placed as close to all mining operations as practicable, but in no case greater than 100 feet away, unless placing additional wells at a greater distance enhances the ability to detect a release from the site as determined by the Department. In such a case, the Department may require the placement of additional monitoring wells more than 100 feet from the mining operations.
  - (i) The points to be monitored for compliance with the groundwater standards for the purposes of determining contamination pursuant to 38 M.R.S. §490-MM(5) and subsection 2(BB) of this Chapter are the downgradient boundaries of all mining operations as they exist at the time any sample is collected. Areas of the site proposed and approved for future use or stripped of topsoil and vegetation and graded or otherwise prepared for future construction are not considered mining operations for the purposes of compliance with this standard. Establishment of additional monitoring locations and abandonment of wells and other monitoring locations, in accordance with procedures described in this Chapter, may be required, and applicants should design monitoring networks with this in mind. Any new monitoring location to be used as a compliance point must be established to allow collection of at least one year of data prior to its becoming a compliance point;

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NOTE: The Department will consider the phasing of operations in determining the location of compliance monitoring wells.

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- (ii) The Department may require groundwater monitoring within any mining area as defined at 38 M.R.S. §490-MM(12) if the Department determines such monitoring to be necessary to assess the performance of pollution control measures or the potential for contamination as defined at 38 M.R.S. 490-MM(5) and section 2(BB) of this Chapter outside any mining area;
  - (iii) The Department may require groundwater monitoring at any location to determine the potential for groundwater discharges to surface waters that would cause or contribute to nonattainment of applicable water quality criteria. Failure of groundwater to meet applicable water quality criteria at points of baseflow discharge constitutes contamination as defined at 38 M.R.S. §490-MM(5) and section 2(BB) of this Chapter; and
  - (iv) The Department may require groundwater monitoring within any mining area as defined at 38 M.R.S. §490-OO(4)(D) for the purpose of that subsection if the Department determines such monitoring to be necessary to assess compliance with the standards established in 38 M.R.S. §490-OO(4)(D) and this Chapter.
- (b) Background groundwater quality monitoring well(s) must be established in an area or areas unaffected by mining operations and hydrologically upgradient of the mining areas to be monitored. Background groundwater quality may be measured at wells that are not upgradient of mining operations if those locations are determined to be representative by the Department;
- (c) Wells must be cased to maintain the integrity of the bore hole. Casing must be screened or perforated and the annular space packed with gravel or sand, where necessary, to

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enable collection of samples. Any annular space above the sampling depth must be sealed to prevent contamination of samples and groundwater;

- (d) Design, location, installation, development, and decommissioning of any monitoring wells, piezometers, and other measurement, sampling, and analytical devices require review and approval by the Department prior to action by the Applicant and must be documented in the Mining and Reclamation Reports required pursuant to section 26(B) of this Chapter;
  - (e) Monitoring wells, piezometers, and other measurement sampling, and analytical devices must be operated and maintained so that they conform to design specifications throughout the life of the monitoring program;
  - (f) The number, spacing, location and depths of monitoring wells and other instruments must be proposed by the Applicant and must be approved by the Department prior to installation. The Department may require additional monitoring wells or other instruments it determines to be necessary. The Applicant shall consider the following in its monitoring system design:
    - (i) Characterization of saturated and unsaturated geologic units and fill materials overlying and underlying the uppermost aquifer including, but not limited to, thicknesses, stratigraphy, lithology, hydraulic conductivities, and porosities; and
    - (ii) Characterization of the uppermost aquifer including, but not limited to, the thickness, flow rate, and flow direction.
  - (g) Parameters for which the Applicant must monitor include, but are not limited to, those for which groundwater performance requirements are established. Changes in parameters to be monitored may be made as determined by the Department;
  - (h) Monitoring for all parameters except specific conductance and pH must take place at least quarterly during the life of the mine, including any post-closure maintenance period or more frequently if determined to be necessary by the Department. Less frequent monitoring may be performed as approved by the Department. The monitoring results must be submitted to the Department within 10 days of the end of each quarter in a format approved by the Department;
  - (i) The Department may require continuous monitoring of certain parameters including, but not limited to, specific conductance and pH, in groundwater seepage and other seepage to lagoon underdrains, drains of impoundment structures, or similar engineered facilities, in natural geologic features with high conductivity, or other locations as determined necessary by the Department. Continuous monitoring results exceeding any established parameter threshold must be submitted electronically to the Department within 24 hours in a format prescribed by the Department; and
  - (j) Any revisions to the plan are subject to review and approval by the Department.
- (2) Surface Water and Sediments
- (a) The Applicant shall establish a surface water monitoring system that is capable of detecting direct or indirect discharges to surface waters from mining operations,

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including, but not limited to, discharges licensed under 38 M.R.S. §413, of any parameter for which a performance requirement has been established or indicator parameters as determined to be necessary by the Department. This system must be capable of detecting any exceedance of performance requirements and violations of water quality standards and criteria pursuant to 38 M.R.S. §§ 464-469.

