

About face:

How a mine moved toward operating in Maine

by Thomas R. Doyle, Matthew D. Manahan, Avery T. Day and Pierce Atwood



The openpit at the Callahan Mine, Brooksville, circa 1970, when the mine was active. Photo by Fred Beck, courtesy of the Maine Geological Survey.

When you think of the state of Maine, you probably think of lobsters or lighthouses. The last thing you would think of is metallic mineral mining, and that is for good reason. According to the Maine Geological Survey's website, "no metals have been mined in Maine since 1977." Moreover, Maine's metallic mineral mining laws and rules, which were last rewritten in 1991, have effectively made mining in the Pine Tree State impossible. Statutory changes enacted in 2012, however, put Maine on a path to make metallic mineral mining part of the local economy in the near future.

History of metallic mineral mining in Maine

Currently, Maine is not a metallic mineral mining state, though that has not always been the case. The 1800s saw various mining operations in Maine, including what the Maine Geological Survey calls a "mining boom" from 1879 to 1882, where mining of iron, silver, copper, lead and zinc expanded rapidly. Mining and mining activity in the more recent past, however, drove the debate before the state legislature when this issue was debated in 2012.

The recent experience with remediation of the Callahan Mine played a big part in

legislative debates regarding expanding mining opportunities in Maine. In 1968, the Callahan Mining Corp. began openpit mining in Brooksville, ME. This mine yielded copper, zinc, lead and a small amount of silver. This openpit mine was active until 1972, when the mineral reserve became depleted. As early as 1975, there were indications of contamination at this site, though efforts to clean up this (what is now) Superfund site did not begin until the early 2000s, with actual remediation not starting until 2011.

The Callahan Mine experience was an unfortunate story that was fresh on Mainers' minds and became the cautionary tale that the environmental lobby told over and over again when metallic mineral mining legislation was considered.

Of course, not all of Maine's history with metallic mineral mining has been negative. In the same year that mining ceased in Maine, 1977, a large deposit was discovered in Maine, at Bald Mountain. According to the Maine Geological Survey, this is an estimated 32.6 Mt (36 million st) copper-zinc lode that also contains significant gold and silver deposits. Not surprisingly, the landowner who now owns Bald Mountain was one of the primary drivers of the legislative reform adopted this year.

While much of the discussion of this legislative proposal centered on Bald Mountain, other deposits also have been discovered but not developed in Maine, including the Mount Chase copper-lead-zinc-silver deposit, discovered in 1979, and the Alder Pond deposit with an estimated 1.3-2.7 Mt (1.5-3 million st) of high grade copper-zinc ore, discovered in 1985.

While a number of deposits were discovered in the 1970s and 1980s, Maine's regulatory stance had evolved since the time of those discoveries to, effectively, prohibit metallic mining in Maine. In 1991, spurred by news that Blackhawk Mining was interested in developing Bald Mountain, the legislature adopted a new mining law. That law and its resulting regulations – which were based on technologies and practices that are now more than 20 years old – made metallic mining virtually impossible.

Factors influencing change in approach to metallic mineral mining

At the beginning of 2012, Maine was operating

Avery T. Day is associate and Thomas R. Doyle, Matthew D. Manahan and Pierce Atwood are partners with Pierce Atwood, LLP, Portland, ME, email aday@PierceAtwood.com.

under laws and regulations that, effectively, prohibited metallic mineral mining. The law of regulatory inertia, and Maine's long history of strict environmental regulation, seemed to dictate that this condition would endure. However, a confluence of factors, both economic and political, led to legislative action.

Economically, there was a motivated landowner who was interested in making Maine's metallic mineral mining laws and regulations workable. Bald Mountain, an estimated 32.6 Mt (36 million st) copper-zinc deposit that also contains gold and silver deposits, had been identified in the 1970s but had not been exploited. Adding to the landowner's motivation was the fact that world metal prices were high, particularly copper, gold and silver prices. Economically, the time was right to expand mining options in Maine.

