

PROPOSED ORDINANCE 2008 – 05

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TITLE 20

CHAPTER A

KEWEENAW BAY INDIAN COMMUNITY

MINERAL EXPLORATION AND MINING REGULATORY ORDINANCE

An ordinance adopted for the purpose of regulating mineral exploration and mining activities within the territorial jurisdiction of the Keweenaw Bay Indian Community.

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SECTION ONE  
DEFINITIONS

§20A.101 Definitions.

1. “affected area” means the area that would or may be affected, either directly or indirectly, by mineral exploration or mining activity, including the mining area and any area that would or may experience degradation of the environment or natural resources as a direct or indirect result of mineral exploration or mining activities.
2. “affiliated entity” means a parent corporation, any principal shareholders or members, any subsidiaries or any affiliated entities of any person.
3. “applicant” means any person who files an application for the exploration of minerals, a notice of intent to conduct mining activities or an application to conduct mining activities with the Department under this Chapter.
4. “application” shall mean an application to conduct mineral exploration, notice of intent to conduct mining activities and/or an application to conduct mining activities with the Department under this Chapter.
5. “beneficiation”, “beneficiation activities” and “mineral processing” mean the primary treatment of ore to separate or remove a metallic product or products using a process including, but not limited to, crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; palletizing; briquetting; calcining; roasting, autoclaving, or chlorination; gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; ex-situ solvent extraction; electrowinning; precipitation; amalgamation; or heap, dump, vat, or tank leaching.
6. “baseline data” means data collected by the Department or its authorized representative over a period of not less than thirty six (36) months, after receipt by the Department of a notice of intent to conduct mining activities from an applicant to establish a base line for environmental and ecological elements and systems and other potentially impacted systems and elements in and around the affected area. Baseline data collected shall include, but not be limited to, the following, as applicable to the affected area:
  - A. Visual, topographic, auditory and morphologic resource data and conditions;
  - B. Seismological data and information;

- D. Geologic data and information;
- E. Climatological factors representative of the area and the region including, but not limited to, precipitation, prevailing winds and temperature;
- F. Air quality;
- G. Surface water occurrence, quality, quantity, discharge, flow, and seasonal variations;
- H. Aquifer characteristics, groundwater occurrence, quality, quantity, flow, hydraulic conductivity, hydraulic gradients, groundwater velocity, 3-dimensional flow path within the aquifer, and interconnections between multiple aquifers and between aquifers and surface water;
- I. Integrated area hydrologic system data, water balance data, and other hydrologic data and information as appropriate;
- J. Sediment type, distribution, and quality;
- K. Stream and lake habitat, quality, quantity, and condition;
- L. Aquatic and benthic populations, population diversity, and population health;
- M. Terrestrial and wetland habitat quality, quantity, and condition;
- N. Wildlife population, population diversity, and population health;
- O. Threatened and/or endangered plant and/or animal species;
- P. Soil type, distribution, and quality;
- Q. Forestry characteristics, quality, and diversity; and
- R. Additional flora characteristics, quality, and diversity.

7. “cessation of mining” means that removal of minerals from a mine for processing and/or sale has been discontinued by the permittee and the Department determines that removal of minerals is not occurring for the purpose of delaying reclamation and avoiding a cessation determination by the Department.

8. “Chapter” or “chapter” means this Chapter of the Tribal Code.

9. “contaminated”, “contamination” or “contaminants” means having substances in concentrations that are above natural background levels and that are, or may be, harmful to the environment, natural resources, or health or welfare of the public, or any significant sites.

10. “closure or mine closure” means activities following cessation of mining undertaken to perform reclamation and remediation for the purpose of restoring the air, surface water, ground water, soil and ecological environment to pre-mining conditions within the mine site and affected

area. For mining projects permitted under this mining ordinance, closure is the activities undertaken after the “Notice of Cession of Mining Activities” and before the issuing of a “Notice of Closure” by the Department.

11. “cumulative impact” means the environmental impacts that result from the proposed mining activities when added to other past, present, or foreseeable future mining and non-mining activities of the applicant or others.

12. “degradation” means the deterioration of the environment through depletion of resources such as air, water and soil; the destruction of ecosystems and the endangerment to, or the extinction of, wildlife.

13. “Department” means the Natural Resources Department of the Keweenaw Bay Indian Community.

14. “disposal facility” means a facility or a part of a facility where overburden, waste rock, or tailings are intentionally placed into or on the land, and at which the overburden, waste rock, or tailings will remain after closure.

15. “final reclamation” means reclamation performed after final cessation of mining with the intent not to resume mining.

16. “financial assurance” means an assurance instrument provided by a permittee to ensure the performance and obligations of the applicant/permittee under the provisions of this Chapter, any rule promulgated under this Chapter, the terms and conditions of any permit issued under this Chapter, or any order of the Department, that is executed and/or delivered in favor of the Department in a form and content and on such terms and conditions as may be satisfactory to the Department.

17. “financial statement” shall mean the persons Statement of Financial Position (Balance Sheet); Statement of Earnings and Comprehensive Income (Income Statement); Statement of Cash Flows; Statement of Changes In Stockholders' Equity, audited by a national recognized certified public accounting firm, in accordance with generally accepted accounting principals, together with an auditor's report and required notes and disclosures.

18. “hazardous materials” means any material, waste, pollutant, contaminant, mixture, condition, smoke, gas, particulate matter, substance, or combination thereof that:

- A. is defined in, or otherwise regulated under, any tribal, local, state, or federal statute, law, ordinance, code, rule, regulation, order, permit, or decree, now or at any time

hereinafter in effect, relating to, imposing liability in connection with, or requiring standards of conduct, cleanup, or remediation concerning human health and the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 *et seq.*, the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §5101 *et seq.*, the Resource Conservation and Recovery Act of 1976, 42 U. S. C. §6901 *et seq.*, the Clean Air Act, 42 U.S.C. §7401 *et seq.*, the Clean Water Act, 33 U.S.C. §1251 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*, the Michigan Natural Resources and Environmental Protection Act, M.C.L. §324.101 *et seq.*, or any regulations promulgated under this Chapter, all as amended; and,

B. because of its quantity, concentration, physical, chemical, or infectious characteristics, will immediately, or with the passage of time, be injurious, directly or indirectly, to human health, safety, or welfare, living organisms, or the environment, regardless of the extent to which it is regulated, exempted, or not regulated under any of the laws included in subsection (a), flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum-based materials (including crude oil or any fraction thereof), methane, materials resulting from, generated by, or exposed by the mining, cleaning, preparation, or transportation of minerals, including but not limited to soil, rock, overburden, ore, minerals, liquid, vegetation, waste, garbage, trash, abandoned cable and equipment, mine tailings, acid mine drainage, leachate from mining operations or from temporary or permanent storage or placement of ore, overburden, or rock, whether above or below ground, and any substance that will immediately, or with the passage of time, alter the physical, chemical, biological, or radiological properties of water.

19. “in-situ leaching” means the injection of liquid or gaseous solutions into the ground for purpose of dissolving minerals or elements for recovery of elements or compounds..

20. “intrusive mineral exploration” means mineral exploration which is carried out below the pre-disturbed earth-surface for the purpose of sampling or data collection with the intent of locating or defining economically viable occurrences of minerals or mineral based products.

21. “MSHA” means the United States Mine Safety and Health Administration.

22. “mine, mine site, mining area” means any parcel of land on or in which mining activity or

mineral processing will occur.

23. “mineral(s)” means a naturally occurring solid chemical element or compound formed through geological processes that has a characteristic chemical composition, an atomic structure, and specific physical properties, excluding for sand and gravel.

24. “mineral exploration” means any prospecting, sampling, conducting surveys, whether airborne, water based, or land based, mapping, drilling, digging, diving, or any other pre-mining activity conducted with the intent of locating or defining economically viable occurrences of minerals or mineral based products.

25. “mineral exploration site” means any parcel(s) of land on or in which mineral exploration occurs including the ground surface cleared for drilling, access roads, drill steel and supplies lay down areas, water storage, drill cuttings settlement basins, drill rigs, excavations for bulk sampling, and any other areas used in conjunction with mineral exploration.

26. “mining, mining activities, or mining operation” means any of the following activities for the purpose of, in associated with, or in anticipation of, the extraction of minerals from the ground:

- A. Clearing or disturbing of land;
- B. Drilling and blasting;
- C. Excavation of earth materials to access or remove ore on or below the surface of the earth;
- D. Beneficiation;
- E. Transportation of overburden, waste rock, ore, and tailings;
- F. Storage, relocation, and disposal of overburden, waste rock, ore, and tailings, including backfilling of mined areas;
- G. Storage and transportation of chemical reagents;
- H. Construction of water impoundment and drainage features;
- I. Construction of roads for access or hauling purposes;
- J. Construction of utilities or extension of existing utilities;
- K. Withdrawal, transportation, and discharge of water;
- L. Beneficiation of ore;
- M. Re-process mine waste rock or tailings; and/ or
- N. Construction of buildings above, on, or below the surface of the ground in

conjunction with any of the foregoing or in connection with mineral exploration;

27. “non-intrusive mineral exploration” means mineral exploration activities that do not disturb the earth-surface, including air borne and land based geophysical surveys, radiological surveys, geochemical surveys, surface geological reconnaissance or mapping, and collection of hand samples, but specifically excludes bulk sampling or drilling for samples.

28. “permittee” shall mean the person who is issued a permit by the Department under this Chapter and any person who owns the minerals, the land and/or a leasehold interest included within the mining area.

29. “organization report” means a statement, certified by the chief executive officer of the applicant as true, accurate and complete, on a form approved by the Department, including the following information:

A. The applicants name, address, and mineral exploration and/or mining business plan of the applicant; and

(1) As to a corporate applicant, the names and addresses of all officers and directors of the corporation, and all shareholders of the corporation, which own or control 10% or more of the outstanding stock of the corporation and limited liability company managers;

(2) As to a limited liability company, the names and addresses of all managers of the company and all members of the company;

(3) As to a general partnership or limited partnership, the names and addresses of all general and limited partners;

(4) As to an individual or sole proprietorship, the name and address of individual or sole proprietor and the names and address of the spouse and child of the individual or sole proprietor;

(5) As to all applicants, the names and addresses of all individuals or business organizations who have the authority to make, or are responsible for making, business, operational and managerial decisions for the applicant, including decisions concerning mineral exploration and mining activities for the applicant.

B. A copy of the applicant’s financial statement;

C. The organizational report, including the financial statement, shall be updated annually and filed with the Department.

30. “overburden” means unconsolidated earth material or soils that overlie bedrock and that are or will be excavated by open pit mining methods to access ore.
31. “percolation leaching” means a process for the primary purpose of the recovery of metals 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, and includes the processes known as “heap leaching” and “dump leaching.”
32. “person” means any individual, sole proprietorship, partnership, corporation, association or any other legal entity.
33. “post-closure” means the period following completion of final reclamation in compliance with the approved reclamation plan and following written approval of closure.
34. “reactive” means susceptible to reacting, dissolving, or otherwise forming a leachate that is or may be harmful to the environment, natural resources health or welfare of the public, or any significant sites under conditions that exist, or may exist at a mining site.
35. “release(s)” means a discharge, emission, spill, leak, escape, dumping, or disposing of hazardous materials from the place where it is contained, generated or stored into the atmosphere, ground or the environment and the abandonment or discarding of barrels, containers, and other closed receptacles containing hazardous materials.
36. “reclamation” actions taken that result in the reconditioning and rehabilitation of the mineral exploration area, mining area, and affected area to a self sustaining ecosystem ecologically equivalent to pre-mining conditions that requires no perpetual maintenance or care, that is protective of the environment, natural resources, and health and welfare of the public, with no ongoing or potential for erosion, land or rock slides, collapses and subsidence, or groundwater, surface water, air, or soil pollution.
37. “remediation” means the taking of actions that are necessary to prevent, minimize, or mitigate damage to the environment, natural resources, or the health or welfare of the public, or any significant sites, including cleanup, removal, isolation, destruction, or treatment of hazardous substances, contaminants, or waste materials, released or threatened to be released into the environment, and associated monitoring and maintenance.
38. “stabilization” means the establishment of vegetation or the proper placement, grading, or covering of soil to ensure its resistance to soil erosion, sliding, or other earth movement.
39. “storage facility” means a facility or a part of a facility where ore, waste rock, overburden,

or tailings is held for a temporary period, at the end of which the ore, waste rock, overburden, or tailings is treated, disposed of, or stored elsewhere.

40. “significant sites” shall mean sites within the affected area having historic, cultural or spiritual significance to members of the Keweenaw Bay Indian Community, as determined, from time to time, by the Tribal Historic Preservation Office.

41. “tailings” means mineral material of inferior or no value that is separated from the economically valuable product in the beneficiation or treatment of minerals.

42. “THPO” means the Tribal Historic Preservation Officer of the Keweenaw Bay Indian Community.

43. “USGS” means the United States Geological Survey.

44. “wetland” means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water and has one of the following three attributes:

- A. At least periodically, the land supports hydrophytes,
- B. The substrate is predominantly un-drained hydric soil; and
- C. The substrate is non-soil and is saturated with water or covered by shallow water at some time during the growing season of each year.

## SECTION TWO

### ADMINISTRATION; POWERS AND DUTIES; SUSPENSION OF CERTAIN MINERAL EXPLORATION AND MINING ACTIVITIES; CERTAIN PROHIBITED ACTIVITIES.

§20A.201 Natural Resources Department.

1. The Department shall administer and enforce this Chapter and regulate all activities of any person that is subject to the provisions of this Chapter. In addition to other powers granted to it in this Chapter, the Department shall have the duty and power to do the following:

- A. Promulgate rules, if the Department deems necessary, from time to time, to implement, administer, and enforce this Chapter. Within 180 days after the effective date of this Chapter, the Department shall promulgate rules for contested case hearings and public hearings authorized or required by this Chapter. Within ten (10) days after the promulgation of any rules by the Department under this Chapter, the Department shall

provide to the Secretary of Tribal Council written notice of the Department's promulgation of the rules, together with thirteen copies of the promulgated rules. The Secretary shall deliver the notice of promulgation and copies of the rules to Tribal Council at the next scheduled meeting of the Tribal Council. The rules shall become effective within thirty (30) days after the date the notification of promulgation and copies of the rules are delivered to the Secretary, unless the Tribal Council shall, within the thirty (30) day time period, adopt a motion rejecting all or any of the promulgated rules.