- (b) The Applicant shall establish a sediment monitoring system capable of detecting accumulations of pollutants in sediments within water bodies affected by mining operations.
- (c) Surface water and sediment monitoring programs are subject to review and approval of the Department and must, at a minimum, meet the following criteria:
  - (i) Provision for surface water and sediment monitoring to determine background levels in the receiving water. Background samples must be collected as close in time as possible to the collection of samples at the monitoring points; and
  - (ii) For the surface water and sediment monitoring program, specification of the monitoring frequencies for each parameter and media. Monthly monitoring is required for all monitored parameters in surface water, except that continuous monitoring is required for certain parameters including, but not limited to, water depth, specific conductance, pH, temperature, and dissolved oxygen. Sediments must be monitored at least annually. The Department shall determine which additional parameters require continuous monitoring. Monthly monitoring results shall be submitted within 10 days of the end of each monitoring period. Continuous monitoring results exceeding any established parameter threshold shall be submitted electronically to the Department within 24 hours in a format prescribed by the Department.
- (3) Hydrology. Hydrology of the mining areas and affected areas must be monitored where mining activities have reasonable potential for measurable impact on surface water and groundwater.
- (4) Biological Resources. Biological resources of the background locations, all mining areas and affected areas shall be monitored where mining activities have a reasonable potential for measurable impact to these resources. This monitoring must include analyses of fish tissue, fish population, invertebrate population and abundance, and any other measure of ecological health determined to be necessary by the Department.
- (5) Mining operations. The Department may require collection of samples for analysis and other monitoring procedures at certain structures on the site including, but not limited to, lagoon underdrains, leachate collection systems, and impoundment drains.
- (6) Initiation of Monitoring. Monitoring, except baseline monitoring activities, must start at the time when extraction or removal of metallic minerals, overburden or mine waste is initiated pursuant to an advanced exploration or mining permit.
- (7) Duration of monitoring. Unless the Department determines that a reduction or cessation is appropriate, monitoring must continue for at least 30 years after closure of the mine subject to the following conditions:

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- (a) If the mining-related activity or disturbance resulting in the reasonable potential for measurable impact has ceased and the results from post-closure monitoring confirm that there is no significant potential for future impact resulting from the mining operation, the monitoring period may be reduced or terminated.
  - (b) If the mining-related activity or disturbance has ceased and the resulting impacts have been reclaimed or mitigated in conformance with mining permit conditions and the results from post-closure monitoring confirm that there is no significant potential for future impact resulting from the mining operation and that the implemented reclamation or mitigation measures are self-sustaining, the monitoring period may be reduced or terminated.
  - (c) The Permittee may provide the Department a written request to terminate all or specific aspects of monitoring not less than 18 months before the proposed termination date and, if such a request is made, must provide supporting data and information demonstrating that the conditions required to terminate monitoring have been achieved. The Department may reduce the 18-month notification requirement on a case-by-case basis.
  - (d) The Department may reduce the default 30-year post-closure monitoring period at any time upon determining that there is a reasonable assurance of no significant potential for environmental, natural resource, public health and safety, and/or property damage impacts resulting from the mining operation and that implemented reclamation or mitigation measures are self-sustaining.
  - (e) The Department shall extend the post-closure monitoring period in increments of up to 20 years for all or specific aspects of monitoring unless the Department determines, approximately 1 year before the end of a post-closure monitoring period or post-closure incremental increase to the monitoring period, that there is a reasonable assurance of no significant potential for environmental, natural resource, public health and safety, and/or property damage impacts resulting from the mining operations and that implemented reclamation or mitigation measures are self-sustaining.
- (8) **Methods.** Monitoring methods, parameters, frequencies and locations will be reviewed and are subject to approval by the Department and must be sufficient to verify that potential and actual mining-related impacts, including those identified in the environmental impact assessment, are avoided, or where unavoidable are adequately minimized, compensated for, or mitigated and that reclamation is effective and complete and self-sustaining as specified in the mining permit application documents, and required by the Act, this Chapter and the mining permit.
- (9) **Reference location.** At least one reference monitoring location must be established outside of each mining area and the affected area with the purpose of providing data relevant to non-mine related influences on monitored parameters and conditions.
- (10) **Exceedances.** The Applicant shall propose to the Department for approval, as part of the permit application, levels indicative of statistically significant change from baseline conditions for each parameter at each monitoring point, and where appropriate, for specific time periods such as hydrologic season. The Department may accept these for use or require different levels, limits, or other performance criteria, based on its review of the data and site conditions.

