§490-OO. Mining permit; application procedure

1. Permit required. A person may not engage in mining without a permit issued by the department under this article.
[PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

2. Application procedure. An application for a mining permit must be submitted to the department in a format to be developed by the department. The application must include the following:

A. The fees established in section 352. All costs incurred by the department in processing an application must be paid for by the applicant; [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

B. An environmental impact assessment for the proposed mining operation that describes the natural and artificial features, including, but not limited to, groundwater and surface water quality, flora, fauna, hydrology, geology and geochemistry and baseline conditions for those features in the proposed mining area and affected area that may be affected by the mining operation and the potential impacts on those features from the proposed mining operation. The environmental impact assessment must define the mining area and the affected area and address practicable alternatives to address impacts to the mining area and potential impacts to the affected area. The department shall review the environmental impact assessment and may approve, reject or require modifications to the assessment; [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

C. An environmental protection, reclamation and closure plan for the proposed mining operation, including beneficiation operations, that will reasonably avoid, minimize and mitigate the actual and potential adverse impacts on natural resources, the environment and public health and safety within the mining area and the affected area. The plan must address unique issues associated with mining and must include, but not be limited to, the following:

(1) A description of materials, methods and techniques that will be used;

(2) Information that demonstrates that the methods, materials and techniques proposed to be used are capable of accomplishing their stated objectives in protecting the environment and public health. The required information may consist of results of actual testing, modeling, documentation by credible independent testing and certification organizations or documented applications in similar uses and settings;

(3) Plans and schedules for interim and final reclamation of the mining area and the affected area following cessation of mining operations and plans and schedules for measures taken during suspension of operations, including contemporaneous reclamation, to the extent practicable;

(4) A description of the geochemistry of the ore, waste rock, overburden, peripheral rock, spent leach material and tailings, including characterization of leachability, reactivity and acid-forming characteristics;

(5) A mining operations closure plan;

(6) Provisions for the prevention, control and monitoring of acid-forming waste products and other waste products from the mining process in accordance with standards in subsection 4, paragraphs D and E;

(7) Storm water and surface water management provisions;

(8) A water quality monitoring plan;

(9) A description of the wastewater discharge management plan;

(10) A description of any tailings impoundment and the methods, materials and techniques to be used;

(11) A plan for the storage of hazardous materials; and

(12) An estimate of costs for reclamation, closure and environmental protection; [RR 2025, c. 1, Pt. A, §62 (COR).]

D. A contingency plan that includes an assessment of the risk to the environment and public health and safety associated with potential significant incidents or failures related to the mining operation and describes the metallic mineral operator's notification and response plans. When the application is accepted as complete for processing by the department, the applicant shall provide a copy of the contingency plan to each municipality in which the mining area and affected area may be located or, in the unorganized territory, to the county commissioners for each county in which the mining area or affected area may be located. The department may require amendments to the contingency plan; [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

E. Financial assurance as described in section 490-RR; and [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

F. A list of other state and federal permits or approvals anticipated by the applicant to be required. [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

[RR 2025, c. 1, Pt. A, §62 (COR).]

3. Permit issuance if violation exists. A mining permit may not be issued or transferred to a person if the department has determined that person to be in violation of this article, rules adopted under this article, a mining permit, an order of the department issued pursuant to this article or any other state law, rule, permit or order that the department determines through rulemaking is relevant to the issuance or transfer 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 pursuant to a compliance schedule approved by the department.

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

4. Criteria for approval. Except as provided for in subsection 3, the department shall approve a mining permit whenever it finds the following.

A. The applicant has the financial capacity and technical ability to develop the project in a manner consistent with applicable state environmental standards and with the provisions of this article. [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

B. The applicant has made adequate provision 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.

(1) In making a determination under this paragraph regarding a mining operation's effects on natural resources regulated by the Natural Resources Protection Act, the department shall apply the same standards applied under the Natural Resources Protection Act.

(2) The applicant must demonstrate that there is reasonable assurance that public and private water supplies will not be affected by the mining operations.

(3) The applicant must demonstrate that rules to protect human health and the environment adopted by the department pursuant to this article will be met. [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

C. The mining operation will be located on soil types that are suitable to the nature of the mining operation. [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

D. There is reasonable assurance that discharges of pollutants from the mining operation will not violate applicable water quality standards. Notwithstanding sections 465-C and 470, contamination of groundwater from activities permitted under this article may occur within a mining area, but such contamination must be limited and may not result in:

(1) Contamination of groundwater beyond the mining area;

(2) Contamination of groundwater within the mining area that exceeds applicable water quality criteria for pollutants other than pH or metals;

(3) 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;

(4) Any violation of surface water quality standards under section 413 or article 4-A; or

(5) 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 section 490-QQ, subsection 3.

Notwithstanding section 490-MM, subsection 12, for the purposes of this paragraph, "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. [PL 2017, c. 142, §7 (AMD).]