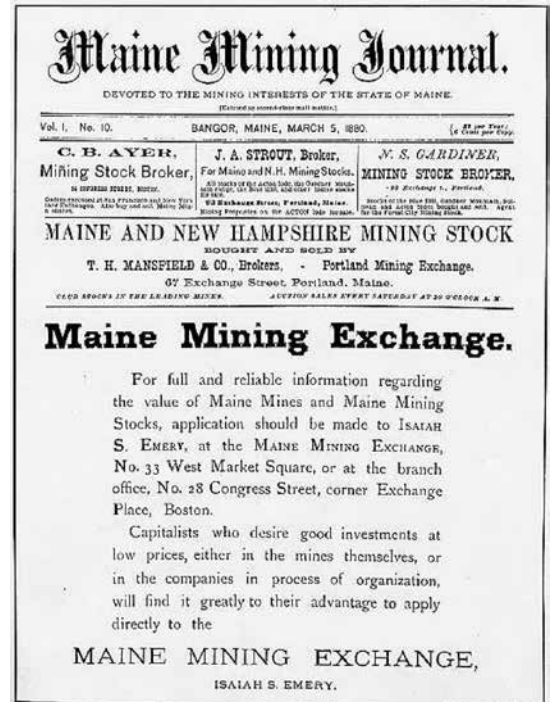
One other factor that was part economic and part political is the location of Bald Mountain. This deposit is located in Aroostook County, Maine's northern-most county. Aroostook County is vast, the largest county east of the Mississippi River, and rural. Natural resources-based industries in Aroostook County – forestry and potato farming – are large drivers of the local economy, and the future prosperity of the area is questionable. Aroostook County is currently experiencing outmigration, particularly among its youth, and has lost population every census since its population figures peaked in 1960. Politically, Aroostook County is well-known, and many Maine politicians feel an obligation to do what they can to limit the recent demographic trends in Aroostook County. Metallic mineral mining was framed as a chance to grow opportunity in Aroostook County, a place where opportunity is lacking.

The economic and demographic trends experienced in Aroostook County are not limited to that county or even to northern Maine. The economic condition of the state as a whole also played a role in this debate. While mining legislation was being considered by the state legislature, a story was published in one of the state's largest daily newspapers titled "Maine earnings growth ranks worst among states; incomes lowest in region¹." According to the article, Maine had the lowest rate of income growth in the country in 2011. Interestingly, the article concluded by explaining that those states with the highest income growth in 2011 were states with a strong mining industry. This information was particularly compelling during the mining debate.

Of course, any kind of large scale legislative change such as this requires a touch of the purely political. The politics of this matter made for a successful revision of Maine's metallic mineral mining laws. The bill to reform Maine's mining laws and regulations was introduced by Rep. John Martin (D), who represents parts of Aroostook County.

In 2012, Martin marked his 46th year in the Maine legislature, with 20 of those years being served as speaker of the Maine House. He was joined by a number of sponsors on his bill, including Sen. Troy Jackson (D), who also represents parts of Aroostook County.