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- (11) Submission of data. Unless otherwise specified in this Chapter or otherwise required by the Department, the Permittee shall submit all monitoring data to the Department in a format specified by the Department. Monitoring data must be submitted to the Department within 10 days of its receipt by the Permittee.
- (12) Notification of Exceedences and Deterioration of Site Conditions. The Permittee shall notify the Department at such time as monitoring indicates that one or more of the following compliance standards has been exceeded or a statistically significant change has been identified at any monitoring station.
- (a) For surface water, the compliance standards are the ambient water quality criteria for toxic pollutants, or applicable water quality-based permit conditions established pursuant to 38 M.R.S. §§ 413 and 464-469.
  - (b) For ground water, the compliance standards are the primary drinking water standards adopted pursuant to 22 M.R.S. §2611, applicable water quality-based license conditions established pursuant to 38 M.R.S. §§ 413, 464, 465-C, and 470 or ground water quality baseline conditions.
  - (c) Within mining areas as defined in 38 M.R.S. 490-OO(4)(D) and section 11(A)(2)(c) of this Chapter, the compliance standards for pollutants other than pH or metals are the primary drinking water standards adopted pursuant to 22 M.R.S. §2611, applicable water quality-based license conditions established pursuant to 38 M.R.S. §§ 413, 464, 465-C and 470 or ground water quality baseline conditions. The compliance standards for pH and metals will be established in the mining permit by the Department based on site-specific geologic and hydrologic characteristics. In determining compliance with these standards, the Department will require groundwater monitoring consistent with the requirements established pursuant to 38 M.R.S. §490-QQ(3) and this section.
  - (c) For biological criteria, sediment, or other relevant environmental criteria, compliance standards are established pursuant to 38 M.R.S. §§ 413 and 464-469, baseline conditions, or as determined by the Department.
- (13) Minimum elements of notification. The notification must consist of:
- (a) A table and chart presenting all data for that monitoring location;
  - (b) Data from associated reference or upgradient monitoring locations;
  - (c) The associated standard or baseline;
  - (d) An analysis of that data relative to the presence or absence of a statistically significant decline in water quality or other evidence of adverse environmental impact; and
  - (e) An analysis of the probability that an observed statistically significant change indicative of declining water quality or other evidence of adverse environmental impact from baseline conditions is related to the mining operation.
- (14) Corrective action required. Failure to meet a performance standard or evidence of a deterioration of site conditions requires the Permittee to undertake corrective action to identify whether the data are accurate, and to identify and eliminate or correct the problem.

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The Department must be notified within 24 hours of the failure to meet a compliance standard at any monitoring location. The Department may require the Permittee to resample the location or locations to confirm the result; confirmation resamples, if required, must be taken within 7 days of the initial Department notification. As part of the corrective action plan, the Department may require such actions as the Department deems necessary, including the actions listed below:

- (a) Increased monitoring;
- (b) Source investigation;
- (c) Corrective action;
- (d) Modification of active or post-closure mining activity; or
- (e) Other action as determined to be necessary by the Department.

(15) Duration of corrective action. The corrective action shall continue, and may be amended from time to time, until such time as the Department determines that corrective actions are complete, the site meets all performance standards including achievement of baseline conditions, the site is expected to continue to meet such standards and conditions without further corrective actions, and all discharges causing or contributing to failure to comply with water quality standards are eliminated or mitigated to correct all compliance issues.

(16) Other conditions requiring corrective actions. The Department may require any action listed in subsection 22(B)(14) if it identifies in the submitted data or from any other information, indications of discharges of contaminants, deterioration in site conditions, or observes conditions on the site indicative of discharges of contaminants or deterioration in site conditions.

(17) Air monitoring.

- (a) Air emissions, including fugitive emissions, shall be monitored in accordance with a plan approved by the Department.
- (b) If at any time during operation, closure or post-closure for the mining operation, the monitoring demonstrates that the performance standards are not being met, a corrective action plan must be implemented, the details of which must be specified or approved by the Department.

**23. Reclamation.** Reclamation shall be completed on all mining areas and, if necessary, any affected areas.

- A. A Permittee shall commence and complete reclamation of each mining area and, if necessary, any affected areas, consistent with mining permit conditions and the Department-approved plan.
- B. Upon written request of a Permittee, the Department may approve with conditions an extension of time to begin or complete final reclamation.

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- C. To the extent feasible and practicable and considering changes caused by non-mining activities or other natural events, the Permittee shall reclaim the mining areas and affected areas to the ecological conditions that approximate pre-mining conditions.
- D. Contemporaneous reclamation of the mining areas must be conducted consistent with the performance standards of this Chapter.
- E. Safe ingress and egress must be provided for people and wildlife to water bodies accessible after reclamation.
- F. Structures and equipment not required in meeting the approved mine plan must be dismantled and removed from each mining area.
- G. The prevailing hydrologic balance of the affected area must be restored to conditions that approximate baseline conditions.
- H. To the extent practical and feasible, intermittent and perennial streams diverted during mining activity must be returned to original channels or, if the original channel has been disturbed or destroyed, to a reconstructed channel having grades, pools (substrate, floodplains), and meanders comparable to baseline conditions.

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**NOTE:** Other or additional standards may apply under the *Natural Resources Protection Act* to a project located in or adjacent to a protected natural resource. For example, a person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials may need to take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource as defined in 38 M.R.S. §480-B.

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- I. Surface water and stormwater from each mining area and each affected area must be managed to ensure that:
  - (1) Erosion and sedimentation control practices are in accordance with the *Maine Erosion and Sediment Control BMPs*;
  - (2) Water impoundments are removed unless necessary for pollution control or to meet other conditions of the permit; and
  - (3) Peak stormwater discharge from the area does not exceed baseline conditions.
- J. Vegetation appropriate to the approved final post-mining land use must be established.
  - (1) Introduced, naturalized or nonnative plant species may be used only if they are suitable to the post-mining land use and approved by the Department.
  - (2) Where establishment of vegetative cover is required by the reclamation plan, the land must be reclaimed with a diverse, self-regenerating, no- or low-maintenance cover of native vegetation that is appropriate to the safety, stability, environmental protection, and natural resource goals of the plan.
  - (3) Transitional vegetative cover may be used to provide the greatest probability of success in plant establishment considering site conditions as well as slope stability, erosion control,

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and hydrologic and water quality goals associated with successful establishment of vegetative cover.