B. Grant, deny, cancel, revoke, suspend, modify, and amend mineral exploration and mining permits and conduct a contested case hearing in connection with any of the foregoing activities and, in connection therewith, compel the attendance of witnesses and production of evidence by the issuance of subpoenas therefore;

C. Hold public hearings relating to the public comments and the issuance of permits under this Chapter and, in connection therewith, compel the attendance of witnesses and production of evidence by petitioning the Tribal Court for the issuance of subpoenas therefore;

D. Conduct research and studies, or provide for research and studies, related to mineral exploration and mining activities;

E. Enter mineral exploration sites and mining areas at any time, and from time to time, for the purpose of enforcing this Chapter, including for the purpose of sampling, monitoring, inspecting and investigating those areas, including any releases and degradation of the natural resources or environment that may be related thereto;

F. Maintain records and provide for public access to those records;

G. Publish notices and release documents for the purpose of obtaining comments as provided by this Chapter;

H. Issue orders directing applicants or operators to comply with the provisions of this Chapter;

I. Investigate and assess, provide for the investigation and assessment, or require applicants or operators to investigate and assess any releases, suspected releases, or threatened releases of hazardous substances, contaminants, and potential contaminants arising out of mineral exploration or mining activities, including but not limited to,

inspecting, sampling, and testing to determine the nature and extent of any release, suspected release, or threatened release, and the actual or potential impact to receptors;

J. Conduct, provide for the conducting, or require applicants and operators to conduct corrective action or actions designed to remedy releases or threatened releases of hazardous substances, contaminants, or potential contaminants; and

K. Establish fees and costs for implementing, administering, and enforcing this Chapter.

§20A.202 Suspension of Mineral Exploration and Mining Activities Pending the Issuance of Permits

All mineral exploration and mining activities taking place on, before or after the effective date of this Chapter shall be suspended until the Department shall have issued permits for such activities as provided for in this Chapter.

§20A.203. Percolation and In-Situ Leaching.

No person shall use percolation or in-situ leaching as a mining or beneficiation activity.

§20A.204. Cyanide.

No person shall use, store, or transport cyanide in connection with any mineral exploration, mining activities, or beneficiation activities.

### SECTION THREE

#### MINERAL EXPLORATION AND MINING ACTIVITY; PERMIT REQUIRED

§20A.301 Permit for Mineral Exploration and Mining Activity.

No person shall conduct exploration for minerals or mining activities on the L'Anse Reservation, the lands formerly known as the Ontonagon Reservation or lands held in trust by the United States of America for the Keweenaw Bay Indian Community or any of its members without first having received a permit for such activity issued by the Department under this Chapter.

§20A.302 Mineral exploration and Mining Activities Subject to this Chapter.

This Chapter shall apply to all mineral exploration and mining activities occurring before, on or after the effective date of this Chapter regardless of when such mineral exploration or mining activities commenced. Any person conducting mineral exploration on or before the effective date of this Chapter shall submit to the Department an application for a mineral exploration as provided in this Chapter within sixty (60) days after the effective date of this Chapter and pending the issuance of the mineral exploration permit, the person shall cease all mineral exploration. Any person conducting mining activities on or before the effective date of this Chapter shall submit to the Department notice of intent to apply for a mining permit as provided in this Chapter within sixty (60) days after the effective date of this Chapter and pending the issuance of the mining permit, the person shall cease all mining activities.

#### SECTION FOUR

##### MINERAL EXPLORATION; APPLICATIONS AND PERMITS

§20A.401 Mineral Exploration Permit Application.

1. No person may engage in mineral exploration without filing an application with the Department for a mineral exploration permit. A mineral exploration permit is required for each mineral exploration site. The mineral exploration permit application shall be on a form prescribed by the Department, and shall include the following:

A. A permit application fee in an amount not less than the cost estimated by the Department, that will be incurred by the Department for reviewing, investigating, issuing and enforcing the mineral exploration application and any permit issued by the Department pursuant the application and the preparation of the THPO assessment. The Department shall calculate the permit application fee as provided by this section and provide to the applicant the amount of the permit application fee.

B. A description of the proposed mineral exploration activities.

C. The description of the proposed mineral exploration site.

D. All data or information collected by or on behalf of the applicant pertaining to the explorations site, including data or information relating to site location(s), purpose of exploration, proposed access route(s), land clearing, chemical use, equipment to be used,

schedule, geology, hydrogeology, target depths, water volumes and source, and proposed waste storage area. All data or information collected for the purpose of mineral exploration provided to the Department shall be held in confidence and treated as the applicant's proprietary property.

E. Evidence that every person who will be engaged in the in drilling operations and well installation for mineral exploration is licensed by the state of Michigan, Wisconsin, or Minnesota, or the federal government to conduct mineral exploration.

F. A water use plan including:

- (1) The source and amount of water to be used during mineral exploration activities.
- (2) The methods to be used to contain the water during mineral exploration activities.
- (3) The methods to be used to remove water from the mineral exploration site after the completion of mineral exploration activities. Water utilized or generated from mineral exploration activities, including all drilling circulation water and drilling muds, shall be containerized and placed in a secured staging area for sampling and analysis. Water shall not be discharged or released to the environment.

G. A waste removal plan including:

- (1) The methods to be used to remove all waste from the site generated during mineral exploration activities, including drill cuttings, core, scrap wood, grout, plastic pond/basin linings, and concrete.
- (2) Evidence that all waste removed from the site will be disposed of in a landfill licensed by a tribal, federal, or state government. Drill cuttings and other waste shall not be discharged to the ground, buried, or otherwise disposed of on the mineral exploration site, but shall only be disposed at a site licensed by a tribe, federal or state agency for the disposal of such waste.

H. A closure plan including:

- (1) A description of how permittee will return the mineral exploration sites to its original, pre-exploration condition, including, but not limited to, provisions for the restoration of drainages and ponds used for circulation water and cuttings

settlement, cleanup of grout, abandonment of borings, closing access roads, cleanup or removal of tree stumps and tops, and re-vegetation of disturbed land.

I. A performance bond, naming the Keweenaw Bay Indian Community, as obligee, in the amount determined by the Department conditioned upon the satisfactory performance by the applicant and permittee of all closure conditions in the mineral exploration permit.

J. An environmental liability protection insurance policy, naming the Keweenaw Bay Indian Community as an additional insured, with an amount of liability coverage approved by the Department, providing coverage for environmental damage, arising out of the acts or omissions of the applicant in conducting the mineral exploration activities.

K. A public liability and property damage liability insurance policy, naming the Keweenaw Bay Indian Community as an additional insured, with an amount of liability coverage approved by the Department, providing coverage for property damage, bodily injury and death arising out of the acts or omissions of the applicant in conducting the mineral exploration activities.

#### §20A.402 THPO Assessment.

Upon receipt of the application for a mineral exploration permit, the Department shall request that the THPO prepare an assessment of all the mineral exploration sites identified in the application to determine what affect the mineral exploration will have on any significant sites.

#### §20A.403 Notice of Intent to Commence Mineral Exploration Activities.

Upon issuance of a mineral exploration permit pursuant to the application, the applicant shall give the Department not less than thirty (30) days written notice of its intent to commence mineral exploration activities.

#### §20A.404 Department Imposed Conditions, Limitations, and Restrictions.

The Department may impose such conditions, limitations and restrictions on the activities that are authorized to be conducted by the mineral exploration permit that are necessary, as determined by the Department, to protect the environment, natural resources, public health, welfare and safety, and any significant sites.

§20A.405 Incomplete Mineral Exploration.

In the event that the applicant does not completed the mineral exploration within the time period identified in the permit, the permit shall thereafter be void and have no further force or effect.

§20A.406 Mineral Exploration; Approval or Denial of Permit.

1. The Department shall deny an application for a mineral exploration permit if the Department finds that:

- A. The proposed mineral exploration site is unsuitable for mineral exploration;
- B. The mineral exploration activities may endanger the environment, natural resources, or health or welfare of the public, or any significant sites;
- C. A mineral exploration permit issued to the applicant, its parent corporation, any of its principal shareholders or members, or any of its subsidiaries or affiliates was canceled or revoked in this or another jurisdiction within the last twenty-five (25) years;
- D. The applicant is in violation of this Chapter, any rule promulgated under this Chapter, any permit issued under this Chapter, any order of the Department, or any other applicable tribal, federal, or state laws applicable to mineral exploration or mining activities; or
- E. The THPO assessment concludes that the mineral exploration will have adverse impact on any significant sites.

2. The Department shall issue a mineral exploration permit if the Department does not deny the permit for the reasons stated in §20A.406(1).

## SECTION FIVE

### MINERAL EXPLORATION; PERMIT MODIFICATIONS

§20A.501 Mineral Exploration; Permit Modifications.

1. The Department may issue a modification to the mineral exploration permit upon the satisfaction of the following conditions:

A. The Department may require the mineral exploration permit to be modified if the Department finds that:

- (1) The terms and conditions of the mineral exploration permit previously issued

by the Department do not provide for necessary protection of the environment, natural resources, health or welfare of the public or any significant sites; or  
(2) A modification of the mineral exploration is necessary to address changes in the mineral exploration activities, natural or human-made conditions, or technology, or in order to correct an oversight in connection with the issuance of the original permit.

B. The permittee may submit a request to modify a mineral exploration permit to address changes in the mineral exploration of natural or human-made conditions, or technology, or in order to correct an oversight in connection with the issuance of the original permit.

2. A request by the permittee to modify a permit shall include the following:

A. The permit modification application on the form prescribed by the Department;

B. The permit modification application fee in an amount not less than the actual cost estimated by the Department that will be incurred by the Department for reviewing, investigating, issuing and/or enforcing the permit modification application and any modification to the permit.;

C. The proposed changes to the mineral exploration activities necessitating the modification of the permit;

D. The proposed changes, if any, to the mineral exploration site;

E. The area affected by the proposed changes to the mineral exploration activity or the mineral exploration site;

F. A detailed narrative description of the factual reasons necessitating the amendment or modification of the original permit;

G. If the request is made to correct an oversight, a detailed narrative description of the nature of the oversight and the proposed correction.

3. The Department may issue a permit modification requested by the permittee if the Department determines that modification of the permit is necessary or appropriate under the then existing circumstances and conditions.

## SECTION SIX

### MINERAL EXPLORATION; PERMIT SUSPENSION AND REVOCATION

§20A.601 Mineral Exploration; Permit Suspension Without a Hearing.

1. The Department may, without a hearing, suspend a mineral exploration permit for a period of up to ninety (90) days if the Department has reasonable grounds to believe that:

- A. The permittee has failed to satisfy a condition of the applicable permit and as a consequence thereof the environment, natural resources, health or welfare of the public, or significant sites may be adversely affected thereby;
- B. The continuation of the mineral exploration may have an adverse affect on the environment, natural resources, or the health or welfare of the public, or any significant sites;
- C. The permittee has made a false or misleading statement to the Department and as a consequence thereof the Department was induced to issue the mineral exploration permit;
- D. The permittee has omitted or failed to disclose material information to the Department and as a consequence thereof the Department was induced to issue the mineral exploration permit;
- E. The permittee has failed to comply with this Chapter, any rule promulgated under this Chapter, any permit issued under this Chapter, any order of the Department, or any other applicable tribal, federal, or state laws and as a consequence thereof the environment, natural resources, or health or welfare of the public, or any significant sites, may be adversely affected thereby; or
- F. The permittee has not commenced mineral exploration within ninety (90) days after the effective date of the permit or the permittee has abandoned or ceased mineral exploration for which a permit has been issued under this Chapter for a period of 90 days.

§20A.602 Mineral Exploration; Permit Revocation After a Hearing.

1. The Department may, after a hearing conducted within the period during which the exploration permit has been suspended, revoke a mineral exploration permit if the Department finds that:

- A. The permittee has failed to satisfy a condition of the applicable permit and as a

consequence thereof the environment, natural resources, health or welfare of the public or significant sites will be adversely affected thereby and during the period of suspension of the permit the permittee has not satisfied the condition of the applicable permit;

B. The continuation of the mineral exploration will have an adverse affect on the environment, natural resources, the health or welfare of the public or significant sites and during the period of suspension of the permit the permittee has not established, to the satisfaction of the Department, that the continuation of the mineral exploration will not have an adverse affect on the environment, natural resources, or the health or welfare of the public, or any significant sites;

C. The permittee has made a false or misleading statement to the Department and as a consequence thereof the Department was fraudulently induced to issue the mineral exploration permit;

D. The permittee has omitted or failed to disclose material information to the Department and as a consequence thereof the Department was fraudulently induced to issue the mineral exploration permit;

E. The permittee has failed to comply with this Chapter, any rule promulgated under this Chapter, any permit issued under this Chapter, any order of the Department, or any other applicable tribal or federal law, and during the period of suspension of the permit the permittee has not established to the satisfaction of the Department that permittee has complied with the applicable provision of this Chapter, rule promulgated under this Chapter, any permit issued under this Chapter, any order of the Department, or the provision of any other applicable tribal or federal law that was the basis for the suspension of the permit; or

F. The permittee has not commenced mineral exploration within ninety (90) days of the effective date of the permit or the permittee has abandoned or ceased mineral exploration for which a permit has been issued under this Chapter for a period of ninety (90) days and the permittee has not established to the satisfaction of the Department justifiable reasons for permittee's failure to have commenced mineral exploration within ninety (90) days of the effective date if the permit, or the abandonment or cessation of the mineral exploration for which a permit has been issued under this Chapter for a period of 90 days.

SECTION SEVEN  
MINING NOTICE OF INTENT; BASELINE DATA

§20A.701. Mining Notice of Intent.

