



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2001 Senate Bill 271

**Senate Substitute
Amendment 1**

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2001 Senate Bill 271 relates to the environmental regulation of mining and notice to transferees of interests in mining sites. Senate Substitute Amendment 1 to Senate Bill 271 does the following:

REGULATIONS UNDER THE SOLID WASTE FACILITIES LAW

Under the Solid Waste Facilities Law, ch. 289, Stats., the Department of Natural Resources (DNR) must, with the advice and comment of the Metallic Mining Council, promulgate rules for the identification and regulation of metallic mining waste. Part of this directive to the DNR specifies that these rules must take into consideration the special requirements of metallic mining operations in the location, design, construction, operation and maintenance of facilities for the disposal of metallic mining waste as well as any special environmental concerns that will arise as a result of the disposal of metallic mining waste. In addition, the rules must be in accordance with “any or all of” the provisions under the Navigable Waters, Harbors and Navigation Law, and the [water] Pollution Discharge Elimination Law, chs. 30 and 283, Stats., as well as the Solid Waste Facilities Law.

The substitute amendment deletes the requirement that the DNR’s rules identifying and regulating metallic mining waste must take into consideration the special requirements of metallic mining operations in the location, design, construction, operation and maintenance of facilities for the disposal of these wastes. It also deletes the phrase that the rules must be in accordance with “any or all of” the provisions under the three laws cited above, thus specifying that the rules must be in accordance with the provisions of those laws.

The substitute amendment also establishes that the DNR may not promulgate rules identifying and regulating metallic mining wastes under this provision that are less stringent than its rules under the Solid Waste Facilities Law setting forth minimum standards for: (a) the location, design, construction, sanitation, operation, monitoring and maintenance of solid waste facilities, in general, or (b) the closing, long-term care and termination of solid waste disposal facilities or hazardous waste facilities.

REGULATIONS UNDER THE HAZARDOUS WASTE MANAGEMENT LAW

Under the Hazardous Waste Management Law, ch. 291, Stats., the basic definition of a “hazardous waste” that is subject to this law is any solid waste identified by the DNR as hazardous under any one of three methods. These three methods are if the waste has the characteristics of hazardous waste, is listed as a hazardous waste or contains a hazardous constituent. Current law requires the DNR to promulgate by rule criteria identical to those promulgated by the U.S. Environmental Protection Agency (EPA) under the Resource Conservation Recovery Act for identifying the characteristics of hazardous waste. Current law also requires the DNR to promulgate by rule a list of hazardous wastes and of hazardous constituents that, in general, must be identical to the EPA’s lists of hazardous wastes and hazardous constituents.

Presently, both the EPA and the DNR exclude, in general, solid waste from the extraction, beneficiation and processing of ores and minerals from their lists of hazardous wastes. [See 40 C.F.R. 261.4 (b) (7) and s. NR 605.85 (1) (k).]

The substitute amendment directs the DNR, notwithstanding the current methods for identifying a solid waste as hazardous based upon the characteristics of the hazardous waste or being listed as a hazardous waste and any exemption for mining waste under the Resource Conservation Recovery Act, to identify a solid waste as a hazardous waste if the solid waste is from the extraction, beneficiation, or processing of ores and minerals, and the solid waste otherwise satisfies one of the criteria for identifying the characteristics of hazardous waste, or has one of the characteristics, or is placed on the EPA’s list of hazardous waste.

REGULATIONS UNDER THE METALLIC MINING LAW

Exemptions, Modifications and Variances

Under the Metallic Mining Law, ch. 293, Stats., the DNR may promulgate rules by which the DNR may grant an exemption, modification or variance for a prospecting or mining activity or facility, either making a requirement more or less restrictive, from any rule promulgated under the Solid Waste Facilities, Hazardous Waste Management, Remedial Action and Metallic Mining Laws. Current law requires that a condition of granting such an exemption, modification or variance is that it does not result in the violation of any federal or state environmental law or endanger public health, safety or welfare or the environment.