- K. The Permittee shall create and attach enforceable covenants on each mining area in accordance with the *Uniform Environmental Covenant Act* at 38 M.R.S. §3001 *et seq.* as required by the Department. These covenants must limit future use of the mining area such that the goals of this Chapter, the Act, and the mining permit are maintained or enhanced until there is no unreasonable threat to public health and safety or the environment.
- L. Following closure and reclamation, the landowner or lessee of a mining area in an unorganized territory may petition the Maine Land Use Planning Commission for rezoning to an appropriate subdistrict designation.
- M. All pitwalls and mine openings shall be adequately marked or fenced, and all markers and fencing must be maintained by the Permittee to provide notice to the public of a dangerous condition. The Department may determine, following closure and reclamation of a mining area from which potential sources of contamination have been removed, that the area may no longer be designated as a mining area.
- N. Highwalls, or quarry faces, must be treated in such a manner as to leave them in a condition that minimizes the possibility of rock falls, slope failures and collapse. A highwall that is loose must be controlled by the use of blasting or scaling, the use of safety benches, the use of flatter slopes or reduced face heights or the use of benching near the top of the face or rounding the edge of the face.
- O. Drill and auger holes, adits, shafts, underground workings, and pits must be permanently secured.
- P. All unused fuel, designated chemical materials, and explosives must be removed from the mine site in accordance with applicable rules.

**24. Closure and Post-Closure Maintenance Standards**

**A. Closure Maintenance Criteria**

(1) Performance Standards

- (a) The Applicant shall design the closure of the mine to minimize the need for maintenance, and to control the release of mine waste and constituents into the air and the groundwater and surface water, and to ensure protection of public health and safety, and the environment. Closure activities must:
  - (i) Restore the mine site to approximate pre-mining baseline hydrologic and geologic conditions and ensure that mining wastes will not contaminate ground and surface water;
  - (ii) Meet performance requirements;
  - (iii) Comply with design, monitoring, and operating criteria approved in the closure plan for the mine, and each mine waste unit; and
  - (iv) Comply with the general technical requirements below.

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- (b) The Permittee shall undertake the following activities:
  - (i) Provide certification by a qualified professional(s) that each mine waste unit, given its location, composition, and construction, is designed to meet current standards of practice for geotechnical engineering;
  - (ii) Institute or maintain a run-on/runoff control system that meets the requirements of this Chapter; and
  - (iii) Implement and maintain monitoring systems as approved in the closure plan.
- (c) For leachate management systems, ore leaching facilities including associated solution ponds, and collection systems including trenches, piping, leachate collection systems, and equipment, which contain leach solutions, the Permittee shall ensure the following:
  - (i) Water that is not to be recycled for processing shall be treated and disposed of in a manner that ensures compliance with the performance requirements and shall in any event comply with the terms and conditions of the permit; and
  - (ii) Leachate collection and management systems must continue until leachate no longer contains constituents in concentrations above those described in the performance requirements for the period of time specified in the permit or otherwise provided by the Department.

(2) Closure Plan

- (a) A closure plan must be submitted at the time of application for a permit. At a minimum, the plan must include the following information for each mine waste unit:
  - (i) The methods, designs, procedures, and processes necessary to satisfy the closure performance standards for each mine waste unit;
  - (ii) An estimate of the maximum capacity and maximum volume of mine waste that can be managed in the unit at any time during the life of the mine waste unit;
  - (iii) A description of activities required to close leaching operations, including compliance with the standards at the time of closure;
  - (iv) A schedule of closure activities; and
  - (v) A detailed cost estimate of closure activities.
- (b) Closure plans must be amended to reflect applicable changes in unit design, operations, or mine waste management technology, and applicable legal requirements, at intervals not to exceed 5 years.
- (c) The closure plan for each mine waste unit must minimize the onsite and offsite use or contact with mine waste if such use or contact would pose a significant risk to the environment or public health and safety.

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- (d) A copy of the closure plan must be kept at the site or at an alternate location approved by the Department until the post-closure maintenance period has ended.
- (3) Closure Design Requirements
- (a) Closure design must be based on the following factors:
    - (i) The geology and geologic setting of the unit;
    - (ii) The character of the waste, including waste treatment;
    - (iii) The potential for and degree of contamination of the environment at or in the vicinity of the mining operation, if applicable;
    - (iv) Corrective action(s) in place or planned, if applicable;
    - (v) The operating practices at the waste unit;
    - (vi) The geographic location of the unit; and
    - (vii) Any other factors which are necessary for an informed determination of an appropriate design.
  - (b) The closure design must minimize maintenance and control the release of contaminants to ensure that performance requirements are met.
  - (c) Final closure requirements for mine waste units including, but not limited to, dry stack tailings management structures are as follows:
    - (i) Final cover for a mine waste unit must have a permeability less than or equal to the permeability of the primary liner system;
    - (ii) The cover must be designed and constructed to function with the minimum maintenance possible;
    - (iii) Closed mine waste units must be graded and maintained to prevent ponding and to divert surface drainage from covered wastes;
    - (iv) Areas with slopes greater than 10%, surface drainage courses, and areas subject to erosion by water and wind must be protected to prevent such erosion; and
    - (v) No discharge to surface or groundwater may be allowed except as licensed by the Department.
  - (d) A protected, permanent benchmark must be established on each closed mine waste unit. This benchmark shall be shown on all recorded drawings.
- (4) Closure Trigger
- (a) Closure must begin, if for the preceding 12 months, the mine waste unit has not received for disposal more than 10% of the average annual volume of waste received during the

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mine life to date as measured from the arrival of a substantial quantity of waste at that mine unit and not including time elapsed during any suspension of mining, unless the Permittee has applied for the extension described in this section.