1. No person shall conduct mining activities prior to filing with the Department a notice of intent to conduct mining activities on a form prescribed by the Department.

2. The notice of intent shall include the following:

A. A detailed description of the proposed mining activities.

B. A legal description of the proposed mining site.

C. All data or information collected by or on behalf of the applicant pertaining to the explorations site, including data or information relating to air borne and land based geophysical surveys, radiological surveys, geochemical surveys, surface geological reconnaissance or mapping, bulk sampling, and drilling results with associated plan and cross section plots of boreholes, rock type, rock mass classification, assay values and mineralogy. All data or information collected for the purpose of mineral exploration provided to the Department shall be held in confidence and treated as the applicant's proprietary property.

D. Organizational report.

E. Evidence, satisfactory to the Department that:

(1) The applicant has operated a mine in the United States of the type and nature identified in the notice of intent at a site with comparable natural and human-made conditions to the site identified in the notice of intent for at least ten (10) years without polluting groundwater or surface water, or degrading the environment, natural resources, or health or welfare of the public, or any significant sites; and

(2) The mine operated by the applicant in the United States a site with comparable natural and human-made conditions to the site identified in the notice of intent did not pollute groundwater or surface water, or degrade the environment, natural resources, or health or welfare of the public, or any significant sites for at least twenty (20) years immediately after the date of closure of the mine.

F. An affidavit of the chief executive officer of the applicant stating that the neither the applicant or any affiliated entity has owned and/or operated any mine included on the National Priorities List, [see 42 U.S.C. 9605(a)(8)(B)] or any mine where the applicant or an affiliated entity, as the owner or permittee of the mine, declared bankruptcy or underwent a dissolution or insolvency that resulted in the failure of the owner or operator of the mine to complete reclamation and remediation of the mine area and affected area to the satisfaction of the governing authority.

G. Financial statements of the applicant for the past three (3) years showing a net worth at least equal to fifteen (15%) percent of the assayed value of the mineral ore body in the mine area for each of the past three (3) years.

3. The payment of a notice of intent fee in an amount estimated by the Department as necessary to reimburse the Department for all costs that will be incurred by the Department in reviewing, investigating, processing, making a final determination on the sufficiency of the notice of intent and, if the notice of intent is approved by the Department, the development of the baseline data as provided for in §20A.702. The estimated amount of the notice of intent fee shall be paid to the Department in full within thirty (30) days after the Department submits the estimated notice of intent fee in writing to the applicant.

A. Within thirty (30) days after the end of each three (3) month period following the date notice of intent fee is paid to the Department, the Department shall provide to the applicant a quarterly statement of all expenses, identified in this section, that have been incurred by the Department in connection with the notice of intent and the applicant shall pay the difference, if any, between the estimated notice of intent fee and the actual cost incurred by the Department in connection with the notice of intent and base line data during the immediately preceding three (3) month period, within thirty (30) days after receipt of the quarterly statement from the Department.

B. In the event that the payment of the balance of the notice of intent fee, as identified in the Department's quarterly statement submitted to the applicant is not paid within the thirty (30) day period after the Department submits the quarterly statement to the applicant, the notice of intent shall be deemed to have been disapproved.

20A.702 Baseline Data.

1. If the Department finds that the applicant satisfies the requirements of §20A.701(2) the Department shall notify the applicant that the notice of intent has been approved and shall commence conducting such studies, investigations, and analysis as the Department determines necessary, including a USGS hydrological data report of the affected area, to establish baseline data for the affected area covering a period of at least three (3) years after the date of the filing of the applicant's notice of intent. The Department may extend the three (3) year period, not to exceed four (4) years, to address unique site-specific factors or then existing or occurring unusual climatic conditions.
2. If the Department finds that the applicant has not satisfied the requirements of §20A.701(2), the Department shall notify the applicant that the notice of intent has not been approved and shall refund any portion of the notice of intent fee that has not been used to reimburse the Department for the costs identified in §20A.701(4).
3. Upon completion of the collection of baseline data for the affected area by the Department and the payment of the balance of the notice of intent fee by the applicant, the Department shall submit the baseline data to the applicant and the public by posting the information on the website of the Keweenaw Bay Indian Community and making copies available to the general public at the offices of the Department and the offices of the Keweenaw Bay Indian Community.

SECTION EIGHT

MINING PERMIT APPLICATIONS

§20A.801 Mining Permit Application.

1. Within one (1) year after the baseline data is submitted by the Department to the applicant filing the notice of intent, the applicant may file with the Department an application, on a form prescribed by the Department, for a permit to conduct mining activities at the site as described and identified, respectively, in the notice of intent. The mining permit application shall include the following:
  - A. The payment of permit application fee in an amount estimated by the Department as necessary to reimburse the Department for all costs that will be incurred by the Department in reviewing, investigating, processing and making a final determination on

the issuance of the mining permit. The estimated permit application fee shall be paid to the Department in full at the time the mining permit application is filed with the Department.

(1) Within thirty (30) days after the end of each three (3) month period following the date the application fee is paid to the Department, the Department shall provide to the applicant a quarterly statement of all expenses incurred by the Department in reviewing, investigating and processing the application and the applicant shall pay the difference, if any, between the estimated application fee and the actual cost incurred by the Department in reviewing, investigating and processing the application during the immediately preceding three (3) month period, within thirty (30) days after receipt of the quarterly statement from the Department.

(2) In the event that the payment of the balance of the application fee, as identified in the Department's quarterly statement submitted to the applicant is not paid within the thirty (30) day period after the Department submits the quarterly statement to the applicant, the application shall be deemed to have been disapproved.

B. A Mining Plan which shall include the following:

(1) A cover sheet that includes, but is not limited to, the name, address, and telephone number of the applicant, the title of the proposed project and, if appropriate, the titles of related projects and the jurisdiction in which each project is located;

(2) An executive summary of the plan;

(3) A table of contents of the plan;

(4) A list of the names and qualifications of the person or persons responsible for preparing and completing the plan and person or persons providing scientific and engineering opinions and safety certifications as required by this Chapter;

(5) Information necessary to evaluate the feasibility and safety of the proposed mining activities;

(6) A description of the project, including purpose, size, scope, affected area, and the phases of development;

- (7) The surface and mineral owners and lessees within the mining area and the affected area;
- (8) Evidence of the applicant's right to enter the mining area and engage in mining activities, including but not limited to, written consent of the owners and lessees;
- (9) Copies of all mining permit applications submitted to any other jurisdiction;
- (10) Materials, methods, and techniques that will be utilized during the proposed mining activities;
- (11) A factual description of the natural and human-made features, including but not limited to, flora, fauna, topography, geology, hydrology, and geochemistry that will be encountered during the mining activities;
- (12) A map of the proposed mining area and affected area and a map and list, including names and addresses, of all known owners of surface and mineral holdings within the proposed mining and affected areas.
- (13) A listing of all parties that have an ownership and controlling interests in the operation, including parties anticipated to have ownership and interests following receipt of a permit, and parties including addresses and telephone numbers.
- (14) A map showing the location of all actual and planned mining and beneficiation activities within the region and physically separate but interrelated mining and beneficiation operations located in close proximity to each other that are under the control of the same owner or permittee.
- (15) Evidence of the applicant's right to enter the mining area and engage in mining activities, including but not limited to, written consent of the owners and lessees;
- (16) The name and address of a designated officer and manager of the applicant for the service of notices and orders from the Department.
- (17) A map of the mine site showing locations of all mining related buildings, operations and activities, and a description of all operations and activities that will occur at the mine site.
- (18) A description of the type and method of proposed mining, the expected operating life of the mine, and the anticipated rate and schedule of mining.

- (19) A description of the pre-mining construction activities, mining activities, remediation activities, closure activities, and related time schedules.
- (20) Infrastructure maps and plans including but not limited to roads, rail lines, docks, utilities, lighting, and pipelines.
- (21) A description and plan for all underground workings and features associated with mining operations.
- (22) The location, description, size, contours, and a map of all proposed open pits.
- (23) Proposed blasting schedule, plans, and methods.
- (24) Estimated amount of taxes, royalties, and other fees and payments to be paid by the permit holder and the anticipated recipient of these payments.
- (25) Onsite and offsite traffic routes and anticipated traffic volumes and traffic type associated with the facility, including, but not limited to, routes traffic management plans and volumes for transport of ore, infrastructure and roads, fuel, chemicals, equipment, supplies, and employees.
- (26) Mine site access control that includes provisions for control of public entry.
- (27) The anticipated sources and amounts of fugitive dust and descriptions of the methods that shall be employed to control or eliminate fugitive dust.
- (28) Detailed geology of the area that includes all geologic units to be encountered during mining. Detailed geology shall be described in narrative and shown in geologic cross sections and other appropriate figures, and include all coring and boring log data and information collected by the applicant.
- (29) Hydrology of the area and maps and cross sections depicting all aquifers, connections between aquifers, connections between groundwater and surface water, and groundwater and surface water flow and gradient information and data, including all substantiating background information. Hydrology shall include the location and description of all aquifers that will be intersected and interconnected by mining operations and the data and data sources used for characterizing the aquifers. Hydrology shall include a characterization of the hydrology of the bedrock that includes fracture flow, and shall include an analysis of current

hydrologic characteristics of the area, and all hydrologic changes that will result from mining operations during various phases of mining and following closure.

(30) Descriptions of anticipated seasonal storm water runoff and snowmelt, identification of all operations potentially impacted or affected, details depicting and describing storm water control and design features for tailings basins, waste rock piles, and other features that specifically contain provisions for anticipated periods of high runoff and snowmelt.

(31) Size, grade, mineralogy, and geochemistry of the orebody, peripheral rock, waste rock, tailings, and overburden.

(32) Acid generating potential, leachability, and reactivity of the orebody, peripheral rock, waste rock, tailings, and overburden, and all substantiating background and testing information and plans for on-going material analysis and characterization during mining.

(33) Radionuclide levels of the orebody, peripheral rock, waste rock, tailings, and overburden, and all substantiating background and testing information and plans for on-going material analysis and characterization during mining.

(34) Descriptions, characterizations, and compositions, of all materials exposed, disturbed, or intersected by mining activities, including but not limited to overburden, peripheral rock, ore, and soils.

(35) Descriptions, characterizations, compositions, volumes, and appropriate figures and diagrams depicting the source, volume, conveyance method, interim storage destination, and final destination of site material moved during mining, including, but not limited to vegetation, topsoil, alluvium, waste rock, tailings, and ore.

(36) Waste-handling plan including the conveyance method, and the location, size, and volume of waste piles, basins, or impoundments. The waste-handling plan shall show the interim and final destinations of all waste generated during mining activities or other activities associated with mining, and shall include plans for on-going waste characterization and reporting of characterization results during mining.

(37) Designs and installation and operation plans for all containment systems including, but not limited to, waste rock, stockpiles, tailings basins, settling ponds, and impoundments that are designed to prevent contaminant discharge and contaminant release to the environment.

(38) A description and supporting data and testing results indicating the amounts, volumes, and sources of all rock and other materials expected to generate acid during active mining and following closure.

(39) A description and supporting data indicating the quality, quantity, and sources of leachate and other contaminants anticipated to be generated during mining and following closure.

(40) Ore handling, beneficiation, processing and preprocessing plans, techniques, and the locations of all related facilities, conveyance structures, and buildings.

(41) A water balance for the proposed mining operation showing all inputs, storage, conveyance, usage, outputs and the anticipated quality of outputs and seasonal variations.

(42) A plan for ongoing mining operation water balance data collection and reporting.

(43) A description of water source, management, conveyance, volume, and discharge location and volumes for each mine operation that will use, generate, or contain water, including but not limited to equipment wash-down areas, underground workings, open pits, laboratories, offices, tailings and waste rock conveyance and basins, dust control, ore beneficiation, ore processing or preprocessing, precipitation, sewage treatment systems, and other mine related areas, processes, and features in which water will be used, generated, or present, including data and information regarding the quality of managed waters and associated system performance data or demonstration of proven effectiveness.

(44) A description of all proposed water treatment plants, operations, techniques, and associated performance data, certification, or demonstrations of proven effectiveness.

(45) Detailed engineering plans, equipment, methods, bench scale and pilot scale studies demonstrating how discharges to groundwater will not degrade, directly or

indirectly, the water quality of the receiving aquifer(s). Discharge to groundwater effluent limits will be lower than the aquifer water quality as established during the baseline studies performed to meet the requirements of a mining permit application or the most restrictive water quality standards, which ever is most protective of the environment.

(46) A description of chemical use that describes and characterizes all hazardous or potentially hazardous chemical inputs, uses, transport, storage, outputs, and the interim and final destination for all chemicals that will be used at the site, including petroleum products.

(47) Management and handling plans for all chemicals and fuels that provide for protection of human health, and prevent release of contaminants to the environment.

(48) A scientific and engineering description of feasible and prudent alternatives to the materials, methods, and techniques that the applicant proposes to be utilized during the proposed mining activities.

(49) Information, data and scientific and/or engineering opinions that demonstrates that all methods, materials, and techniques proposed to be utilized are capable of protecting human health and the environment through prevention of release of contaminants to the environment during mining and following post-closure in an environmental setting similar to the proposed mining site, and have previously accomplished their stated objective at similar mine sites in similar environmental settings. The information, data and scientific and/or engineering opinions shall also demonstrate that mining operations will not result in degradation or contamination of surface water, groundwater, or harm human health or the environment during operations, closure, and following post-closure.

(50) All substantiating information, data, calculations, references, models, and other information utilized to complete the mining plan shall be submitted with the plan.

(51) A description of a health and safety plan for construction and mining activities that complies with applicable MSHA laws and regulations.

(52) Additional information and data as required by order of the Department.