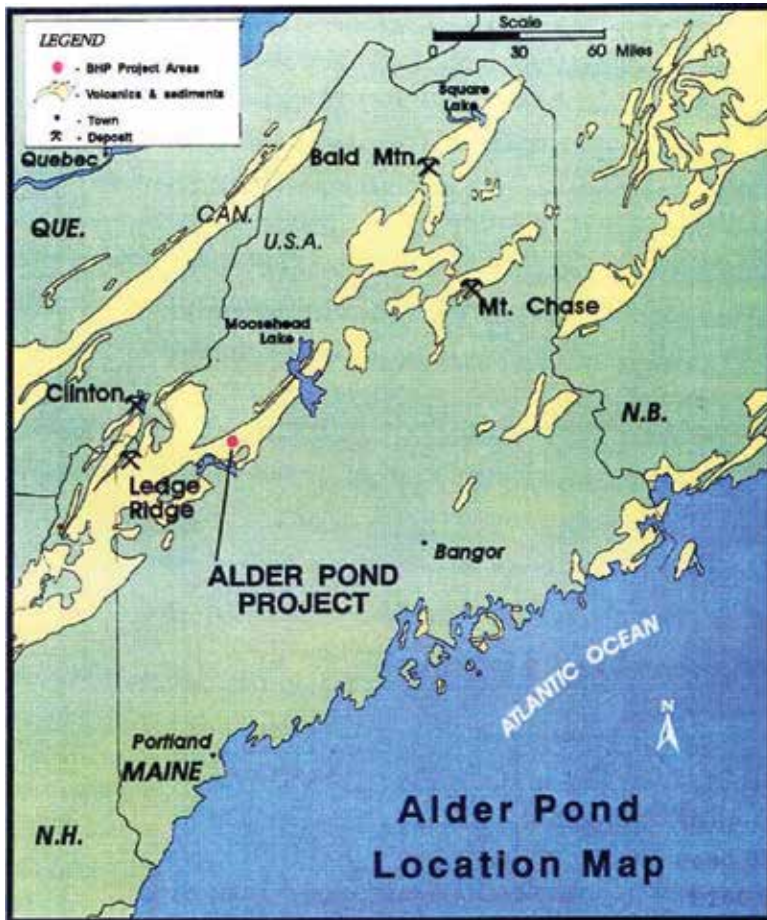
Republican personalities were also instrumental in making this legislative change. In 2010, both chambers of the Maine legislature switched control to the Republicans; this had not happened in 36 years. That election also ushered in a Republican governor. Maine's new governor, Paul LePage, was very supportive of the mining bill. Moreover, so were legislative leaders. The Republican legislator who was perhaps the most instrumental in guiding this bill through the process was Sen. Tom Saviello, chair of the committee of jurisdiction for this bill. The mining bill was not introduced through regular channels and came in late in the session, which was set to adjourn about six weeks after the bill was introduced. Sen. Saviello, however, was committed to holding an unprecedented number of work sessions on the bill – ultimately nine in all – and two public hearings. The transparent and exhaustive way that the legislation was handled in committee limited the effect of opponents claiming this was "rushed through the process" or "passed in the dead of night." Timing assisted Sen. Saviello, as the legislature ran well over the statutory adjournment date, creating additional time for his committee to do its extensive work.



Front page of the *Maine Mining Journal*, March 5, 1880. Photo courtesy of the Maine Geological Survey.

¹ <http://bangordailynews.com/2012/03/29/business/maine-earnings-growth-ranks-worst-among-states-incomes-lowest-in-region/?ref=videos>

Maine Mining



Location map of Alder Pond project (from BHP-Utah International educational display). Photo courtesy of the Maine Geological Survey.

Ultimately, this confluence of economic and political factors worked in the bill's favor and the new law was enacted.

Factors limiting change in approach to metallic mineral mining

Although a number of factors broke in favor of proponents of mining reform, that is not to say that there were no headwinds facing proponents during this effort. As a traditionally liberal, northeast state, Maine has a particularly active environmental community. Activists from Trout Unlimited, Maine Rivers, Environment Maine, the Natural Resources Council of Maine, Maine Audubon Society, The Nature Conservancy and Maine Conservation Voters, just to name a few organizations, all turned out in opposition to the reform of mining laws and regulations. These organizations worked hard to mobilize their membership, focusing their arguments on the potential for ground water and ultimately surface water contamination.

The environmental lobby has traditionally been very influential with Maine's Democratic-dominated legislature. That could have been the case this year, but Republican control and the fact that two of the mining bill's biggest supporters were Democrats helped ensure passage of this reform. Bipartisan support, however, did not

mean that industry had a free hand to write the bill. During the legislative process, a number of compromises were struck to attempt to satisfy environmental concerns, though these groups still maintain their opposition to mining reform.

The change enacted

After determining that Maine's mining laws and regulations from 1991 were confusing, complex and extremely difficult, if not impossible, to meet, the authors were asked to help draft legislation that would rectify this situation. Though what was adopted varied in several ways from what was introduced, many of the most important provisions were enacted into the new law, and the mining bill is a significant improvement over the status quo.

One of the biggest problems with existing law is that mining operations can be subject to two permitting authorities based on where they are located. Many remote, unincorporated areas of Maine are overseen by a state-wide land use regulatory agency, which currently acts as a permitting authority. The state's Department of Environmental Protection (DEP) also holds permitting authority over mining operations throughout the state. This new law changes that situation by driving all permitting authority to the DEP, while the land use planning authority maintains minimal zoning authority over mining in unincorporated areas of the state.