- (b) The Department may grant an extension to the initiation of closure if the Permittee demonstrates that:
  - (i) The mine waste unit is planned to be used within the next 7 years;
  - (ii) The mine waste unit is in compliance with performance, design, and operating requirements; and
  - (iii) The mine waste unit will continue to comply with performance, design, and operating requirements during the extension.
- (c) The Department may grant a 12-month extension, up to a maximum of 7 extensions.

(5) Certification of Closure

- (a) Within the 90-day period following closure of the mine waste unit, the Permittee must submit certification to the Department verifying that closure has been completed in accordance with an approved closure plan.
- (b) Certification shall be based on a review of the mine waste facility by a qualified professional approved by the Department, a responsible officer of the Permittee and an inspection of the facility by the Department.

**B. Post-Closure Maintenance Criteria**

- (1) Applicability. Following certification of the closure, the Permittee shall commence post-closure maintenance for the closed mine waste unit.
- (2) Performance Standards
  - (a) The Permittee shall conduct post-closure maintenance activities to ensure the continued protection of public health and safety, and the environment, and to ensure the performance requirements continue to be met.
  - (b) Site access during the post-closure maintenance period must be controlled as necessary to prevent the removal of mine waste and ensure continued effectiveness of closure and post-closure maintenance activities.
  - (c) Post-closure land uses shall not impair the integrity of containment structures.
- (3) Requirements
  - (a) The Department may require the Permittee to conduct, at a minimum, any or all of the following activities during post-closure maintenance:
    - (i) Periodic sampling of the mine waste as necessary to characterize the mobilization or conversion of mine wastes or parameters;

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- (ii) Inspection and maintenance activities necessary to maintain the structural and chemical stability of the mine waste unit;
  - (iii) Continued operation and maintenance of run-on/run-off control systems and leachate management systems, if any;
  - (iv) Continued operation and maintenance of groundwater and surface water monitoring stations and other monitoring locations; and
  - (v) Any other measure necessary to prevent a violation of a performance standard or other legal requirement and otherwise to protect public health and the environment.
- (b) All post-closure monitoring activities shall continue until such time as the Department provides written approval for their cessation. In addition, the Department may alter post-closure requirements in response to monitoring information or other assessments.
- (c) Mine waste units that have been closed may be reactivated or re-utilized only under a new or amended permit. The Permittee shall ensure that:
- (i) Operations conform to the performance requirements, design operating criteria, and monitoring requirements of this Chapter; and
  - (ii) If mining wastes remain in the mine waste unit following the removal of materials for additional beneficiation, or at the completion of additional storage or disposal activities, the mine waste unit is closed in compliance with the requirements of this section.
- (d) If any performance requirement is not met, the Permittee shall develop and implement a corrective action plan pursuant to section 30(A) of this Chapter.
- (4) Post-Closure Maintenance Plan
- (a) The Applicant shall prepare and submit a detailed post-closure maintenance plan as part of the application. At a minimum, the plan must include the following information:
- (i) A description of activities and frequency of activities necessary to satisfy the performance standards;
  - (ii) A detailed estimate of post-closure maintenance costs;
  - (iii) A description of the planned use of the property to satisfy the post-closure maintenance performance standards, including the following information:
    - (A) Prevention of exposure of mine waste or constituents to the environment, unless such exposure would pose no significant risk to health or environment and is within licensed limits; and
    - (B) Continued maintenance of the structural and operational components of closure and post-closure; and

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- (iv) The name, address, and telephone number of the Permittee's contact during the post-closure maintenance period.
  - (b) A copy of the post-closure maintenance plan shall be kept at the mine waste unit or alternate location as approved by the Department throughout the post-closure maintenance period.
- (5) Length of the Post-Closure Care Period. The collection, treatment, and disposal methods must be designed to ensure that discharges to affected areas must meet water quality standards without requiring active treatment as soon as practicable, but in no case greater than 10 years post-closure. The post-closure care period for Group A and Group B wastes must end 30 years from the time of closure certification, provided the Department determines the mine waste unit has been closed in compliance with the performance requirements of this Chapter and the post-closure performance standards of this section, and that the site will continue to remain in compliance with such standards. The post-closure care period for Group C waste must be 5 years from the time of closure certification.
- (6) Deed Notation
- (a) During the first year following closure certification the Permittee shall record a notation on the deed to property, or other instrument normally examined during a title search, if any mine waste or constituent remain at the site.
  - (b) The deed notation must state that the land has been used for the management of mine waste, that mine waste or constituents remain at the mine waste unit and, if applicable, that land use is restricted.
- (7) Post-Closure Certification
- (a) After completion of post-closure maintenance for the mine waste unit, the Permittee shall submit certification to the Department verifying completion of post-closure maintenance. All inspection records and reports pertaining to certification shall be submitted to the Department.
  - (b) The certification must be based on a review of the mine waste unit by a qualified professional approved by the Department and executed by a responsible officer of the Permittee and an inspection of the facility by the Department.
  - (c) Approval of certification of the completion of postclosure maintenance of a waste unit by the Department does not release the Permittee from any subsequent corrective action requirements or other legal responsibility including the requirement for any monitoring determined to be necessary by the Department.

