

§490-NN. Administration and enforcement; rules; regulation by local units of government

1. Administration; jurisdiction; rules. The department shall administer and enforce this article in all areas of the State, including the unorganized territory, in order to regulate mining.

A. The provisions of articles 6, 7 and 8-A, chapter 13 and section 420-D do not apply to projects reviewed under this article. Projects reviewed under this article do not require any other permits from the department except for permits required under section 490-OO; permits required under article 5-A; waste discharge licenses required under section 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 Code of Federal Regulations, Section 122.26; licenses required under chapter 4; and other permits or licenses issued pursuant to any United States Environmental Protection Agency federally delegated program. This article does not prohibit the department from adopting rules to implement standards for mining that are necessary to protect human health and the environment. [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

B. In addition to other powers granted to it, the department shall adopt rules to carry out its duties under this article, including, but not limited to, standards for exploration, advanced exploration, construction, operation, closure, post-closure monitoring, reclamation and remediation. Except as otherwise provided, rules adopted under this article are major substantive rules for purposes of Title 5, chapter 375, subchapter 2-A and are subject to section 341-H. Notwithstanding Title 5, section 8072, subsection 11, or any other provision of law to the contrary, rules provisionally adopted by the department in accordance with this article and submitted for legislative review may not be finally adopted by the department unless legislation authorizing final adoption of those rules is enacted into law. [PL 2017, c. 142, §5 (AMD).]

[PL 2017, c. 142, §5 (AMD).]

2. Maine Land Use Planning Commission. The department may not approve a permit under this article in an unorganized territory unless the Maine Land Use Planning Commission certifies to the department that:

A. The proposed mining is an allowed use within the subdistrict or subdistricts in which it is to be located; and [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

B. The proposed mining meets any land use standard established by the Maine Land Use Planning Commission and applicable to the project that is not considered in the department's review. [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF); PL 2011, c. 682, §38 (REV).]

The Maine Land Use Planning Commission shall adopt rules in accordance with this subsection relating to the certification of mining permit applications under this article. Notwithstanding any other provision of law to the contrary, rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2017, c. 142, §6 (AMD).]

3. Municipal authority. This article does not prevent a municipality from regulating or controlling mining or reclamation activities that are subject to this article, including, but not limited to, construction, operation, closure, post-closure monitoring, reclamation and remediation activities.

[PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

4. Determination of applicability of Maine Metallic Mineral Mining Act requirements. As provided in this subsection and following the adoption of rules by the department pursuant to this subsection, a person proposing to conduct exploration for or physical extraction, crushing, grinding, sorting or storage of metallic minerals as described in section 490-MM, subsection 11, paragraph D may request a written determination from the department that the requirements of this article do not

apply to the activity. The department shall adopt rules governing the requirements for issuance of such a determination under this subsection, which must include, but are not limited to:

- A. Provisions for ensuring that the activity will generate only mine waste that does not have the potential to create acid rock drainage, alkali rock drainage or drainage or other discharges that could cause violations of water quality criteria or standards other than sedimentation or turbidity and will not release or expose radioactive or other materials that could endanger human health or the environment. The provisions under this paragraph must include, but are not limited to, preextraction sampling requirements; [PL 2023, c. 398, §4 (NEW).]
- B. Provisions for ensuring that the activity, if excluded from the requirements of this article, is subject to requirements of article 6, article 7, article 8-A or Title 12, chapter 206-A as applicable, including, but not limited to, applicable requirements and standards under those laws regarding the effect of the activity on wildlife habitat and other protected natural resources; and [PL 2023, c. 398, §4 (NEW).]
- C. Provisions for requiring monitoring as necessary to demonstrate compliance with applicable standards and to protect water quality and human health during and after the activity. [PL 2023, c. 398, §4 (NEW).]

An activity excluded from the requirements of this article as determined by the department pursuant to this subsection is not subject to the otherwise applicable requirements of this article, the otherwise applicable rules adopted pursuant to this article, except for those rules adopted by the department pursuant to this subsection, or the fees for metallic mineral mining set forth in section 352, subsection 4-A. Rules adopted by the department pursuant to this subsection are major substantive rules, as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2023, c. 398, §4 (NEW).]

5. Mining excise tax. A person engaging in mining activities pursuant to this article and a person, pursuant to article 6, article 7, article 8-A or Title 12, chapter 206-A, engaging in activities described in section 490-MM, subsection 11, paragraph D following a determination by the department under subsection 4 is subject to the mining excise tax under Title 36, chapter 371. A person engaging in the activities described in section 490-MM, subsection 11, paragraphs A to C is not subject to the mining excise tax under Title 36, chapter 371.

[PL 2023, c. 398, §5 (NEW).]

SECTION HISTORY

PL 2011, c. 653, §23 (NEW). PL 2011, c. 653, §33 (AFF). PL 2011, c. 682, §38 (REV). PL 2017, c. 142, §§5, 6 (AMD). PL 2023, c. 398, §§4, 5 (AMD).

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