E. The mining operation will not cause a direct or indirect discharge of pollutants into surface waters or discharge groundwater containing pollutants into surface waters that results in a condition that is in nonattainment of or noncompliance with the standards in article 4-A or section 414-A or 420. [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

F. Withdrawals of groundwater and surface water related to the mining operation will comply with article 4-B. [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

G. The applicant has made adequate provision of utilities, including water supplies, wastewater 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. [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

H. The mining operation will not unreasonably cause or increase the flooding of the area that is altered by the mining operation or adjacent properties or create an unreasonable flood hazard to any structure. Notwithstanding any provision of law to the contrary, 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 flood plains or flood hazard areas. [PL 2017, c. 142, §7 (AMD).]

I. The applicant has made adequate provision for protection of public safety. [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

J. The mining operation will not use heap or percolation leaching. [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

K. No part of the mining operation will be located wholly or partially in, on or under any state land listed in Title 12, section 549-B, subsection 7, paragraph C-1. [PL 2017, c. 142, §8 (NEW).]

L. The mining operation will not involve the removal of metallic minerals in, on or from a river, stream or brook, as defined in section 480-B, subsection 9; a great pond, as defined in section 480-B, subsection 5; a freshwater wetland, as defined in section 480-B, subsection 4; or a coastal wetland, as defined in section 480-B, subsection 2. [PL 2017, c. 142, §8 (NEW).]

M. The mining operation will not involve placement of a mine shaft in, on or under a significant river segment, as identified in section 437; an outstanding river segment, as identified in section 480-P; an outstanding river, as identified in Title 12, section 403; a high or moderate value waterfowl and wading bird habitat that is a significant wildlife habitat pursuant to section 480-B, subsection 10, paragraph B, subparagraph (2); a great pond, as defined in section 480-B, subsection 5; or a coastal wetland, as defined in section 480-B, subsection 2. [PL 2017, c. 142, §8 (NEW).]

N. 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. [PL 2017, c. 142, §8 (NEW).]

O. The mining operation will not use open-pit mining. [PL 2017, c. 142, §8 (NEW).]
[PL 2017, c. 142, §§7, 8 (AMD).]

5. Permit coordination. If a person submits an application for a mining permit under this article and an application to the department for any other permit required pursuant to section 490-NN, subsection 1, the department shall process the applications in a coordinated fashion and issue a joint decision. The coordinated permit process must include consolidation of public hearings.
[PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

6. Public and local participation. In addition to provisions for public participation pursuant to Title 5, chapter 375 and department rules relating to public participation in the processing of applications, the following provisions apply to an application for a mining permit.

A. At least 60 days prior to submitting an application to the department, the applicant shall notify by certified mail the municipal officers of each municipality in which the mining area or affected area may be located or, in the unorganized territory, the county commissioners for each county in which the mining area or affected area may be located. The applicant at the same time shall provide a copy of the notice to the department and the Director of the Division of Geology, Natural Areas and Coastal Resources within the Department of Agriculture, Conservation and Forestry. [PL 2013, c. 405, Pt. C, §22 (AMD).]

B. At the time an application is submitted to the department, the applicant shall provide written notice to the municipal officers of each municipality in which the mining area and affected area may be located or, in the unorganized territory, to the county commissioners for each county in which the mining area or affected area may be located and shall publish notice of the application in a newspaper of general circulation in the area. [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

C. The department shall hold an adjudicatory public hearing within the municipality in which the mining operation may be located or, in the unorganized territory, in a convenient location in the vicinity of the proposed mining operation. Administrative expenses of a hearing held pursuant to this paragraph must be paid for by the applicant. [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

D. 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 have intervenor status if they request it within 60 days after notification under paragraph B. The intervenor status granted under this paragraph applies in any proceeding for a permit under this article. Immediately upon the commissioner's receipt of a request for intervenor status under this paragraph, the intervenors have all rights and responsibilities commensurate with this status. [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

E. The commissioner shall reimburse or make assistance grants for the direct expenses of intervention of any party granted intervenor status under paragraph D, not to exceed $50,000. The department shall adopt rules governing payment by an applicant to the department of fees necessary for the department to award intervenor assistance grants and governing the award and management of intervenor assistance grants and reimbursement of expenses to ensure that the funds are used in support of direct, substantive participation in the proceedings before the department. Allowable expenses include, without limitation, hydrogeological studies, traffic analyses, the retention of expert witnesses and attorneys and other related items. Expenses not used in support of direct, substantive participation in the proceedings before the department, including attorney's fees related to court appeals, are not eligible for reimbursement under this subsection. Expenses otherwise eligible under this subsection that are incurred by the municipality or county commissioners after notification pursuant to paragraph B are eligible for reimbursement under this paragraph only if a completed application is accepted by the department. The department shall also establish rules governing the process by which an intervenor under paragraph D may gain entry to the proposed mining site for purposes of reasonable inspection and site investigations under the auspices of the department. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2011, c. 653, §23 (NEW); PL 2011, c. 653, §33 (AFF).]

[PL 2013, c. 405, Pt. C, §22 (AMD).]

SECTION HISTORY

PL 2011, c. 653, §23 (NEW). PL 2011, c. 653, §33 (AFF). PL 2013, c. 405, Pt. C, §22 (AMD). PL 2017, c. 142, §§7, 8 (AMD). RR 2025, c. 1, Pt. A, §62 (COR).

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