C. A Reclamation Plan which shall include the following:

- (1) A cover sheet that includes, but is not limited to, the name, address, and telephone number of the applicant, the title of the proposed project and, if appropriate, the titles of related projects and the jurisdiction in which each project is located;
- (2) An executive summary of the plan;
- (3) A table of contents of the plan;
- (4) A list of the names and qualifications of the person or persons responsible for preparing and completing the plan and person or persons providing supporting scientific and engineering opinions and safety certifications required by this section.
- (5) A plan, schedule, and description of all anticipated reclamation activities and materials and features involved and affected including, but not limited to, waste rock piles, underground workings, or other underground features, tailings basins, site buildings, site infrastructure, drainage ways, conveyances, roadways, and impoundments.
- (6) Topographic maps depicting site conditions, final land contours, proposed final land use, and relationship to surrounding land and land use, along with all ponds, streams, wetlands, roads, dikes, drainage ditches, and soil erosion and sedimentation control structures that will be present after completion of reclamation.
- (7) Plans and schedules for filling all mine workings, including shafts, portals, or other openings between the land surface and underground mine workings in a manner that will protect the environment, natural resources, and public health and safety and that will prevent subsidence of, or movement of water into or out of, the mine workings.
- (8) Plans and schedules for reuse or removal of all buildings and infrastructure constructed as a part of the mining activities.
- (9) The description, location, and volume of all waste materials anticipated as present at the cessation of mining.

(10) The description, location, volume, handling plan, storage plan, and interim and final destination of all waste materials generated and handled during reclamation activities. Final disposition of all toxic and hazardous wastes, refuse, tailings and other solid waste shall be provided for such that the environment, natural resources and public health and safety will be protected, and shall be in conformance with all other applicable federal and tribal regulations.

(11) A plan for rendering inert or permanently isolating from the environment all reactive, leachable or potentially reactive or leachable waste, peripheral rock, and other materials generated, disturbed, intersected, exposed, or encountered during mining activity.

(12) A demonstration that leaching or oxidation of material will not occur or will not be occurring following completion of reclamation activities and following post-closure, and a demonstration that this has been successfully achieved at similar mining sites located in similar environmental settings to the proposed mine site.

(13) A long-term mine water management plan and a description and data and information that demonstrates the long-term affects and response of local and area hydrologic systems following closure.

(14) A revegetation plan that includes vegetation species and quantities, seedbed and planting area preparation, seeding and planting methods, mulching, fertilization, maintenance, and final density of plants. All vegetation shall be native species approved by the Department for planting.

(15) A description and supporting data and information of the long-term impact of the proposed mining activities on the groundwater, surface water, air, and soil within the mining area and the affected area.

(16) Information, data and scientific and/or engineering opinions that demonstrates that reclamation will result in the reconditioning and rehabilitation of the mineral exploration area, mining area, and affected area to a self sustaining ecosystem ecologically equivalent to pre-mining conditions that requires no perpetual maintenance or care, that is protective of the environment, natural resources, and health and welfare of the public, with no ongoing or potential for

erosion, land or rock slides, collapses and subsidence, or groundwater, surface water, air, or soil pollution.

(17) A detailed itemized statement showing the applicants estimation of the cost of reclamation.

(18) Such additional requirements as required by order of the Department.

D. An Environmental Protection Plan which shall include the following:

(1) A cover sheet that includes, but is not limited to, the name, address, and telephone number of the applicant, the title of the proposed project and, if appropriate, the titles of related projects and the jurisdiction in which each project is located;

(2) An executive summary of the plan;

(3) A table of contents of the plan;

(4) A list of the names and qualifications of the person or persons responsible for preparing and completing the plan and person or persons providing supporting scientific opinions and engineering and safety certifications;

(5) A description of the ore, waste rock, overburden, peripheral rock, and tailings, including characterization of leachability and reactivity in the affected area;

(6) A description of the amount and source of storm water and snowmelt runoff in the mining area and the affected area;

(7) A description of the amount and source of fugitive dust resulting from the proposed mining activities;

(8) A description of the materials, methods, and techniques that will be utilized to prevent the discharge or release of hazardous substances, contaminants, and potential contaminants to air, soil, groundwater, and surface water.

(9) Such additional requirements as required by order of the Department.

E. A Monitoring Plan which shall include the following:

(1) A cover sheet that includes, but is not limited to, the name, address, and telephone number of the applicant, the title of the proposed project and, if appropriate, the titles of related projects and the jurisdiction in which each project is located;

(2) An executive summary of the plan;

- (3) A table of contents of the plan;
- (4) Provisions that shall ensure that any threat to the environment, natural resources, or health or welfare of the public caused either directly or indirectly by the proposed mining activities are detected and reported to the Department as early as possible;
- (5) A description of the materials, methods, and techniques that will be utilized to monitor air, soil, groundwater, and surface water quality for actual and potential adverse impacts on the environment, natural resources, and health and welfare of the public from the proposed mining activities;
- (6) Plans and schedules for monitoring air, soil, groundwater, and surface water quality in the mining area and the affected area during mining activities.
- (7) Provisions for monitoring and detection of changes for the following:
  - (a) Groundwater and surface water quality;
  - (b) Area biota;
  - (c) Groundwater flow and levels;
  - (d) Surface water flow and discharge;
  - (e) Soil quality;
  - (f) Air quality, including fugitive dust levels and emissions;
  - (g) Stormwater runoff quality and quantity;
  - (h) Erosion and sedimentation on and off of the site;
  - (i) Leachate quality and quantity;
  - (j) Containment system leaks, releases, ruptures, or failures;
  - (k) Decreases or increases in local and area surface elevation potentially related to mining activity; and
- (8) Additional information as required by order of the Department.
- (9) Plans, description, and location for real time continuous elevation monitoring and subsidence detection.
- (10) Plans, description and location for real time continuous surface water stream gauges meeting current USGS standards for continuous water monitoring gauges. Final locations shall require approval by the Department.

- (11) Plans, description and locations of biotic monitoring stations and locations, and methods capable of determining changes to or within the aquatic wildlife and vegetation community, terrestrial vegetative community, terrestrial wildlife populations, and aquatic and terrestrial habitat quality or conditions.
- (12) Plans and descriptions for measuring and determining mining related erosion and sedimentation volumes, quality, and impacts.
- (13) Plans and descriptions for real time continuous leachate quality and quantity monitoring for all relevant mining and mining related operations and elements.
- (14) Plans and descriptions for real time continuous leak detection monitoring for all containment systems, waste storage units, fuel storage areas, and other material and process areas as appropriate.
- (15) Plans, descriptions and locations of all groundwater monitoring wells. Monitoring wells shall be located as close as practicable to planned operations and operational elements, and the monitoring network shall be capable of monitoring all local and area aquifers. Groundwater monitoring system design and locations shall account for potential local and area receptors, horizontal and vertical hydrologic gradients, geologic and hydrologic conditions, seasonal variations, topography and access. Monitoring of groundwater shall include provisions for continuous collection of general quality and quantity data including but not limited to pH, specific conductance, temperature, and level.
- (16) Monitoring of groundwater and surface water shall include provisions for monthly or more frequent monitoring of relevant metals and cyanide as listed on most current EPA Target Analyte list, plus uranium. Monitoring of groundwater and surface water shall include provisions for monthly or more frequent monitoring of specific conductance, temperature, the hydrogen ion concentration expressed as pH, dissolved oxygen, calcium, sodium, magnesium, potassium, iron, chloride, sulfate, bicarbonate, and other total and dissolved elements and compounds that may be introduced or affected by the mining activities, as identified by the applicant and approved by the Department.
- (17) Provisions for inspection and maintenance of all monitoring systems on a monthly or more frequent basis.

(18) Provisions for reporting of all collected monitoring data on a monthly or more frequent basis.

(19) Provisions for quality assurance and quality control for all monitoring methods, collected monitoring data, and monitoring systems.

(20) Such additional requirements as required by order of the Department.

F. A Contingency Plan which shall include:

(1) A cover sheet that includes, but is not limited to, the name, address, and telephone number of the applicant, the title of the proposed project and, if appropriate, the titles of related projects and the jurisdiction in which each project is located;

(2) An executive summary of the plan;

(3) A table of contents of the plan;

(4) A list of the names and qualifications of the person or persons responsible for preparing and completing the plan and person or persons providing certification that the Contingency Plan meets or exceeds current federal standards for contingency and emergency response planning;

(5) A description of the materials, methods, and techniques that will be utilized to respond to a discharge or release, or a threatened discharge or release, of hazardous substances, contaminants, and potential contaminants to air, soil, groundwater, and surface water;

(6) An agreement by applicant to update the plan each year until the date of the Notice of Final Closure of the Mine.

(7) A description of all planned measures, techniques, structures, facilities or other human health or environmental protection plans or measures to be utilized during construction, mining, and reclamation activities to protect human health and the environment, prevent release of contaminants to the environment, and prevent release or discharge of contaminants to surface water or groundwater and respond to a discharge or release, or a threatened discharge or release of hazardous substances, contaminants, and potential contaminants to air, soil, groundwater, and surface water;

(8) A spill prevention and response plan;

(9) An assessment of the risk to the environment or public health and safety associated with potential accidents or failures involving the following, and the response measures that shall be followed. For a release or threat of release of contaminants or potential contaminants the applicant shall describe response measures that the applicant will take that result in removal of contaminants from the environment and contaminant source removal, remediation, or control. An assessment of risk shall be completed for each of the following:

- (a) Release or threat of release of toxic or acid-forming materials.
- (b) Release or threat of release of leachate or other contaminants.
- (c) Material and chemical transport onsite and offsite.
- (d) Storage, transportation, and handling of explosives.
- (e) Fuel storage and distribution.
- (f) Fires.
- (g) Wastewater collection and treatment system.
- (h) Settling pond or tailings disposal area embankment failure.
- (i) Containment system cover failure, liner failure or leachate collection system failure.
- (j) Air emissions including dust.
- (k) Toxic and hazardous waste spill.
- (l) Other specific natural risks defined by the environmental impact assessment.
- (m) Power disruption.
- (n) Subsidence.

(10) A map identifying at risk locations within the mining area and the affected area.

(11) A section that contains all of the following information:

- (a) The procedure for notifying the general public, public authorities, and safety agencies in the event of an emergency, a discharge or release, or a threatened discharge or release, of hazardous substances, contaminants, and potential contaminants to air, soil, groundwater, and surface water;

- (b) A list, by title, of personnel to be contacted and their duties and responsibilities;
- (c) The actions to be taken to restrict access of nonessential personnel to the area;
- (d) If evacuation of the public is necessary, the procedure for conducting the evacuation;
- (e) A list of emergency equipment and its location;
- (f) A list of emergency telephone numbers, including the following:
  - (i) Representatives of the permittee;
  - (ii) KBIC government departments;
  - (iii) The emergency management coordinator;
  - (iv) Local ambulance services;
  - (v) Local hospitals;
  - (vi) Local fire and police departments;
  - (vii) The pollution emergency alerting system;
  - (viii) Federal regulatory agencies as appropriate; and
  - (ix) The local law enforcement authorities unit of government.

(12) The agreement of the applicant to submit a report to the Department and emergency management agency having jurisdiction over the mining area and the affected area of any incident, act of nature, or violation of this Chapter or the mining permit, within twenty-four (24) hours of the occurrence thereof, that has created, or may create, a threat to the environment, natural resources, the health, safety or welfare of the public or any significant site.

G. A Beneficiation Plan, if beneficiation activities are identified by the map required by Section 20A.801 (1) (B)(17), which shall include:

- (1) A cover sheet that includes, but is not limited to, the name, address, and telephone number of the applicant, the title of the proposed project and, if appropriate, the titles of related projects and the jurisdiction in which each project is located;
- (2) An executive summary of the plan;
- (3) A table of contents of the plan;

- (4) A list of the names and qualifications of the person or persons responsible for preparing and completing the plan and person or persons providing scientific and engineering opinions and engineering and safety certifications required by this Chapter;
- (5) A plan, schedule, and description of all anticipated beneficiation activities and materials and features involved and affected including, but not limited to, chemicals used, by-products generated, waste materials generated, products, water use, and discharge water quality.
- (6) A detailed description and relevant location maps and plans depicting any mills, concentrators, flotation cells, dryers, separators, chemical reactors, filtering equipment, kilns, or other type equipment to be used to beneficiate minerals.
- (7) The types, amounts, locations, sequence, schedule, conveyance structures and methods and other means of handling, moving, storage and disposing of waste rock and tailings including all associated waste water systems.
- (8) Detailed descriptions and plans depicting emergency and backup systems and conveyances.
- (9) Provisions, plans, and system details that will be used to prevent release of contaminants to the environment from beneficiation activities and processes, and engineering certifications that systems and activities will be effective in accomplishing this objective and have accomplished this objective at other beneficiation sites.
- (10) Information that demonstrates that all methods, materials, and techniques proposed to be utilized are capable of accomplishing the objective of protecting the public health and the environment in an environmental setting similar to the proposed mining site, and have previously accomplished the stated objective at similar mine sites in similar environmental settings.
- (11) Additional information and data as required by order of the Department.

§20A.802 Beneficiation Activities.

1. Beneficiation activities shall require a separate permit for mining activities if either of the following conditions exist:

A. The site of the proposed beneficiation activities is not, or will not be, within the site of mining activities that is the subject matter of an application for mining permit that has been filed with the Department; or

B. The permittee of the proposed beneficiation activities that are associated with certain mining activities is not the same person as the permittee of mining activities that is the subject matter of an application for mining activities that has been filed with the Department.

2. If the provisions of §20A.802 are applicable, the person proposing to conduct the beneficiation activities shall submit to the Department a notice of intent required by Section 7 and, if the notice of intent is approved by the Department, an application for a mining permit to conduct the beneficiation activities in the same manner and subject to the same terms and conditions as a notice of intent and application for the mining permit under provisions of this Chapter, except that the Mining Plan shall not be required in the application for beneficiation activities and the beneficiation plan required by §20A.801(1)(G) shall be supplemented to include the following information:

A. A certification by the chief executive officer of the applicant that neither the applicant, its parent corporation nor any of its principal shareholders or members, or any of its subsidiaries or affiliates has failed to provide, defaulted on or forfeited any financial assurance required for any mining activity in this or another governmental jurisdiction within the last twenty-five (25) years;

B. Financial assurance as required in §20A.1201;

C. An organization report on the form prescribed by the Department;

D. The name of agent for service of process residing within the territorial jurisdiction of the Keweenaw Bay Indian Community;

E. A list of all tribal and federal permits, licenses, and authorizations that will be required for the mining activity and any other activity associated with the mining activity;

F. Financial statements of the applicant for the past three (3) years showing a net worth at least equal to fifteen (15%) of the value of the ore that will receive beneficiation at the proposed beneficiation site in the fifteen (15) year period following commencement of operation, for each of the past three (3) years.

