

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND TWENTY-FOUR

—  
S.P. 590 - L.D. 1471

**Resolve, Regarding Legislative Review of Portions of Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining, a Late-filed Major Substantive Rule of the Department of Environmental Protection**

**Emergency preamble.** Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A requires legislative authorization before major substantive agency rules may be finally adopted by the agency; and

**Whereas,** a major substantive rule was submitted to the Legislature outside the legislative rule acceptance period and a legislative instrument to allow for legislative review was not prepared; and

**Whereas,** immediate enactment of this resolve is necessary to record the Legislature's position on final adoption of the rule; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

**Sec. 1. Adoption. Resolved:** That, notwithstanding any provision of the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A to the contrary, and using this resolve as provided in Title 5, section 8072, subsection 11, the Legislature authorizes final adoption of portions of Chapter 200: Metallic Mineral Exploration, Advanced Exploration and Mining, a provisionally adopted major substantive rule of the Department of Environmental Protection that was submitted February 29, 2024 to the Legislature for review pursuant to Title 5, chapter 375, subchapter 2-A outside the legislative rule acceptance period, only if the following changes are made:

1. The rule must be amended, as necessary, in section 36(B), and any other relevant sections to provide that, as part of a preapplication mine waste and ore sampling and testing plan, proposed rock sampling under such plan must:

A. Include a minimum of 4 samples per acre of proposed exclusion area, except that the department may require less than 4 but not less than 2 samples per acre in cases where the department determines that the geology is uniform and not complex, such that requiring less than 4 but not less than 2 samples per acre is appropriate; and

B. Be conducted by a qualified professional;

2. The rule must be amended, as necessary, in section 36(C), and any other relevant sections to provide that, as part of a preapplication water quality evaluation plan, proposed water quality testing on groundwater and surface water samples from a proposed exclusion area must include, but not be limited to, testing for perfluoroalkyl and polyfluoroalkyl substances, or PFAS. The rule must also require water quality testing on groundwater and surface water samples from reclaimed portions of an exclusion area, as directed by the department, that includes, but is not limited to, testing of those samples for PFAS;

3. The rule must be amended, as necessary, in section 39 to require, as a condition of the department's approval of an exclusion application, that all lighting fixtures implemented or used by the licensee within the exclusion area must be designed to reduce, to the greatest extent practicable, the glare and light pollution on all adjacent areas through the use of shielding, reflectors, light diffusers and other measures, as specified by the department. The rules must establish requirements for allowable lighting fixtures within the exclusion area that limit each lighting fixture to a light emittance rating of not more than 2,000 lumens and a correlated color temperature of not more than 3,000K;

4. The rule must be amended, as necessary, in section 39 to require, as a condition of the department's approval of an exclusion application, that reclamation within an exclusion area must, to the greatest extent practicable, be designed to result in restoration of natural vegetation and other wildlife and aquatic resources that existed prior to the commencement of mining activities within the exclusion area;

5. The rule must be amended, as necessary, in section 39(D)(4), and any other relevant sections, to provide that the total area within an exclusion area that is actively used for the physical extraction of metallic minerals and not yet reclaimed does not exceed 5 acres.

A. In calculating whether the 5-acre limit is reached, the rule may not include the areas within an exclusion area that are not actively used for the physical extraction of metallic minerals, including, but not limited to, areas where extracted material is stockpiled or stored; areas where extracted material is crushed, ground or physically sorted; areas that include buildings or other structures relating to or supporting mining activities; and access roads, parking lots and related infrastructure.

B. Once the 5-acre limit is reached, the rule must require reclamation in order to expand the area within the exclusion area that is actively used for the physical extraction of metallic minerals such that, at any time, a maximum of 5 acres in total are actively used for the physical extraction of metallic minerals and not yet reclaimed.

The rule must provide for the requirements and standards applicable to the reclamation of all areas within the exclusion area, including those areas not actively used for the physical extraction of metallic minerals; and

6. All other necessary changes must be made to the rule to ensure conformity and consistency throughout the rule and to ensure consistency between the rule and the provisions of the Maine Revised Statutes, Title 38, section 490-NN, subsection 4, including

any necessary grammatical, formatting, punctuation or other technical, nonsubstantive editing changes.

The Department of Environmental Protection is not required to hold hearings or undertake further proceedings prior to final adoption of the rule in accordance with this section.

**Emergency clause.** In view of the emergency cited in the preamble, this legislation takes effect when approved.