The substitute amendment deletes the reference to rules under the Solid Waste Facilities, Hazardous Waste Management and Remedial Action Laws, thus applying this authority to grant an exemption, modification or variance only to requirements under the Metallic Mining Law. The substitute amendment also modifies the condition for granting such an exemption, modification or variance identified above in two ways. First, it specifies that federal or state environmental law includes federal environmental statutes and regulations and state environmental statutes and rules. Second, it states that the exemption, modification or variance may result in a violation of the state rule from which the exemption, modification or variance is granted, but not in other federal or state environmental statutes, regulations or rules.

The substitute amendment creates a new limitation on the DNR's powers under the Metallic Mining Law. Under this provision, the DNR may not grant, for the storage or disposal of solid waste for mining or prospecting, an exemption, modification or variance that makes less restrictive a requirement in a rule promulgated under the Solid Waste Facilities or the Hazardous Waste Management Laws.

Groundwater Design Management Zone

Currently, under the Metallic Mining Law and notwithstanding the Solid Waste Facilities Law and the Hazardous Waste Management Law, the DNR may promulgate rules establishing groundwater quality standards or groundwater quantity standards, or both, for any prospecting or mining activity, including standards for any mining waste site. Under its metallic mining wastes rules promulgated in part under this provision, the DNR has established the design management zone for metallic mining facilities to be, in general, 1,200 feet from the outer waste boundary of a mining waste facility or the edge of the mine, or the boundary of the property owned or leased by a mining permit applicant, whichever is less. This zone is used in the DNR's groundwater protection regulations in the design and operation of metallic mining facilities, including mining waste facilities. These rules also specify a 150-foot mandatory intervention boundary that is used in the siting of a metallic mine's groundwater quality monitoring wells and the implementation of a metallic mine's contingency plan. Part of this plan specifies the actions the mine operator will take when groundwater quality monitoring results exceed specified amounts.

The substitute amendment specifies that, if the DNR establishes groundwater quality standards under this authority, the DNR must require the use of a three-dimensional design management zone for purposes of facility design, the review of facility performance, and enforcement. This zone must extend no further than 150 feet from the outer waste boundary, from the edge of a facility other than a waste facility or from no further than the boundary of the property owned or leased by the applicant, whichever distance is less.

Effect of Other Statutes

Current law establishes that if there is a standard under other state or federal statutes or rules which specifically regulates in whole or in part a prospecting or mining activity also regulated under the Metallic Mining Law, that the other state or federal statute or rule shall be the controlling standard. The substitute amendment specifies that the other statute or rule will not be controlling if the standard is less stringent than a standard under the Metallic Mining Law. The substitute amendment also establishes that this provision applies to other federal regulations in addition to federal statutes.

Notice to Transferee

The substitute amendment creates a new requirement in the Metallic Mining Law that applies to a person who is transferring an ownership interest in a metallic mining site for which an application for a mining permit is pending with the DNR. Before the person holding the ownership interest may make this transfer, the person must notify the transferee in writing of the following statutory requirements and the rules promulgated under these statutes:

1. The DNR's minimum standards for solid waste facilities under the Solid Waste Facilities Law.

2. The new method created by the substitute amendment under which a mining solid waste may be identified as a hazardous waste.
3. The DNR's minimum standards for exploration, prospecting, mining and reclamation under the Metallic Mining Law.
4. The limit created by the substitute amendment on the DNR's authority to grant an exemption, modification or variance for the storage or disposal of solid waste from mining or prospecting that makes less restrictive a requirement in a rule promulgated under the Solid Waste Facilities or Hazardous Waste Management Laws.
5. The effect of other state and federal statutes, regulations and rules on metallic mining regulation, as modified by the substitute amendment.

INITIAL APPLICABILITY

The substitute amendment establishes that it applies to mining operations for which the DNR issues a permit on or after its effective date.

The Senate Committee on Environmental Resources recommended introduction and adoption of Senate Substitute Amendment 1 to Senate Bill 271 on a vote of Ayes, 5, Noes, 0, on October 31, 2001. The committee recommended passage of Senate Bill 271, as amended, on a vote of Ayes, 4, Noes, 1, on October 31, 2001.

On November 6, 2001, the Senate adopted Senate Substitute Amendment 1 to Senate Bill 271 on a vote of Ayes, 18, Noes, 15, and passed Senate Bill 271, as amended, on a vote of Ayes, 19, Noes, 14.

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