**Subchapter 6: MINING INSPECTION, RECORDKEEPING AND REPORTING REQUIREMENTS**

**25. Inspection and Maintenance.** The Permittee, using qualified professionals, shall inspect all phases of the mining operation to ensure compliance with the design and construction specifications, standard operating procedures, the mining permit, applicable rules, and the Act. Nothing in this section limits the ability of the Department to conduct inspections in any area of the property or to require corrective actions to address deficiencies identified in the monitoring data or as a result of

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such inspections. A qualified professional under this section cannot also serve as a third-party independent inspector under section 12.

- A. A Permittee shall allow all inspections and comply with maintenance and monitoring requirements contained in the permit.
- B. Each phase of mine construction, operation, and closure must be inspected by qualified professionals in accordance with the Quality Assurance Plan (QAP) approved by the Department.
  - (1) For construction of containment structures and impoundments, Construction Quality Assurance (CQA) must include continuous site inspections by the CQA personnel. Inspection, testing, and certification must be done by CQA personnel separate from the Permittee. As determined by the Department, this requirement may also apply to storage piles depending on the nature and extent of the particular storage pile.
    - (a) For the purposes of this section, separate from the Permittee means CQA personnel are not in the direct employment of the Permittee. Direct employment of the owner/operator does not include CQA personnel employed by a company under a contractual relationship with the owner/operator, provided that the CQA personnel are employed by a company that:
      - (i) Offers and performs quality assurance services for other companies not affiliated with the owner/operator; and
      - (ii) Has a management structure that exists and operates separately from the owner/operator, such that CQA personnel are not directly compensated by, and are completely free of any direct reporting obligation to the owner/operator.
  - (2) All other phases of mine construction must be inspected by qualified professionals and the inspections must be conducted with the frequency and level of detail and documentation necessary to allow the qualified professional to certify that the structures were constructed consistent with the design.
  - (3) Mine operations must be inspected at least weekly by qualified professionals in order to verify that the mine is operated consistent with permit requirements and that structures and practices designed to protect natural resources, the environment and public health and safety are functioning as designed, intended and required by the mining permit, this Chapter and the Act, and not susceptible to failure due to significant weather, seismic or other events.
  - (4) Inspection and maintenance requirements and schedules for the operation, reclamation, closure, and post closure phases of the mining operation. These requirements must at a minimum apply to any feature or structure that represents a potential threat to natural resources, the environment and public health and safety, as well as to hydrologic and biologic features in the mining and affected area.
    - (a) During operation, reclamation and closure, the mining areas and affected areas must be inspected by qualified persons at least monthly.
    - (b) During the post-closure monitoring period, the mining areas, and affected areas must be inspected by qualified persons at least twice per year.

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- (c) Within 30 days of the inspections required under this section, the qualified person shall submit to the Permittee and the Department:
  - (i) A summary of activities that occurred at the mine site during the reporting period and results of analyses conducted to monitor compliance with permit conditions;
  - (ii) Certification that the mining areas and affected areas are in good condition and in compliance with the mining permit, this Chapter, and the Act; or
  - (iii) Identification of the corrective measures that must be undertaken by the Permittee to reach compliance. Within 10 days of receipt of the necessary corrective measures, the Permittee shall propose a plan and schedule to the Department for review and approval for implementing the corrective measures.

**26. Reporting Requirements**

A. **Requirements.** A Permittee shall file with the Department an updated mining and reclamation report:

- (1) On or before March 15<sup>th</sup> of each year;
- (2) During the period the mine is operating;
- (3) During suspension of mining operations; and
- (4) During the post-closure monitoring period.

B. **Mining and Reclamation Report.** The mining and reclamation report must contain a description of mining and reclamation activities conducted during the preceding year, including:

- (1) A description of the status of mining and reclamation;
  - (a) The types and amounts (tons) of materials moved from the ore body and to storage piles, including a distinction among ore, lean ore, overburden or mine waste;
  - (b) The acreage disturbed;
  - (c) Changes to the beneficiation process and to tailings and waste disposal;
  - (d) The amount of metallic product (tons) produced at the facility;
  - (e) The amount of waste rock and tailings disposed of at the facility by disposal unit;
  - (f) The amount of leachate collected and treated from each disposal unit;
  - (g) An evaluation of the effectiveness of the leachate treatment and disposal system; and
  - (h) An update on mine waste characterization including a characterization of new mine waste encountered during mining that has not been previously characterized under section 20 of this Chapter.

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- (2) An update of the contingency plan:
  - (a) Documentation that the updated plan has been submitted to the municipality or county commissioners, as applicable; and
  - (b) A description of amendments to the contingency plan as a result of changes in mining and beneficiation.
- (3) A description of reclamation conducted, including acreage and a discussion of the success of revegetation efforts;
- (4) A report of monitoring results for the preceding calendar year;
- (5) A list of the notifications required under section 27 of this Chapter, for the preceding calendar year;
- (6) The estimated cost to implement the reclamation plan, closure and post-closure plan, and corrective action plan if the mining operations were to cease in the next year;
- (7) A description of any proposed amendments to the amount and type of financial assurance;
- (8) A description of proposed mining, beneficiation, tailings disposal, and reclamation activities; during the current year;
- (9) A summary of inspection results; and
- (10) An evaluation of the facility's operations to verify compliance with approved plans, licenses, and regulatory requirements. This evaluation must be performed either by qualified facility personnel or a qualified professional.