3. For the purposes of this §20A.802, all the provisions of this Chapter, except as provided in

section 2, relating to mining activities shall apply to beneficiation activities and each such provision shall be read by substituting the terms “beneficiation” or “beneficiation activities” for the terms “mining”, “mining activities, or mining operations”, as the context may require.

§20A.803 Approval or Denial of Mining Permit Application

1. If the Department determines that the application permit for mining activities does not comply with the requirements of this Section 8, the Department shall deny the application and refund to the applicant any portion of the application fee that has not been applied by the Department for the purposes specified in §20A.801(1)(A).
2. If the Department does not deny the application for a permit for mining activities, the Department shall grant the permit.

SECTION NINE

ENVIRONMENTAL ASSESSMENT

§20A.901 Environmental Assessment.

1. Within one (1) year after the Department receives a completed application for mining activities which complies with the requirements of this Chapter, as determined by the Department, the Department shall prepare an Environmental Assessment. The Environmental Assessment shall include the following:

A. A cover sheet that includes;

- (1) The name, address, and telephone number of the applicant, the title of the proposed project that is the subject of the assessment and, if appropriate, the titles of related actions, together with each jurisdiction, if applicable, where the project is located.
- (2) The name, address, and telephone number of Department staff or designee who can supply further information.
- (3) A SUMMARY abstract of the assessment.
- (4) The date of the public hearing on the draft EIA and the date following the meeting by which comments on the draft EIA must be received by the Department.

- B. A summary of findings;
- C. A table of contents to be used to assist readers to locate material;
- D. A project description that describes the project size, scope, environmental setting, geographic location, and the anticipated timeline, phases of development and operation, phases of reclamation, and phases and anticipated operating life and date of closure;
- E. A delineation of the mining and affected areas;
- F. Environmental setting maps of the mining and affected area that show the areas affected by mining including, but not limited to information and data for the following as it exists at the time of application:
  - (1) Bedrock geology, including appropriate cross sections that show the horizontal and vertical relationships.
  - (2) Watershed, water basins, water courses, and wetlands.
  - (3) Hydrology.
  - (4) Hydrogeology and aquifers.
  - (5) Soils.
  - (6) Fish, wildlife, and habitat.
  - (7) Past mining facilities.
  - (8) Significant sites.
  - (9) Infrastructure.
  - (10) Parks, refuges, wilderness, or other similar areas.
  - (11) Zoning plans land use plans, and other plans and designated areas as available.
  - (12) Baseline data and information details or summaries.
  - (13) Additional information determined as necessary for evaluation of the environmental setting as determined by the Department.
- G. A description of the environmental setting of the proposed mining and affected areas that includes environmental reports, information, and data for the mining and affected area.
- H. A list of all known governmental permits and approvals required for the project. Those permits for which all necessary information has been gathered and presented in the EA shall be identified.

- I. A description of the measured climatic factors representative of the mining area and the affected area.
- J. Air quality.
- K. A water balance that accounts for precipitation, evapotranspiration, infiltration, runoff, stream flows, and groundwater and surface water withdrawals and discharges from mining activities.
- L. Topographic maps showing the boundaries of the mining and affected area, building locations and man-made features within the mining and affected area.
- M. A map which delineates existing vegetation types and plant communities within the mining and affected area, including sensitive, threatened or endangered, or culturally significant plant species.
- N. Wildlife information for the mining and affected area, including, but not limited to:
  - (1) A map showing habitat types, identified key habitat areas, and special or unique wildlife habitat features
  - (2) A list of species occurring and potentially occurring within the mining or affected area and any additional species potentially impacted by the mining operations.
  - (3) Data gathered including presence/absence, distribution by season and habitat type, forage base, known or possible interrelationship amongst and between species, and relative abundance.
  - (4) An analysis of the health and sensitivity of existing ecosystems, including anticipated direct, indirect, short- and long-term impacts associated with the proposed operation.
- O. A description of the ore body in the proposed permit area, including geologic plans and cross-sections depicting the various geologic units, mineralized zone or ore body, aquifers and springs.
- P. A description of the potential for geochemical alteration of overburden, ore body and other materials present within the permit area. Detailed analyses may be required if the substrata is suspected to contain substances that are likely to create acid drainage or leach contaminants, or might degrade surface water or ground water or hinder reclamation.

Q. Surface water and ground water information shall include the following site and potentially affected area specific data:

(1) A map or maps containing surface water and stream data and information, area watersheds, watercourses, drainage ways, lakes, reservoirs, springs, and riparian and wetland areas;

(2) Likely and identified project water discharge areas and points.

(3) A description of surface drainage systems and information regarding the seasonal variations in surface water quantity and quality within the proposed mining and affected areas as determined through collection of site and area specific data;

(4) Lithology and thickness of each geologic unit below the site indicating which units are water bearing, cross sections and potentiometric maps indicating the location of wells and springs, and the ground water flow direction in the vicinity of the site and potentially affected area as determined through collection of site and area specific data;

(5) A description of the aquifer characteristics including depths to ground water, direction of flow, gradients, and other aquifer data including ground water quality, as determined through collection of site and area specific data, and use of existing data and information;

(6) A determination of the probable impacts caused by mining and reclamation, on the mining and affected areas, with respect to the hydrologic regime, quantity and quality of surface and ground water systems.

R. A description and delineation on topographic maps of known prior mining operations which may have affected the mining or affected area.

S. A list and accompanying map indicating sites on or eligible for listing on the National Register of Historic Places, the Michigan State Historic Preservation Office's inventory of historic properties, and Significant sites. Included with this list and map shall be a description of the effects the proposed mining operations may have on these sites.

T. A description of the present and historic land use of the permit area, the general patterns of land use in the surrounding areas, and a narrative of land capability and

productivity based upon U.S. Soil Conservation Service land use capability classes or a similar classification.

U. A geologic evaluation of seismicity, subsidence potential and other pertinent geologic information.

V. Additional information as determined necessary by the Department for evaluation of the application.

W. An alternatives section comparing the potential impacts of the proposal with those of other alternatives, including the no-action alternative, to the proposed project.

X. A discussion of measures that could eliminate any adverse environmental, cultural, and treaty rights impacts of the proposed project or various phases of the project, and the potential effectiveness of those measures.

Y. An analysis of the cumulative impacts of past, current, and proposed future actions on the natural and human-made environmental setting and features in the proposed mining and affected area.

Z. An assessment of potential impacts of the proposed project on natural and human-made environmental setting and features, treaty rights, cultural resources and significant sites.

AA. An appendix that shall include, when applicable:

- (1) Material prepared in connection with the EIA;
- (2) Material which substantiates any analysis fundamental to the EA;
- (3) Permit information that was developed and gathered concurrently with the preparation of the EIA;
- (4) Baseline data collected from and descriptive of the environment of the proposed mining and affected area, including air quality, water quality and quantity and surface water groundwater interrelationships, hydrodynamic regime, wildlife and wildlife habitat, vegetation and forestry data, and human made features and existing human related conditions.

SECTION TEN  
PUBLIC PARTICIPATION

§20A.1001 Public Participation.

1. Within fifteen (15) days after the Department delivers the Environmental Assessment to the applicant, the Department shall post the application for mining permit and the Environmental Assessment for public comment on the Keweenaw Bay Indian Community's web site and publish notice of the opportunity for public comment in a newspaper of local circulation for three (3) consecutive weeks. The notice of public comment shall include:

A. A summary of the application for a mining permit and of the Environmental Assessment;

B. A listing of any other permits, federal or local, and hearings that are pending or anticipated with respect to the proposed mining activities.

2. The Department shall accept written public comment on the application for mining permit and the Environmental Assessment for a period of one hundred and twenty (120) days after posting the application for mining and the Environmental Assessment for public comment.

§20A.1002 Review of Public Comments; Proposed Decision.

1. The Department shall have one hundred and twenty (120) days to review the public comments on the application for mining and the Environmental Assessment and to incorporate public comments into the Environmental Assessment which the Department deems applicable, appropriate and significant and to issue a proposed decision to grant or deny the permit. If the Department issues a proposed decision granting the permit the Department shall include in the decision the proposed permit and any conditions the Department proposes to include in the permit.

§20A.1003 Proposed Decision; Notice of Public Hearing.

1. The Department's proposed decision shall be posted on the Keweenaw Bay Indian Community's web site and notice of the proposed decision shall be published in a newspaper of local distribution in the area where the proposed mining operation is to be located.

2. At the same time the Department issues its proposed decision to grant or deny the permit, the

Department shall issue a notice of a public hearing on the proposed decision. The notice shall specify the time and place of the public hearing, which shall take place not less than ninety (90) days and not more than one hundred (100) days after the date of the publication of the Department's proposed decision. The public hearing shall be held in the area where the proposed mining operation is to be located. The notice shall be published on the web site of the Keweenaw Bay Indian Community and in a newspaper of local distribution in the area where the proposed mining operation is to be located.

§20A.1004 Public Hearing.

1. The Department shall accept verbal and written public comment on the proposed decision at the public hearing and written comment on the proposed decision for a period of sixty (60) days after the date of the public hearing. At the public hearing the Department and the applicant may call witnesses to testify, under oath, on the merits of the proposed decision. The public hearing shall be transcribed by a certified court reporter.
2. The Department shall keep a recorded record of the public hearings required under this section.

SECTION ELEVEN  
MINING PERMIT

§20A.1101 Mining; Approval or Denial of Permit.

1. Within ninety (90) days after the end of the public comment period provided for in §20A.1004(1), the Department shall issue its final decision granting or denying the permit.
2. The Department shall deny an application for a mining permit if the Department finds that:
  - A. The proposed mining site is not suitable for mining;
  - B. The mining activities may endanger, impair, degrade or damage the environment, natural resources, or health or welfare of the public, or any significant sites;
  - C. The mining activities may impair or restrict any treaty rights of the Keweenaw Bay Indian Community or the hunting, fishing and gathering rights of the members of the Keweenaw Bay Indian Community;
  - D. Any mining permit issued to the applicant, its parent corporation, any of its principal

shareholders or members, or any of its subsidiaries or affiliates was violated, canceled, forfeited or revoked in this or another jurisdiction within the last twenty-five (25) years;

E. The financial assurance posted by the applicant, its parent corporation, any of its principal shareholders or members, or any of its subsidiaries or affiliates as security for the performance of its obligations under any mining permit, mining law or mining regulation has been enforced, defaulted, or drawn upon, in whatever manner provided by law or contract, by the obligee, beneficiary or secured party named as such in the financial assurance within the last twenty-five (25) years;

F. The applicant, its parent corporation, any of its principal shareholders or members, or any of its subsidiaries or affiliates has declared bankruptcy, been adjudicated bankrupt, had a receiver appointed for its assets or undergone a dissolution that resulted in the:

- (1.) failure to complete construction of a mine of any type within the time period provided for in the permit issued for the mine;
- (2.) failure to continue the construction of a mine of any type for a period of ninety (90) days or more;
- (3.) failure to complete construction of a mine of any type in accordance with the terms and conditions of the permit issued for the mine;
- (4.) revocation of a mining permit of any type;
- (5.) enforcement, default or a draw on any financial assurance issued to secure the performance of the terms and conditions of any mining permit of any kind; and/or
- (6.) failure to complete reclamation of a mining site in this or another jurisdiction within the last twenty-five (25) years;

G. The applicant is in violation of this Chapter, any rule promulgated under this Chapter, any permit issued under this Chapter, any order of the Department, or any other tribal or federal law, regulation or permit applicable to any aspect of the mining activities

H. The mining permit does not comply with any requirement of this Chapter or any regulation promulgated by the Department pursuant hereto.

I. The Environmental Assessment determines that the mining activities or any aspect thereof, individually or cumulatively, will result in an adverse impact on the rights reserved by the predecessors of the Community under the 1842 and 1854 treaties with the United States of American, natural resources, the environment, health or welfare of the

public, or to any significant sites as may be located within the affected area.

J. The applicant has not obtained all tribal and federal licenses and authorizations necessary for the mining activities.

3. The Department shall issue a mining permit if the Department does not deny the permit for the reasons stated in §20A.1101(2).

4. Any permit issued by the Department for the mining activities shall incorporate, as conditions to the permit that must be complied with by the permittee, compliance with the mining, reclamation, environmental protection, monitoring, contingency plans and, if applicable, the beneficiation plan that are approved by the Department, together with such other terms and conditions as may be deemed necessary or desirable by the Department in order to protect the environment, natural resources, the health and welfare of the public and/or significant sites as may be located within the affected area.

## SECTION TWELVE FINANCIAL ASSURANCE

§20A.1201 Financial Assurance.

1. After the issuance of the mining permit by the Department for mining activities and as a condition to the commencement of any mining activities, the permittee shall file with the Department the financial assurance required by the Section.

2. The financial assurance required by this Section shall consist of:

A. Performance bonds.

B. Cash and/or securities escrow fund.

C. Certificate of deposit.

D. Irrevocable unconditional letter(s) of credit.

E. Insurance policies.

F. Such other equivalent financial assurance as may be satisfactory to the Department.

3. The financial assurance shall be on such terms and conditions as may be satisfactory to the Department.

4. The financial assurance shall be payable to the Keweenaw Bay Indian Community, or shall name the Keweenaw Bay Indian Community as the beneficiary, obligee, or insured thereunder, as

the circumstances of the form of the financial assurance may require.

5. The provider of the financial assurance shall not be an affiliated entity with the permittee.

6. The financial assurance shall become immediately due and payable to the Keweenaw Bay Indian Community in the event any of the following occurrences take place:

A. The Department shall suspend mining activities for a period in excess of sixty (60) days as a result of a violation of any provision of this Chapter by permittee.