This is not, however, the only permitting improvement over existing law. Mining operations will not be required to seek a number of other permits as they were in the past, including a Site Law permit, a Solid Waste Management Act permit and a state storm water permit. Permits that are required must be processed by the DEP in a consolidated fashion. Additionally, mining permits have no term limit, meaning they are not subject to a costly and time-consuming permit renewal process.

Ground water issues dominated the debate over the legislation. This new law, however, manages to relax restrictions affecting ground water in important ways, while still protecting ground water resources. In particular, discharges to ground water may occur within a "mining area," which is defined more broadly than prior law. "Mining area" includes ground water and surface water treatment systems, extending the compliance boundary beyond these systems. Also, regulations under this law are to be performance-based. To the extent regulations are not performance-based, permittees can propose alternative, performance-based compliance mechanisms.

The new law also adds flexibility to

financial assurance requirements. Previously, financial assurance requirements for operation, reclamation, closure and post-closure care could be met only through a trust, tying up assets in a very concrete manner. Under the new law, financial assurance requirements can be met through surety bond, escrow, cash, trust, irrevocable letter of credit, or other equivalent security, subject to DEP approval.

In all, these changes work together to make metallic mineral mining in Maine a possibility. It is worth noting that, while this legislation was advanced by the owner of Bald Mountain and much of the debate over this bill focused on that one site, this rewrite of Maine law applies to the entire state, including already identified deposits and those yet to be discovered.

More work lies ahead

With the legislature's action this year, statutory changes have been enacted. The final legal landscape regarding mining in Maine, however, has not yet been determined and will not be determined for a few years. The new law relies heavily on the two regulatory agencies with oversight over mining to flesh out many details of the law through the regulatory rulemaking process.

For example, the agency with oversight over land use planning in the unincorporated areas of the state must amend its rules regarding zoning by Jan. 15, 2013. This same agency must also adopt rules related to certification of permit applications by Jan. 10, 2014, with these rules requiring legislative approval. The DEP must also adopt rules by Jan. 10, 2014 that require legislative approval – these new rules will implement the bulk of this new law. These agencies are also required to jointly develop rules regarding permitting of exploration of deposits.

While the primary battle has been fought and won, this issue will not be completely resolved until regulations are adopted and actual sites are permitted. The regulatory process is not free of politics, particularly because some rules require legislative approval. The environmental community is certain to try to limit the legislative gains adopted this year by advocating for restrictive regulations. That is why it is vitally important that the mining industry is strongly represented as this process enters the next phase. Moreover, once this process advances to the point of permitting for individual sites, applicants will need to negotiate a complicated gauntlet of new laws and rules, and success will require an intimate knowledge of those laws and rules and their background and genesis, as well as the Maine regulatory and permitting landscape.



What conclusions can be drawn?

What does this dramatic change of events in Maine in 2012 mean for the mining industry in general? Obviously, a victory in a traditionally blue state in a blue region of the nation is a positive development, but what does it mean elsewhere? It is difficult to draw many conclusions from this legislative battle, but here are a few thoughts:

- Obviously, economics is a key driver in all of this. Without high metal prices, there would likely have been little interest in developing this resource, as dealing with the environmental community in Maine leads to high transaction costs. Further, without economic potential, the primary landowner leading this effort would have had little incentive to pursue a legislative and regulatory overhaul that will end up benefiting sites across the state. Finally, without the promise of jobs and prosperity, lawmakers would likely have shied away from this proposal.
- The mining industry now has an additional jurisdiction for growth. With legal barriers all but prohibiting mining in Maine, this was a state where industry essentially could not expand. Now, this jurisdiction is open for investment and development.
- The mining industry has the potential to gain additional allies in the U.S. Congress. Maine is known for its moderate delegation, like Sen. Olympia Snowe and Sen. Susan Collins. Prior to this reform, they had very few incentives to support the mining industry at the federal level because they did not represent a mining state. Should the mining industry grow in Maine, there may be an opportunity to cultivate a relationship with Maine's federal delegation. ■

Late in 1972, Kerramerican, a subsidiary of Kerr Addison of Toronto, commenced production at the Black Hawk Mine in Blue Hill, ME. The photo above shows miners sinking a shaft at the Black Hawk Mine during the mid-1960s. Photo courtesy of the Maine Geological Survey.