



WISCONSIN LEGISLATIVE COUNCIL ACT MEMO

2017 Wisconsin Act 134
[2017 Assembly Bill 499]

Nonferrous Metallic Mining

2017 Wisconsin Act 134 makes a number of changes to laws relating to nonferrous metallic mineral prospecting and mining, as summarized below.

SULFIDE ORE PERMITTING CONDITIONS

The Act repeals a requirement under which applicants for a nonferrous mining approval must provide, and the Department of Natural Resources (DNR) must verify, information showing that a sulfide mining operation in the United States or Canada has operated for at least 10 years without polluting surface water or groundwater and that a sulfide mining operation in the United States or Canada has been closed for at least 10 years without polluting surface water or groundwater.

APPLICABILITY OF GROUNDWATER STANDARDS

In the context of nonferrous metallic mining or prospecting, the Act provides that groundwater contamination enforcement standards do not apply below the depth in the Precambrian bedrock below which the groundwater is not reasonably capable of being used for human consumption and is not hydrologically connected to other sources of groundwater that are suitable for human consumption. Under current law, groundwater standards generally apply from the land surface down through all saturated geological formations.

WETLANDS

The Act eliminates special administrative code provisions applicable to impacts to wetlands caused by a nonferrous mining operation. Under the Act, generally applicable wetlands requirements apply to a mining site.

This memo provides a brief description of the Act. For more detailed information, consult the text of the law and related legislative documents at the Legislature's Web site at: <http://www.legis.wisconsin.gov>.

BULK SAMPLING

Under current law, a person may apply to the DNR for an approval to engage in exploration for, prospecting for, or mining of nonferrous metallic minerals. The Act creates a separate approval process for “bulk sampling” of nonferrous metallic minerals, defined to include excavating in a potential mining site by removing less than 10,000 tons of total material, including overburden, to assess the nonferrous metallic minerals present or gather data to support a mining application.

Under the Act, a person who intends to conduct bulk sampling must file a bulk sampling plan with the DNR, which triggers a streamlined process for obtaining any approvals necessary for the activity. Specified information is required to be included with the plan, and the person who intends to conduct bulk sampling must file a bond in an amount determined by the DNR (but not less than \$5,000) to cover costs of conducting a revegetation plan.

The Act also provides that the DNR is not required to prepare an environmental impact statement (EIS) related to a bulk sampling application.

MINING PERMIT APPLICATION TIMELINE

The Act makes various changes to the process for approval of nonferrous metallic mineral prospecting and mining permits, including changes related to pre-application data collection and the timeline under which consideration of a mining application must be conducted. The Act also requires the DNR to seek to enter into a memorandum of understanding (MOU) with the applicant, the U.S. Army Corps of Engineers, and other relevant federal agencies, which may include an agreement between the DNR and the applicant regarding alternative timelines for the permitting process.

Unless an alternative timeline is provided for under a MOU, the timeline for review of an application for a nonferrous prospecting or mining permit is as follows:

1. The DNR has 180 days after application submittal to provide comments and request additional information. If no additional information is requested, the DNR has 180 days to prepare a draft EIS, a draft prospecting or mining permit, and any other related draft approvals.
2. If the DNR requests additional information under step 1, it has 90 days after the applicant submits additional information to again provide comments and request additional information.¹ If no additional information is requested, the DNR has 180 days to prepare a draft EIS, a draft prospecting or mining permit, and any other related draft approvals.

¹ If the applicant makes a substantial modification to the mining or prospecting plan during this phase of the process that significantly changes the information necessary to prepare the EIS or adequately review an application, the DNR may re-start the review process (this may only be done one time).

3. If the DNR requests additional information under step 2, it has 180 days after the applicant submits additional information to prepare a draft EIS, a draft prospecting or mining permit, and any other related draft approvals.