**27. Notification Requirements.** A Permittee shall promptly notify the Department and each municipality or county commissioners in the unorganized or deorganized areas of the State in which the mining areas and the affected areas are located of any incident, act of nature or violation of a permit standard or condition related to the mining operation that has created, or may create, a threat to the environment, natural resources, or public health and safety.

- A. Notification to an authorized representative of the Department during normal business hours, or to the Department pollution emergency alerting system between 5 p.m. and 8 a.m. and on weekends and holidays shall be made by telephone or in person as soon as possible, and in any case within 2 hours following the incident, act of nature or exceedance.
- B. The Permittee shall submit to the Department a detailed written incident report of the incident, act of nature or exceedance within 5 days of discovery, including:
  - (1) The name of the Permittee;
  - (2) The name of the person reporting the incident, act of nature, or exceedance;
  - (3) The date and time of the incident, act of nature, or exceedance;
  - (4) The nature of the incident, act of nature, or exceedance;

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- (5) The nature and degree of the threat to the environment, natural resources, or public health or safety; and
  - (6) Response actions taken or planned.
- C. If the response to the incident, act of nature or exceedance is not concluded at the time the written incident report is required, then the Permittee shall submit to the Department a written final incident report within 30 days after the incident response is concluded. The final incident report must contain a summary of the initial incident report and an account of all response actions taken. If the final response to the incident, act of nature or exceedance is not concluded within 30 days, then the Department may require periodic progress reports.
- D. Records upon which reports are based must be preserved by the Permittee in accordance with section 28 of this Chapter.

**28. Recordkeeping Requirements.** Records must be retained by the Permittee as follows:

- A. All records required pursuant to the Act, Chapter 200 and the mining permit must be preserved by the Permittee for 6 years, or preserved for a longer period of required by the Department.
- B. Any retained record must be available to the Department upon request.
- C. Records upon which incident reports under section 27 of this Chapter are based must be preserved by the Permittee for 6 years, or until the end of the post-closure monitoring period, whichever is later.

**Subchapter 7: SUSPENSION OF MINING**

**29. Suspension of Mining and Resumption of Mining after Suspension.**

**A. Requirements**

- (1) Any Permittee requesting a temporary suspension of mining must file a written request for approval of a temporary suspension of mining to the Department at least 30 days prior to suspending mining for a continuous period of 90 days or more. A temporary suspension of mining must be limited to 365 days. Activity that deviates substantially from the approved mine plan may not constitute part of a continuous period of mining for the purposes of this section. The request for a temporary suspension must set forth:
  - (a) The reasons for the temporary suspension of mining;
  - (b) The start date and expected duration of the temporary suspension of mining;
  - (c) The factors that will influence the decision for resumption of mining;
  - (d) Measures to maintain and monitor the mining areas;
  - (e) Security measures to be taken during the temporary suspension of mining;
  - (f) Interim sloping or stabilization of surfaces;

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- (g) An update to financial assurance;
  - (h) Interim measures that will be taken during the temporary suspension of mining to comply with its mine plan and mining permit;
  - (i) Interim measures that will be taken to protect the environment, natural resources, and public health and safety; and
  - (j) Verification that all required, routine operations will continue during the suspension, including but not limited to, treatment operations, inspections, monitoring, corrective actions (if any), and annual reporting.
- (3) Prior to considering the request for approval or modification of a request for temporary suspension of mining operations, the Department shall verify Permittee compliance with the Act, applicable rules, and the mining permit.
- (4) The Department may require more information from the applicant, a partial closure of mining operations, an adjustment to financial assurance, corrective actions or additional measures to protect the environment, natural resources, and public health and safety as a condition of approval.
- (5) The Permittee shall file a revised request for temporary suspension of mining to the Department for approval if modifications to elements of the original request are required by the Permittee or the Department.
- (6) The Permittee may request an increase in the duration of the period of suspension of mining, and as part of this request, the Permittee must:
- (a) Provide an explanation as to why the Permittee has not recommenced operations; and
  - (b) Provide a demonstration of continued commitment to conduct mining within 365 days from the date of temporary suspension of mining.
- (7) The Permittee is considered to have ceased mining and all requirements applicable to the closure take effect if mining operations are suspended for a continuous period exceeding 365 days, not counting any nominal activity, unless the Department agrees in writing to delay the implementation of the closure plan based on a written submission by the Permittee that demonstrates to the satisfaction of the Department that the mining operations are expected to recommence within 1 year or less. In any case, the Department may require partial closure of the mining operation during such suspension.
- (8) For any suspension of mining operations greater than 60 days from the original date of request, prior to resuming operations, the Permittee shall inspect the facility and provide certification to the Department that all systems are functioning as designed and are capable of resuming operations.
- B. Exemption from licensing requirements.** A request to suspend mining activities pursuant to this section is exempt from licensing requirements under 06-096 C.M.R. ch. 2.

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**Subchapter 8: ENFORCEMENT AND COMPLIANCE**

**30. Permittee Required to Correct Violations and Deterioration in Site Conditions.** The Commissioner may order a Permittee to correct a violation of the Act, this Chapter, an order of the Department, or a mining permit.