B. The Department shall revoke the mining permit as a result of a violation of any provision of this Chapter by permittee.

C. The permittee shall be adjudicated bankrupt under any applicable federal laws.

D. A receiver shall be appointed for the assets of the permittee under any applicable state law.

E. The collapse of the mine or any part thereof or any other event occurs in or around the mine site that, in the determination of the Department, endangers the health, safety or welfare of persons, property or the environment within and/or outside of the affected area.

F. The permittee fails to provide or keep, in full force and effect, at all time the financial assurance as required by this Section.

G. Any provider of the financial assurance shall be adjudicated bankrupt under any applicable provision of federal law, and the permittee does not immediately replace the financial assurance with alternate financial assurance from an alternative provider.

H. Any receiver shall be appointed for the assets of the permittee under any applicable state law and the permittee does not immediately replace the financial assurance with alternate financial assurance from an alternative provider.

I. Any provider of financial assurance cancels, terminates or suspends the financial assurance, or any part thereof, and the permittee does not immediately replace the financial assurance with alternate financial assurance from an alternative provider.

J. The authority or license of the provider of financial assurance to do business in the state of Michigan is suspended, revoked or not renewed and the permittee does not immediately replace the financial assurance with alternate financial assurance from an alternative provider.

7. The amount of the financial assurance shall be equal to 125% the cost, as estimated by the

Department, for the Department or a third party contractor designated by the Department, at any point in time with in the next year, to pay for the cost of performing the following actions:

- A. The administration, implementation and completion of the reclamation, environmental protection, monitoring, and/or contingency plans;
- B. The administration, implementation and completion of the closure and post closure of the mine; plus
- C. Any measures necessary to protect the environment, natural resources, health and welfare of the public, and any significant sites within the affected area, including remediation of contaminated air, soil, groundwater, or surface water resulting from the mining activities.

8. For the purposed of this subsections, the term “costs” shall include the amount of any third party contracts entered into to perform the actions described above, including the contractor’s profit, costs of administration, insurance and contract contingencies, and the Department’s cost for contract administration and oversight.

9. A permittee shall keep the financial assurance in full force and effect, a permittee’s sole cost and expense, during mining activities and until the Department determines that all reclamation has been completed and the post-closure period has been terminated as provided for in this Chapter.

10. Department is authorized to draw, on behalf of the Keweenaw Bay Indian Community, such funds from the provider(s) of the financial assurance as may be necessary, from time to time, but not more often that once a month, to pay for the costs of the actions described in §20A.1201(6).

11. The amount of the financial assurance used by the Department to pay for the costs of the actions described in §20A.1201(6) during any three (3) month period shall be replaced by the permittee by filing with the Department such additional financial assurance as may be necessary to equal the amount of the financial assurance that existed immediately prior to the occurrence of the event which resulted in the actions taken by Department as authorized by §20A.1201(6).

#### §20A.1202 Review of Financial Assurance.

1. The Department shall annually review the amount of financial assurance available for taking the actions authorized by §20A.1201(5) to determine whether the amount of financial assurance needs to be increased or decreased to enable the Department to pay for the costs of the actions

described in §20A.1201(6) calculated as provided in §20A.1201(6).

A. In the event that the Department determines that the financial assurance must be increased as required under the provisions of §20A.1201(6), the Department shall give written notice to the permittee of the amount of the increase and, within forty five (45) days of receipt of the notice of the increased amount, the permittee shall cause the financial assurance to be increased by that amount.

B. In the event that the Department determines that the financial assurance may be decreased under the provisions of §20A.1201(6), that Department shall give written notice to the permittee of the amount of the decrease, and, thereafter, the permittee may make such arrangements with the providers of the financial assurance as may be necessary to effectuate a release of the portion of the financial assurance equal to the decreased amount.

#### §20A.1203 Failure of Permittee to Provide Financial Assurance.

The Department shall order the immediate suspension of mining activities, including the removal of all mined minerals from the mining site, if a permittee fails to provide the financial assurance as required under this Section.

#### §20A.1204 Recovery of Costs Not Covered by Financial Assurance.

In the event that the Department is not able to recover the full amount of its costs related to the actions taken by the Department under §20A.1201(6), from the providers of the financial assurance or the permitted, the Keweenaw Bay Indian Community may file suit in Tribal Court against the permittee and the provided to recover the amount of the deficiency, provided, however, in no event shall a provider of financial assurance be liable for any amount in excess of the amount of financial assurance provided under the terms of the financial assurance document entered into or issued by the provider.

#### §20A.1205. Release of Financial Assurance.

Upon the issuance of the Post Closure Notice by the Department, the Department shall provide written notice to the permittee of the Department's release of all remaining financial assurance and shall execute and deliver such documents and instruments required by the financial

assurance documents to effectuate the release and termination thereof.

SECTION THIRTEEN  
MINING PERMITS; MODIFICATIONS

§20A.1301 Mining Permits; Modifications and Amendments.

1. The Department may modify a mining permit, after a hearing is conducted by the Department in accordance with the requirement of §20A.1004, upon the occurrence of either of the following:

A. The Department may require that a mining permit be modified if it finds that:

(1) The terms and conditions of the mining permit do not adequately provide for the protection of the environment, natural resources, health or welfare of the public or any significant sites; or,

(2) The modification the mining permit is necessary to address:

(a) actual or anticipated changes in mining activities or technology;

(b) natural or human-made conditions; or

(c) issues that develop during oversight of mining activities by the Department subsequent to the issuance of the mining permit.

B. The permittee submits a request to modify mining permit to address:

(1) Actual or anticipated changes in mining activities or technology,

(2) Natural or human-made conditions; or

(3) An actual oversight by the applicant in the application for mining permit.

2. A request by the permittee to modify a permit shall be subject to the following requirements:

A. The requirements of §20A.801 as, and to the extent, as may be determined applicable by the Department.

B. The permit modification application shall be on a form prescribed by the Department.

C. The permittee shall pay to the Department a permit modification application fee in an amount not less than the actual cost estimated by the Department for administering and reviewing the permit modification application.

D. The permit modification application shall include:

(1) A description of proposed changes to the mining permit and any associated changes to the mining activities.

- (2) A description of the proposed changes, if any, to the mining site.
- (3) A description of the area affected by the proposed changes to the mining permit and, if applicable, the mining activities or the mining site.
- (4) A description of the revisions to any of the following that are affected by the proposed modifications to the mining permit:
  - (a) The environmental impact assessment;
  - (b) The mining, reclamation, environmental protection, contingency, or monitoring plans;
  - (c) Provisions for financial assurance.
- (5) A list of all other tribal and federal permits, licenses, and authorizations that are anticipated to be required by the modification to the mining permit.
- (6) A detailed description of the following, each of which shall be certified as being true, accurate and complete by the chief executive officer or managing partner of the applicant:
  - (a) the reason for the proposed modification to the mining permit; and
  - (b) if the request is made to correct an oversight, the nature of the oversight and the proposed correction.

3. Before requiring or granting any modification of the mining permit, the Department shall determine whether it is necessary or appropriate for the Department to prepare an updated baseline data, as described in §20A.702, and/or an updated environmental assessment, as described in Section Nine, based upon its review of the permittee's permit modification application or the Department's determination that a modification to the mining permit is required.

4. The Department shall not approve a permit modification application if the modification of the permit would involve new mining activities in the same ore body described in the original mining permit application or in an ore body which is adjacent to, contiguous with or separate from the ore body described in the original permit application. In the foregoing instances a new application for a mining permit for those mining activities must be filed by the permittee.

5. The Department may remove any portion of the mining site from the scope of the mining permit if the Department determines that mining has not occurred on that portion of the site within the period specified in the mining application or the mining permit. The Department shall

not remove any portion of the mining site from the scope of the permit, or reduce or release any financial assurance relating thereto, if the Department determines that mining activities have occurred on that portion of the site, unless all terms and conditions of the permit have been satisfied with respect to that portion of the site and that portion of the site has been closed as required by the provisions of this Chapter and the terms and conditions of the mining permit.

§20A.1302 Approval or Denial of Permit Modification

If the Department does not deny the permittee's request for a modification of a mining permit, the Department shall approve permit modification.

SECTION FOURTEEN  
MINING PERMITS; TRANSFER

§20A.1401 Mining Permits; Transfer.

1. A mining permit may not be transferred without the prior approval of the Department authorizing the transfer of the permit. The application to transfer the mining permit shall be filed with the Department by the proposed transferee on a form prescribed by the Department and shall include, the following:

- A. The transfer application fee in an amount not less than the actual cost to the Department of administering the transfer application as calculated by the Department;
- B. An updated contingency plan. The applicant shall provide a copy of the updated contingency plan to each emergency management agency having jurisdiction over the mining area and the affected area;
- C. A written certification, signed by the chief executive officer or general partner of the proposed transferee, that neither financial assurance posted by the proposed transferee, its parent corporation, any of its principal shareholders or members, or any of its subsidiaries or affiliates as security for the performance of its obligations under any mining permit, mining law or mining regulation has been enforced, defaulted, or drawn upon, in whatever manner provided by law or contract within the last twenty-five (25) years;
- D. Updated financial assurance by the transferee as required by Section 12;
- E. An Organization Report of the transferee on the form prescribed by the Department;

- F. The name and address of an agent for service of process for the transferee residing within the territorial jurisdiction of the Community;
- G. A written certification, signed by the chief executive officer or general partner of the proposed transferee that, to the knowledge of the proposed transferee, the permittee is not in default under or has not violated the terms or conditions of the mining permit that is to be transferred and if any defaults or violations have been identified by transferee, the transferees' written description of its proposed methodologies or plans to cure the defaults or violations subsequent to the date of the transfer of the permit.
- H. Financial statements of the proposed transferee for the past three (3) years showing a net worth at least equal to fifteen (15%) percent of the assayed value of the mineral ore body in the mine area, for each of the past three (3) years.
- I. The written assumption by the proposed transferee to assume and perform the obligation of the permittee under the terms and conditions of the mining permit.

§20A.1402 Mining Permits; Denial of Transfer.

1. The Department shall deny an application for the transfer of a mining permit if the Department finds that:

- A. A mining permit issued to the transferee, its parent corporation, any of its principal shareholders or members, or any of its subsidiaries or affiliates, was terminated, cancelled or revoked in this or another jurisdiction within the last twenty-five (25) years;
- B. The financial assurance posted by the proposed transferee, its parent corporation, any of its principal shareholders or members, or any of its subsidiaries or affiliates as security for the performance of its obligations under any mining permit, mining law or mining regulation has been enforced, defaulted, or drawn upon, in whatever manner provided by law or contract, by the obligee, beneficiary or secured party named as such in the financial assurance in this or another jurisdiction within the last twenty-five (25) years;
- C. The transferee, its parent corporation, any of its principal shareholders or members, or any of its subsidiaries or affiliates has declared bankruptcy been adjudicated bankrupt, had a receiver appointed for its assets or undergone a dissolution that resulted in the:
  - (1) failure to complete construction of a mine of any type within the time period provided for in the permit issued for the mine;

- (2) failure to continue the construction of a mine of any type for a period of ninety (90) days or more;
- (3) failure to complete construction of a mine of any type in accordance with the terms and conditions of the permit issued for the mine;
- (4) revocation of a mining permit of any type;
- (5) enforcement, default or a draw on any financial assurance issued to secure the performance of the terms and conditions of any mining permit of any kind; and/or
- (6) failure to complete reclamation of a mining site in this or another jurisdiction within the last twenty-five (25) years.

D. The current permittee is in violation of this Chapter, any rule promulgated under this Chapter, any permit issued under this Chapter, any order of the Department, or any other tribal or federal laws applicable to mining activities at the mining site, and the methodologies and plans proposed by the proposed transferee are not in the determination of the Department satisfactory to cure permittee's violations of the foregoing.

§20A.1403 Mining Permits; Approval of Transfer.

1. The Department shall approve a transfer of a mining permit if the Department finds that:
  - A. The mining activities at the mining site will comply with the requirements of the mining permit and this Chapter after the transfer is complete or after the transferee has cured any of permittee's violations identified in transferee's application or as may be determined by the Department;
  - B. The transferee possesses all other tribal and federal permits, licenses, and authorizations necessary for the mining activities;
  - C. The permitted mining activities will continue to minimize the actual and potential adverse impacts on the environment, natural resources, the health and welfare of the public and any significant sites from the proposed mining activities; and,
  - D. The Department has not denied the transfer of the mining permit under the provisions of §20A.1402.
2. If the Department shall issue the decision of the Department approving the transfer of the permit to the transferee, the decision shall incorporate the terms and conditions of the original permit, the terms and conditions set forth in the transfer application, the updated contingency

plan, the mining plan, the reclamation plan, the environmental plan, the monitoring plan and the beneficiation plan, and any modified terms and conditions to the permit, that the Department determines are necessary to meet the requirements of this Chapter and the Rules.

SECTION FIFTEEN  
MINING PERMITS; SUSPENSION OR REVOCATION

§20A.1501 Mining Permits; Suspension or Revocation.

1. The Department may, without a hearing, suspend the mining permit for a period of up to one hundred and eighty (180) days if the Department has reasonable grounds to believe that:

A. The permittee has failed to satisfy a condition of the applicable permit and as a consequence thereof the environment, natural resources, health or welfare of the public or any significant site may be adversely affected thereby;

B. The continuation of mining activities may have an adverse affect on the environment, natural resources, the health or welfare of the public or any significant site;

C. The permittee has made a false or misleading statement to the Department and as a consequence thereof the Department was induced to issue the mining permit;

D. The permittee has omitted or failed to disclose material information to the Department and as a consequence thereof the Department was induced to issue the mining permit;

E. The permittee has failed to comply with this Chapter, any rule promulgated under this Chapter, any mining permit issued under this Chapter, any order of the Department, or any other applicable tribal or federal laws, and as a consequence thereof the environment, natural resources, health or welfare of the public or any significant site may be adversely affected thereby;

F. The permittee has not commenced mining activities within time period specified therefore by the mining permit or the permittee has abandoned or ceased mining activities for which a permit has been issued under this Chapter for a period of 180 days.