HIGH CAPACITY WELL APPROVAL

Under current law, a nonferrous prospecting or mining permit applicant must obtain a high capacity well approval if the applicant will withdraw groundwater or dewater mines at a rate and capacity of more than 100,000 gallons each day. The DNR is prohibited from issuing this approval if the withdrawal or dewatering will result in the unreasonable detriment of public or private water supplies or the unreasonable detriment of public rights in the waters of the state. [s. 293.65 (3), Stats.] Under the Act, the DNR is authorized to impose conditions on such an approval to avoid these outcomes, including requiring that the applicant replace, increase, or temporarily augment waters of the state.

HEARING AND REVIEW PROCESS

Under current law, a “master hearing” is held after the DNR issues a final EIS, draft mining or prospecting permits, and any other draft approvals that are required for the prospecting or mining project. This master hearing includes both a contested case hearing, with testimony under oath and the opportunity for cross-examination, and a public informational hearing. After the master hearing, the DNR issues its decision on the application and related approvals. [ss. 293.43, 293.45, and 293.49, Stats.]

Under the Act, the DNR will conduct a public informational hearing (not a contested case hearing) on the draft prospecting or mining permit, the draft EIS, and other necessary approvals. Following the DNR’s decision on whether to approve these permits and approvals, a person may petition for a contested case hearing if the person believes that he or she is aggrieved by the DNR’s decision and the petition is filed within 60 days of that decision. If a contested case hearing is requested and held, the Act requires the hearing examiner to issue a decision within 270 days after the DNR approves or denies the mining or prospecting permit.

Under the Act, judicial review is available to a person aggrieved by a DNR decision relating to nonferrous metallic mineral exploration, bulk sampling, prospecting, and mining, in the court for the county in which the majority of the proposed activity would occur. A petition for judicial review of a hearing examiner’s decision following a contested case hearing must be brought within 30 days of the decision.

The Act does not authorize a person to request a contested case hearing on a DNR decision relating to exploration or bulk sampling.

FEES

The Act exempts a nonferrous metallic mining operation from specified solid waste disposal fees that would be required under current law.

PREDICTIVE MODELING

Under the Act, if the DNR requires an applicant for a nonferrous mining permit to conduct engineering and hydrologic modeling to evaluate whether a waste site in the proposed mining operation will violate groundwater or surface water quality standards, the period of time to be examined may not extend longer than 250 years after closure of the mining waste site.

FINANCIAL ASSURANCE REQUIREMENT

Under current law contained in administrative code, an applicant for a nonferrous metallic mining permit must create and maintain an irrevocable trust, and maintain this trust in perpetuity, to ensure the availability of funds for preventative and remedial activities. [s. NR 132.085, Wis. Adm. Code.] The Act eliminates this requirement and, instead, creates two new statutory financial assurance requirements.

First, the Act requires a nonferrous metallic mining operator to provide one of several specified forms of financial assurance, prior to beginning mining operations, to cover unforeseen remedial contingencies not otherwise covered by the reclamation bond and waste site long-term care bond, including for the provision of a replacement water supply if required under the Act. The amount of this financial assurance is equal to 10% of these other two bonds through the life of the mining operation. For the 40 years following the end of extraction activities at the mining site, the operator must maintain this bond in an amount equal to 10% of the amount of these two bonds at the time that the operator ceased extraction. The bond must be released no later than 40 years after the end of extraction activities.

Second, the Act requires a nonferrous metallic mining operator to provide proof of financial responsibility for the reasonably anticipated costs to be incurred during the period between 40 and 250 years after closure of the mining waste site to repair or replace any engineered cover systems or tailings water management control systems used at the mining site or mining waste site. This proof of financial responsibility must be provided at the time of closure of the mining waste site, in an amount to be calculated at the time that the nonferrous mining permit is approved. The DNR must base this amount on the net present value discounted at a rate of at least 5% per year. The Act requires that the proof of financial responsibility be created in one of a listed number of forms, all of which are interest-bearing. The funds available may be used by the operator or the DNR to conduct the anticipated repairs or replacements and any remaining funds are to be returned to the operator.

The Act does not modify other forms of financial assurance required under current law, such as requirements for insurance and financial requirements related to completion of the reclamation plan and long-term care of a waste facility. The Act does specify that the DNR may not impose a financial assurance requirement that is not provided for in statute.

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