A. **Corrective Action Plan.** The Permittee shall develop and submit a corrective action plan on a schedule determined by the Department.

(1) This plan shall, at a minimum:

- (a) Be protective of public health and environment;
- (b) Propose a remedy to control the sources of releases and ensure compliance with the performance requirements throughout operation, reclamation, closure, and post-closure maintenance;
- (c) Propose a schedule for implementing corrective action;
- (d) Provide a detailed cost estimate for corrective action activities; and
- (e) Provide financial assurance for corrective action costs pursuant to section 9(I) and 17 of this Chapter.

(2) In developing the corrective action plan, at a minimum, the following shall be considered:

- (a) Extent, nature, and cause of contamination;
- (b) Identification of remedies to achieve compliance with the performance requirements and to prevent future exceedances or deterioration of site conditions;
- (c) Availability of alternative treatment or disposal measures during implementation of the corrective action;
- (d) Evaluation of performance, reliability, timing and ease of implementation, and potential impacts (including safety and cross-media environmental impacts) of alternative corrective actions;
- (e) Potential risk to public health and the environment prior to completion of corrective actions;
- (f) Evaluation of requirements (e.g., federal, state and local permit requirements, environmental or public health requirements) that could substantially affect implementation of potential corrective actions; and
- (g) Other relevant factors specified by the Department.

B. When the Permittee is aware of a violation of the Act, this Chapter, an order of the Department or a mining permit, the Permittee shall:

(1) Take immediate action to correct the violation; and

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(2) Notify the Department of the violation and of the action being implemented to correct the violation.

D. The Permittee shall correct the violation as soon as practicable.

E. The Department may pursue enforcement action in accordance with 38 M.R.S. §§ 347-A, 348 and 349, or any other statutory authority and may require changes to the corrective action plan.

**31. Imminent Endangerment.** If the Commissioner determines that a violation is causing or resulting in an imminent and substantial endangerment to the public health and safety, the environment, or natural resources, the Department may take action necessary to abate or eliminate the endangerment, including one or more of the following:

A. Taking action to suspend or revoke the mining permit as authorized by the Act, 38 M.R.S. §342 (11-B) and the *Maine Administrative Procedure Act*;

B. Recommend to the Board pursuant to 38 M.R.S. §342(11-C) that the Board modify or take corrective action on the permit pursuant to 38 M.R.S. §341-D(3).

C. Issuing an order to the Permittee requiring immediate suspension of mining activities;

D. Issuing an order prohibiting the removal of metallic product from the site;

E. Ordering the Permittee to undertake such other response actions as may be necessary to abate or eliminate the endangerment;

F. Issuing an emergency order as authorized by 38 M.R.S. §347-A(3);

G. Notifying municipal officers and county commissioners or their designees, from each municipality and county in which the mining areas and affected areas may be located;

H. Notifying the public through publication of the action in a newspaper of general circulation in the area; and

I. Refer the violation to the Attorney General for civil or criminal prosecution pursuant to 38 M.R.S. §§347-A or 348.

**32. Effect of Revocation of a Mining Permit or Suspension of Mining Activities.**

A. The revocation of a mining permit by the Commissioner or a court, or the suspension of mining activities by the Department does not relieve the Permittee from its responsibilities to continue the following actions as directed by the Department or a court:

(1) Complete all reclamation, closure, post-closure maintenance and monitoring, and corrective actions;

(2) Maintain financial assurance under 38 M.R.S. §490-RR and this Chapter; and

(3) Undertake all appropriate measures to protect the environment, natural resources, and public health and safety.

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**33. Enforcement and Compliance Orders Issued Under this Chapter**

- A. Any enforcement or compliance order issued under this Chapter, except an emergency order as authorized by 38 M.R.S. §347-A(3) and for which the procedure is set forth in that section, shall be governed by this section.

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NOTE: This section does not apply to license orders of the Commissioner, which may be appealed as set forth in 38 M.R.S. §§ 344(2-A) and 346 and 06-096 C.M.R. ch. 2, §24.

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- B. Any order issued under this Chapter must contain findings of fact. Service of a copy of the Commissioner's order must be made by the Sheriff or Deputy Sheriff or by hand delivery by an authorized representative of the Department in accordance with the Maine Rules of Civil Procedure. The person to whom the order is directed shall comply immediately.
- C. A person to whom such an order is directed may apply to the Board for a hearing on the order if the application is made within 7 working days after receipt of the order by the person to whom the order was directed. Within 14 working days after receipt of the application, the Board shall hold a hearing, make findings of fact and vote on a decision that continues, revokes or modifies the order. That decision must be in writing and signed by the Board Chair using any means for signature authorized in the Department's rules and published within 2 working days after the hearing and vote. The nature of the hearing is an appeal. At the hearing, all witnesses must be sworn and the Commissioner shall first establish the basis for the order and for naming the person to whom the order was directed. The burden of going forward then shifts to the person appealing to demonstrate based upon a preponderance of the evidence, that the order should be modified or rescinded. The decision of the Board may be appealed to the Superior Court in accordance with 38 M.R.S. §346 and Title 5, chapter 375, subchapter 7.

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NOTE: A person to whom an order is directed also may appeal directly to the Superior Court pursuant to 38 M.R.S. §346(1) and Title 5, chapter 375, subchapter 7.

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STATUTORY AUTHORITY: 38 M.R.S. §349-A

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