2. The Department may, after a hearing conducted within the period during which a mining permit has been suspended, revoke the mining permit if the Department finds that:

A. The permittee has failed to satisfy a condition of the applicable permit and as a consequence thereof the environment, natural resources, health or welfare of the public or

any significant site will be adversely affected thereby and during the period of suspension of the permit the permittee has not satisfied the condition of the applicable permit;

B. The continuation of the mining activities will have an adverse affect on the environment, natural resources, or the health welfare of the public or any significant site and during the period of suspension of the permit the permittee has not established to the satisfaction of the Department that the continuation of the mining activities will not have an adverse affect on the environment, natural resources, the health or welfare of the public or any significant site;

C. The permittee has made a false or misleading statement to the Department and as a consequence thereof the Department was fraudulently induced to issue the mining permit;

D. The permittee has omitted or failed to disclose material information to the Department and as a consequence thereof the Department was fraudulently induced to issue the mining permit;

E. The permittee has failed to comply with this Chapter, any rule promulgated under this Chapter, any permit issued under this Chapter, any order of the Department, or any other applicable tribal or federal laws and during the period of suspension of the permit the permittee has not established to the satisfaction of the Department that permittee has complied with the applicable provision of this Chapter, rule promulgated under this Chapter, any permit issued under this Chapter, any order of the Department, or the provision of any other applicable tribal or federal that was the basis for the suspension of the permit;

F. The permittee has not commenced mining activities within time period specified therefore by the mining permit or the permittee has abandoned or ceased mining activities for which a permit has been issued under this Chapter for a period of 180 days and the permittee has not established to the satisfaction of the Department justifiable reasons for permittee's failure to have commenced the mining activities within the time period specified therefore by the mining permit or for the abandonment or cessation of the mining activities.

## SECTION SIXTEEN

### MINING PERMIT; REQUIRED NOTICES TO OR FROM THE DEPARTMENT

§20A.1601 Notices.

1. Notice of Commencement of Construction. Upon issuance of the mining permit, the permittee shall give the Department not less than thirty (30) days prior written notice of its intent to commence construction of the mining facilities.
2. Notice of Commencement of Mining Activities. Upon completion of construction of the mining facilities, to the extent provided by the mining plan that will enable permittee to commence mining activities, the permittee shall give the Department not less than sixty (60) days prior written notice of its intent to commence mining activities.
3. Notice of Cessation or Suspension of Mining Activities. A permittee shall give written notice to the Department within twenty-four (24) hours after the permittee ceases or suspends all or any substantial portion of mining activities at the mining site.
4. Notice of Occurrences. A permittee shall give written notice to the Department within twenty four (24) hours of any event within the mining site or the affected area, whether man made or by natural occurrence, such as unplanned explosions, rock falls, floods, collapse or similar occurrence(s) in any part of the mine, which may endanger human health, welfare or safety, damage to the mine or the environment, or in permittee being in violation of the mining permit or this Chapter.
5. Notice of Release. A permittee shall immediately give written notice to the Department and emergency management agency having jurisdiction over the mining area and/or the affected area of any release, suspected release, or threatened release of hazardous materials within the mining site or the affected area.
6. Notice of Degradation. A permittee shall give written notice to the Department within twenty four (24) hours of any degradation, suspected degradation, or threatened degradation of the environment, natural resources, health or welfare of the public or any significant site within the mining site or affected area by any mining activity.

7. Notice of Cessation of Mining Activities. Within ten (10) days after the cessation of mining activities at the mine site, the permittee shall submit to the Department a written Notice of Cessation of Mining Activities.
8. Notice of Commencement of Reclamation Activities. Upon completion of the environmental impact analysis of the affected area, the Department shall give written notice to the permittee to conduct reclamation activities in accordance with the requirements of the environmental impact analysis and terms and conditions of the mining permit.
9. Notice of Completion of Reclamation Activities. Upon completion of reclamation activities and remediation activities in the mining area the permittee shall give written notice to the Department that the permittee has completed reclamation activities and remediation activities in the mining area in accordance with the terms and conditions of the mining plan.
10. Notice of Closure. The Department shall issue a written notice to the permittee when the Department has determined that the permittee has completed the reclamation activities and remediation activities in accordance with the mining plan and the Notice of Commencement of Reclamation Activities and that the permittee is otherwise in compliance with the requirements of this Chapter. The Notice of Closure shall state that the post-closure monitoring period has commenced.
11. Notice of Completion of Post Closure. The Department shall issue a written notice to the permittee when the Department has determined that post closure activities have been completed in accordance with the requirements of this Chapter.

## SECTION SEVENTEEN

### GENERAL MONITORING REQUIREMENTS; DEPARTMENT'S INSPECTIONS

#### §20A.1701 General Monitoring Requirements

During any and all mining, reclamation, closure and post closure activities, a permittee shall monitor air, soil, groundwater, and surface water within the affected area in accordance with the terms and conditions of the mining permit and Monitoring Plan and, any subsequent order of the Department, if the Department shall determine that alternative or different monitoring of the affected area is necessary in order to protect the air, soil, groundwater, and surface water that may be impacted by mining, reclamation, closure or post closure activities.

§20A.1702 Department's Inspections

For the purposes of enforcement of the provisions of this Chapter, the Department or the Department's designated representative, at any time and from time to time, may enter upon the mining area and any and all offices, buildings, excavations and mine workings of the permittee, and all or any part of the affected area, except for residences and business located in the affected area, for purposes of inspections and investigations to determine permittee compliance or noncompliance with this Chapter and, in connection therewith, the Department may construct and install monitoring devices as deemed necessary or appropriate by the Department for the protection of the public health, welfare and safety and for the protection of the environment and natural resources.

SECTION EIGHTEEN  
RESPONSE TO A RELEASE OR DEGRADATION

§20A.1801 Response to a Release or Degradation.

1. Upon any release, suspected release, or threatened release of hazardous materials within the mining site or the affected area, the permittee shall immediately:
  - A. Determine the nature, extent, and source of the release; stop the release from occurring and provide all information relating to the release to the Department and the emergency management agency in a Notice of Release;
  - B. In emergency situations, take all reasonable temporary actions and, thereafter, take all permanent actions, as shall be approved by the Department, necessary to protect the environment, natural resources, health and welfare of the public and significant sites from further releases and to minimize the impact of the release on the air, soil, groundwater, surface water and any significant sites;
  - C. Subject to the approval of the Department, take all action necessary to remove the hazardous materials from the environment, natural resources and any significant site;
  - D. Take all action as necessary to eliminate the source of the release;
  - E. Revise, to the extent necessary, the mining, reclamation, environmental protection, monitoring, and contingency plans to prevent future releases of hazardous materials and

submit the revised plans to the Department for approval within forty five (45) days after the occurrence of the release;

F. Take any and all actions as may be determined necessary by order of the Department with respect to the release of the hazardous materials, including such remediation activities as may be ordered by the Department.

2. Upon the discovery by the permittee, the Department, or any other governmental agency of the degradation, suspected degradation, or threatened degradation of the environment, natural resources, health or welfare of the public or any significant site by, or associated with, the mining activities the permittee shall immediately:

A. Determine the nature, extent, and cause of the degradation and provide all information relating to the degradation to the Department in a Notice of Degradation;

B. In emergency situations, the permittee shall take all reasonable temporary actions and, thereafter, take all permanent actions, as shall be approved by the Department, to protect the environment, natural resources, health and welfare of the public and any significant site from the degradation, and minimize the impact of the degradation on air, soil, groundwater, surface water and any significant site.

C. Take all action as necessary to prevent the reoccurrence of the degradation;

D. Revise the mining, reclamation, environmental protection, monitoring, and contingency plans to prevent future degradation on air, soil, groundwater, and surface water and submit the revised plans to the Department for approval within forty five (45) days after the discovery of the degradation.

E. Shut down any portion of the mining activities and/or mining site that is associated with, or contributing to, the degradation.

F. Take any and all actions as may be determined necessary by order of the Department with respect to the degradation, including such remediation activities as may be ordered by the Department.

SECTION NINETEEN  
RECLAMATION

§20A.1901 Notice of Cessation of Mining Activities; Environmental Impact Analysis.

1. Upon permanent cessation of mining activities the permittee shall submit to the Department a Notice of Cessation of Mining Activities, together with the payment of the environmental impact analysis fee.

2. The environmental impact analysis fee shall be in an amount estimated by the Department as necessary to reimburse the Department for all costs that will be incurred by the Department to prepare an environmental impact analysis, including the costs of administration related thereto. The fee shall be paid to the Department in full at the time the Notice of Cessation of Mining Activities is filed with the Department.

A. Upon the completion of the environmental impact analysis, the Department shall provide to the permittee a statement of all expenses incurred by the Department in the preparation of the environmental impact analysis. The permittee shall pay the difference, if any, between the estimated fee and the actual cost incurred by the Department in the preparation of the analysis.

B. In the event that the permittee does not pay the balance due on account of the environmental impact analysis fee within thirty (30) days as set forth in the Department's statement after receipt of the Department's statement related thereto, the Department shall declare the permittee in violation of this Chapter and may draw down on the financial assurance in the amount of the unpaid balance of the fee.

3. Upon receipt of the Notice of Cessation of Mining Activities and the environmental impact analysis fee, the Department shall prepare an environmental impact analysis of the affected area.

4. The environmental impact analysis shall include, but is not limited to, the following:

A. A description of the mining area and the affected area;

B. Current base line conditions of the affected area. Current data and information shall be collected for a minimum of two (2) years immediately following the submission of the Cessation of Mining Activities;

C. A description of the natural and human-made features in the affected area compared to pre-mining conditions of the affected area;

D. A description of adverse impacts and cumulative adverse impacts of the mining activities in the affected area.

E. A description of all reclamation and remediation activities that the permittee must conduct in the affected area as a condition of the closure of the mine.

5. Upon completion of the Department's environmental impact analysis of the affected area, the Department shall deliver the environmental impact analysis to the permittee, together with a Notice of Commencement of Reclamation Activities, which shall include all reclamation and remediation activities that the permittee must complete in the affected area as a condition of the closure of the mine.

#### §20A.1902 Completion of Reclamation

Upon completion of reclamation activities identified in the Notice of Commencement of Reclamation Activities, the permittee shall submit to the Department a Notice of Completion of Reclamation Activities.

#### §20A.1903 Reclamation Following Suspension of Mining Activities

1. If mining activities are suspended for a continuous period of more than sixty (60) days, the permittee shall immediately:

A. Submit to the Department a Notice of Suspension of Mining Activities;

B. Take all actions necessary to maintain, monitor, and secure the mining facilities and the mining area as may be directed by order of the Department; and

C. Conduct any interim reclamation and remediation activities necessary to protect the environment, natural resources, the health and welfare of the public or any significant site as may be directed by order of the Department.

## SECTION TWENTY

### CLOSURE

§20A.2001 Closure.

1. Upon receipt by the Department of the Notice of Completion of Reclamation Activities from the permittee, together with a written application for closure of the mine and the payment of, or financial assurance for the payment of, the post closure monitoring and inspection fee provided for in Section 21 by the permittee, the Department shall conduct an inspection of the affected area to determine that the permittee has satisfactorily completed the reclamation activities identified in the Notice of Commencement of Reclamation Activities and in accordance with the provision's mining plan and that the permittee is otherwise in compliance with this Chapter and any rules promulgated by the Department hereunder, any orders issued by the Department and any other applicable tribal or federal law.
2. The Department shall deny an application for closure if the Department finds that:
  - A. The permittee is in violation of this Chapter, any rule promulgated under this Chapter, any permit issued under this Chapter, any order of the Department, or any other applicable tribal or federal law;
  - B. The permittee has not satisfactorily completed the reclamation activities identified in the Notice of Commencement of Reclamation Activities and in accordance with the provisions of the mining plan;
  - C. There is subsidence or there exists the potential for subsidence in the mining area or the affected area;
  - D. The mining activities have adversely impacted the environment, natural resources, or health or welfare of the public, or any significant sites; or
  - E. The mining activities have degraded air, soil, groundwater, or surface water.
3. If the Department does not deny the application for closure of the mine, the Department shall grant the application by serving a Notice of Closure on the permittee.

SECTION TWENTY-ONE  
POST-CLOSURE

§20A.2101 Post-Closure.

1. The post-closure period shall be for a period of (25) years after the date of Notice of Closure.
2. After the issuance of the Notice of Closure, the permittee shall submit a post-closure monitoring and inspection plan for the post closure period to the Department for approval. The

Department shall administer the post closure monitoring and inspection plan for the post closure period. The post-closure monitoring and inspection plan shall be prepared by the Department and shall include, but is not limited to, the following:

- A. A description of the natural and human-made features that require monitoring and inspection during the post-closure period;
- B. Materials, methods, and techniques that will be utilized to monitor and inspect the natural and human-made features described in subsection (A).
- C. Plans and schedules for monitoring and inspecting the natural and human-made features described in subsection (A).

3. The monitoring and inspection fee shall be in an amount estimated by the Department as necessary to reimburse the Department for all costs that will be incurred by the Department to conduct the inspection of the affected area as provided for in Section 20, prepare the post closure monitoring and inspection plan, conducting the post closure monitoring and inspection of the mine during the post closure period, including the costs of administration related thereto. The fee shall be paid to the Department in full at the time the Notice of Completion of the Reclamation Activities is filed with the Department.

- A. Periodically, but not less than annually, the Department shall provide to the permittee a statement of all expenses incurred by the Department in monitoring and inspecting the mine during the preceding portion of the post closure period. The permittee shall pay the difference, if any, between the estimated monitoring and inspection fee and the actual cost incurred by the Department for monitoring and inspecting the mine during the preceding portion of the post closure period, within thirty (30) days after receipt of the Department's statement related thereto
- B. In the event that the permittee does not pay the balance due on account of the monitoring and inspection fee as set forth in the Department's statement with thirty (30) days after receipt of the Department's statement relating thereto, the Department shall declare the permittee in violation of this Chapter and may draw down on the financial assurance in the amount of the unpaid balance of the fee.

4. The Department shall extend the post-closure period up to an additional twenty five (25) years if the Department finds that hazardous materials, or potential hazardous materials are present in, or may be released to, the, air, soil, groundwater, or surface water within the affected area or if

there is, or appears to be, any danger of a collapse of any part of the mine. The Department shall notify the permittee in writing of any of the foregoing findings and the permittee shall conduct such actions to stop and/or prevent the release or collapse and such reclamation and/or remediation of the affected area, as determined necessary by order of the Department.

5. In the event that the permittee fails to comply with the order of the Department as provided for in this section, the Department shall find the permittee in violation of this Chapter and draw down on the financial assurance, as provided for this Chapter, to pay for the costs associated with compliance with the Department's order.

## SECTION TWENTY-TWO REPORTS AND RECORDS

§20A.2201 Annual Reports.

1. The permittee shall file an annual report with the Department on the anniversary date of the issuance of the mining permit, during mining activities and the reclamation, closure and post-closure periods. The report shall contain the following:

- A. The current status of mining activities, reclamation activities, closure activities and post closures activities, as applicable, in such detail as may be required by the Department;
- B. An updated contingency plan. The permittee shall provide a copy of the updated contingency plan to each emergency management agency having jurisdiction over the mining area and the affected area within five (5) days after the report is submitted to the Department;
- C. An updated organization report;
- D. Audited financial statements for the immediately preceding fiscal year of the permittee.
- E. A certification by the chief executive officer of the permittee that neither it or its parent corporation nor any of its principal shareholders or members, or any of its subsidiaries or affiliates has failed to provide, defaulted on or forfeited any financial assurance required for any mining activity in this or another governmental jurisdiction within the last year;

- F. Financial assurance as required in this Chapter;
- G. The name and address of an agent for service of process residing within the territorial jurisdiction of the Keweenaw Bay Indian Community;
- H. The name and address of a designated officer and manager of the permittee for the service of notices and orders from the Department.
- I. An updated list of all tribal and federal permits, licenses, and authorizations that are required for the mining activity and any other activity associated with the mining activity.
- J. A report of monitoring and inspection results for the preceding calendar year;
- K. The total tons of material mined from the mining area and the amount of minerals by weight produced from the mine for the preceding calendar year;
- L. A list of the reports required under subsection (2) for the preceding annual period;
- M. An estimate of the cost of reclamation for mining activities planned for the next calendar year.

§20A.2202. Records.

The permittee shall keep all permittee's records upon which the annual reports required by this section are based and all data and documentation required to be maintained by this Chapter, until the end of the post closure period. The records, data and documentation shall be kept in both paper and electronic format. The records shall be filed chronologically with each annual report and permittee shall make all such records, data and documentation available for inspection and copying by the Department upon the request of the Department.

SECTION TWENTY-THREE  
CONTESTED CASE HEARINGS

§20A.2301 Contested Case Hearings

1. A person who is aggrieved by an order or decision of the Department or by the issuance, denial, revocation, or amendment of a mining permit under this Chapter may file a petition with the Department requesting a contested case hearing within thirty (30) days after the issuance of the order or decision of the Department or denial, revocation, or amendment of a mining permit by the Department. The Department shall mail copies of the notice of the hearing to the person

requesting the hearing at least 10 days before the date of the hearing.

2. The Department may initiate a contested case hearing in connection with any action or inaction of permittee during mineral exploration activities, mining activities or beneficiation activities that the Department has determined to be a violation by permittee of any provision of this Chapter, any provision of any rule promulgated under this Chapter, any permit issued under this Chapter, or any order of the Department. The Department shall mail a notice of the hearing to the permittee at least 10 days before the date of the hearing.

3. Any contested case hearing under this Chapter shall be held pursuant to the administrative procedures promulgated by the Department as provided for in the Chapter.

## SECTION TWENTY-FOUR

### VIOLATIONS; ENFORCEMENT; PENALTIES; AND LIENS

#### §20A.2401 Compliance with this Chapter and the Permit

A permittee shall comply with the provisions of this Chapter, any rule promulgated under this Chapter, any permit issued under this Chapter, any order of the Department issued to permittee, any other applicable tribal or federal laws, and with any permit issued under any applicable tribal or federal law for any activity associated with the mineral exploration, mining activities, beneficiation activities or reclamation activities.

#### §20A.2402 Administrative Actions

1. If the Department determines that a permittee has violated the provisions of this Chapter, any rule promulgated under this Chapter, any permit issued under this Chapter, any order of the Department issued to permittee, any other applicable tribal or federal laws, and with any permit issued under any applicable tribal or federal law for any activity associated with the mineral exploration, mining activities, beneficiation activities or reclamation activities, it shall issue an order to permittee requiring the permittee to correct the violation.

2. If the Department determines, prior to a hearing, that a permittee has violated the provisions of section 1 hereof and that the violation is of an emergency nature and is causing or resulting in an imminent endangerment to the environment, natural resources, health or welfare of the public or a significant site, the Department shall take such action as it deems necessary to eliminate or

abate the endangerment. Such action may include, but is not limited to, any of the following:

A Issuing an order to permittee suspending any or all the activities being under taken by the permittee pursuant to any permit issued under this Chapter.

B. Issuing an order to the permittee to undertake such actions as may be necessary, in the judgment of the Department to abate or eliminate the endangerment.

C. If the permittee fails or neglects to correct the violation or take corrective actions as specified in the order of the Department, the Department may take such action in the mine area or affected area, including corrective or remediation action by the Department, or third party contractor designated by the Department, as may be, in the judgment of the Department, necessary or appropriate under the circumstances to abate or eliminate the endangerment.

D. Notify the provider of any financial assurance or the issuance of any order issued by the Department under this section and drawing down the financial assurance of such amounts expended by the Department from time to time in connection with any corrective, reclamation or remediation actions that may be taken by the Department.

3. If the Department determines, after a hearing, that a permittee has violated the provisions of section 1 hereof, the Department may do any of the following:

A. Issuing an order requiring that the permittee take such actions as may be necessary to correct, abate or eliminate the violation;

B. Issue an order imposing a fine of not less than \$2,500 and not more than \$25,000.00, per day for each violation;

C. Issue an order suspending any or all of the mineral exploration, mining or beneficiation activities of the permittee;

D. Issue an order revoking the mineral exploration or mining permit, in whole or part;

E. Issuing an order to the permittee requiring the removal of mined minerals, fixtures and/or equipment from the site;

F. If the permittee fails or neglects to correct the violation or take corrective actions as specified in the order of the Department, the Department may take such action in the mine area or affected area, including corrective, reclamation or remediation action by the Department, or third party contractor designated by the Department, as may be, in the judgment of the Department, necessary or appropriate under the circumstances to

correct, abate or eliminate the violation.

G. Notify the provider of any financial assurance or the issuance of any order issued by the Department under this section to the permittee and draw down the financial assurance in such amounts as are expended by the Department from time to time in connection with any corrective, reclamation or remediation actions that may be taken by the Department in respect of the violation.

4. Nether the revocation of a permit or suspension of activities under section 4 shall relieve a permittee of the responsibility to complete reclamation, remediation and/or closure of the mine area or the maintenance of the financial assurance required under this Chapter and undertake all appropriate measures to protect the environment, natural resources and significant sites and the protection of the public health, welfare and safety as required by this Chapter and the permit issued to permittee under this Chapter.

#### §20A.2402 Civil Actions

1. Upon a violation by permittee of provision of this Chapter, any provision of any rule promulgated under this Chapter, any permit issued under this Chapter, or any order of the Department, the Tribal Prosecutor may commence a civil action in Tribal Court for:

- A. Permanent or temporary injunction, including mandatory injunctive relief;
- B. A civil fine of not less than \$2,500 and not more than \$25,000.00 per day for each violation;
- C. For a violation or violations that have caused substantial endangerment or damage to, or destruction of, the environment, natural resources, or health or welfare of the public, or any significant sites, a civil fine, in addition to the sanctions set forth in subsection (B), a civil compensatory fine of not less than \$500,000.00 and not more than \$25,000,000.00.;
- D. Actual damages for the full value of the damage or destruction to the environment, natural resources, or health or welfare of the public, or any significant sites;
- E. The Department's cost of administration and enforcement resulting from the violation or violations of the Chapter;
- F. A civil fine of not less than \$5,000.00 and not more than \$50,000.00 for the first violation, and not less than \$25,000.00 and not more than \$250,000.00 for each additional violation, for any false or misleading statement, representation, or certification in an

application for a permit under this Chapter, in any notice or report required or permitted under this Chapter or the rules, any notice or report required or permitted by the terms and conditions of a permit issued under this Chapter, which is made by any officer or manager of an applicant or permittee, who knew or should have known that the statement, representation or certifications was false or misleading. For purposes hereof, knowledge possessed by a person other than the defendant under this subsection may be attributable to the defendant if the defendant took affirmative steps to shield himself or herself from obtaining or finding out the truth of the relevant information.

G. Three times the actual, compensatory and consequential damages to the Keweenaw Bay Indian Community resulting from a violation of §20A.403(5).

H. Enforcement of any order or decision of the Department under this Chapter.

2. A civil fine or other civil award imposed under this section shall constitute a lien on any property, of any nature or kind, owned wholly or in Chapter by the defendant and the lien shall have priority over all other liens and encumbrances except those filed or recorded prior to the date of judgment which imposes the lien.

#### §20A.2403 Criminal Violations

1. Any person, including a natural person, who shall willfully cause bodily or death arising out of mining activities or beneficiation activities shall be guilty of a misdemeanor.

A conviction upon violation of this section shall constitute a conviction of a Class A misdemeanor and the defendant shall be sentenced for a maximum period of incarceration of 365 days and a maximum fine of \$10,000,000.00.

2. Any person, including a natural person, who intentionally makes a false statement, representation, or certification in an application for a permit under this Chapter, in any notice or report required or permitted under this Chapter or the rules, any notice or report required or permitted by the terms and conditions of a permit issued under this Chapter shall be guilty of a misdemeanor. For purposes hereof, knowledge possessed by a person other than the defendant under this subsection may be attributable to the defendant if the defendant took affirmative steps to shield himself or herself from obtaining or finding out the truth of the relevant information.

A conviction upon violation of this section shall constitute a conviction of a Class B misdemeanor and the defendant shall be sentenced for a maximum period of incarceration of 180 days and a fine of not less than \$2,500.00 per day or more than \$25,000.00 per day for each violation or, if the conviction is for a violation committed after a first conviction of under this section, the court shall impose a fine of not less than \$25,000.00 per day and not more than \$50,000.00 per day, for each violation.

3. Any person who shall during the course of mining activities or beneficiation activities willfully endanger the public health, safety, or welfare shall be guilty of a misdemeanor.

A conviction upon violation of this section shall constitute a conviction of a Class A misdemeanor and the defendant shall be sentenced for a maximum period of incarceration of 365 days and a maximum fine of \$10,000,000.00.

4. Any person who shall during the course of mining activities or beneficiation activities willfully cause damage or destruction to the environment, natural resources or a significant site or sites shall be guilty of a misdemeanor.

A conviction upon violation of this section shall constitute a conviction of a Class A misdemeanor and the defendant shall be sentenced for a maximum period of incarceration of 365 days and a maximum fine of \$10,000,000.00.

5. Any person, including a natural person, employed by or under contract with an applicant or permittee, or who is affiliated with or has a contractual relationship with the applicant or permittee, either express or implied, who shall, without the express written consent of the Keweenaw Bay Indian Community, solicits the services of, or engages by contract or employment any employee, consultant or expert employed or under contract with the Department or attorney or law firm representing the Department or the Community, with respect to any application by the applicant for a permit, a permit issued under this Chapter, and/or any mineral exploration, mining, beneficiation, reclamation, remediation or closure activity which is

the subject matter of the Chapter or any hearing, including a contested case hearing under this Chapter, shall be guilty of a misdemeanor.

A conviction upon violation of this section shall constitute a conviction of a Class B misdemeanor and the defendant shall be sentenced for a maximum period of incarceration of 180 days and a maximum fine of \$5,000,000.00

## SECTION TWENTY-FIVE JUDICIAL REVIEW

§20A.2501 Judicial Review.

1. A final decision of the Department issued in a contested case hearing conducted under this Chapter shall be appealable by right, on the record of the hearing before the Department, to the Tribal Court. An appeal of the decision of the Department shall be filed by the appealing party with the Tribal Court within forty-five days after date upon which the final decision of the Department is issued.
2. For purposes of an appeal to the Tribal Court under this section, the applicable provisions of MCR §7.105, et seq, shall govern the appeal in Tribal Court.
3. Within thirty (30) days after the appeal is filed the appellant must pay for and file with the Tribal Court the transcript of the hearing before the Department, and all exhibits entered on the record of the hearing, or a copy of reporter's or recorder's certificate and a statement that the transcript and/or exhibits are not yet available.
4. If the appellant does not comply with the provisions of section 3, or in the event that the transcript and the exhibits are not filed with the Tribal Court within sixty (60) days after the date the appeal is filed, the appeal may be considered abandoned and the Tribal Court may dismiss the appeal on seven (7) notice to the parties.

SECTION TWENTY-SIX

SEVERABILITY

20A.2601 Severability

If any provision of this ordinance is held invalid or unenforceable by a court of competent jurisdiction, the remainder of this ordinance will not be affected thereby.

SECTION TWENTY-SEVEN

EFFECTIVE DATE

§20A.2701 Effective Date.

This ordinance shall take immediate effect on the date of its adoption.

Motion by \_\_\_\_\_ Seconded by \_\_\_\_\_

Ayes \_\_\_\_ Nays \_\_\_\_ Abstained \_\_\_\_ Not Present \_\_\_\_

Adopted \_\_\_\_ (Yes) \_\_\_\_ (No)

Date: \_\_\_\_\_