

1999 DRAFTING REQUEST

Bill

Received: **01/15/99**

Received By: **traderc**

Wanted: **As time permits**

Identical to LRB:

For: **Russell Decker (608) 266-2502**

By/Representing: **Jim**

This file may be shown to any legislator: **NO**

Drafter: **traderc**

May Contact:

Alt. Drafters:

Subject: **Environment - mining**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Past acts of mining permit applicants and local mining agreements

Instructions:

Like 1997 SB 342

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	traderc 01/29/99	chanaman 02/9/99		_____			S&L
/1			jfrantze 02/10/99	_____	lrb_docadmin 02/10/99	lrb_docadmin 03/18/99	

FE Sent For:

G → 05-05-99

<END>

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1?	traderc	cmr 2/2 1	2/9	2/9			

FE Sent For:

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1999 ~~1997 SENATE BILL 342~~

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DNote

November 4, 1997 - Introduced by Senators ~~DECKER, PLACHE and BURKE~~, cosponsored by Representatives ~~SPRINGER, HUBER, BLACK, TURNER, BOYLE, BAUMGART, ROBSON and PLOUFF~~. Referred to Committee on Agriculture and Environmental Resources.

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1 **AN ACT to repeal** 293.41 (2) (f) and 293.49 (2) (d) 3.; **to renumber and amend**
2 293.49 (8); **to amend** 293.37 (2) (e) 1. a. to d., 293.41 (1), 293.49 (2) (c) and (d)
3 (intro.) and 1., 293.49 (2) (e) and (f) and 293.49 (3); and **to create** 293.31 (1m),
4 293.37 (2) (e) 1. e., 293.37 (2) (em), 293.49 (1) (a) 7., 293.49 (2) (g), 293.49 (2) (h),
5 293.49 (2) (i) and 293.49 (8) (b) to (f) of the statutes; **relating to:** applications
6 for metallic mining permits, denial of metallic mining permits, information
7 concerning exploratory drilling, agreements between local governments and
8 applicants for metallic mining permits and requirements for mining
9 contractors and subcontractors.

Analysis by the Legislative Reference Bureau

Information submitted by applicants for mining permits

Under current law, a person must obtain a mining permit from the department of natural resources (DNR) before beginning to mine for metallic minerals. A person who applies for a mining permit must provide DNR with information concerning specified occurrences that happened within 10 years before the application is submitted. The occurrences include the forfeiture in the United States of mining reclamation bonds by the applicant or related persons, felony convictions of the

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SENATE BILL 342

applicant or a related person for mining-related violations of state or federal environmental protection laws, financial problems of the applicant or related persons that resulted in failure to reclaim a mining site in the United States and revocations of mining permits in the United States because of failure to reclaim a mining site.

This bill changes the provisions concerning information that must be submitted by the applicant for a mining permit. The bill requires the reporting of occurrences in Canada, as well as in the United States. The bill requires the reporting of any criminal conviction for a mining-related violation, rather than only felony convictions. The bill requires an applicant to submit information about forfeitures or other civil penalties imposed on the applicant or a related person within 10 years before the application is filed as the result of a mining-related violation of an environmental protection law. The bill also requires an applicant to provide information about any unpaid forfeiture, other civil penalty, fine or civil judgment imposed on or entered against the applicant or a related person as the result of violation of environmental laws or damage to the environment caused by a mining operation in the United States or Canada.

Denial of mining permits based on prior occurrences

Under current law, DNR is required to deny a permit to mine for metallic minerals under specified circumstances related to the occurrences required to be reported by the applicant. DNR must generally deny the mining permit if the applicant or a related person has, within 10 years before applying, forfeited a mining reclamation bond for a mine in the United States, undergone financial problems that resulted in the failure to reclaim a mining site in the United States or had a mining permit revoked because of failure to reclaim a mining site in the United States. DNR is required to deny a mining permit if the applicant or a related person has, within 10 years before applying, been convicted of more than one felony for mining-related violations of state or federal environmental protection laws unless the person convicted has been pardoned, the applicant terminates its relationship with the convicted person or the applicant submits a plan to prevent the occurrence of events similar to those that resulted in the convictions.

This bill changes the provisions concerning the denial of a mining permit because of the occurrences that are required to be reported. The bill requires denial because of occurrences in Canada, as well in the United States. The bill requires DNR to deny a mining permit if the applicant or a related person had a mining permit revoked because of a violation of an environmental law, as well as if the permit was revoked for failure to reclaim a mining site. The bill generally requires DNR to deny a permit if the applicant or a related person has been convicted of any mining-related crime. This bill eliminates the provision that allows an applicant that has committed a mining-related crime to obtain a mining permit upon submission to DNR of a plan to prevent similar occurrences.

The bill requires DNR to deny a mining permit if, within 10 years before applying, the applicant or a related person has been required to pay a total of more than \$50,000 in forfeitures or other civil penalties as the result of mining-related violations of environmental laws in the United States or Canada. The bill also

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SECTION 1

1 conducted at the proposed mining site. The department shall ensure that the
2 information submitted under this subsection is readily available to any person.

3 SECTION 2. 293.37 (2) (e) 1. a. to d. of the statutes are amended to read:

4 293.37 (2) (e) 1. a. A forfeiture by the applicant, principal shareholder of the
5 applicant or a related person of a mining reclamation bond that was sufficient to
6 cover all costs of reclamation and was posted in accordance with a permit or other
7 approval for a mining operation in the United States or Canada, unless the forfeiture
8 was by agreement with the entity for whose benefit the bond was posted.

9 b. A ~~felony~~ criminal conviction of the applicant, a related person or an officer
10 or director of the applicant for a violation of a law for the protection of the natural
11 environment arising out of the operation of a mining site in the United States or
12 Canada.

13 c. The bankruptcy or dissolution of the applicant or a related person that
14 resulted in the failure to reclaim a mining site in the United States or Canada in
15 violation of a state or federal law.

16 d. The permanent revocation of a mining permit or other mining approval
17 issued to the applicant or a related person if the permit or other mining approval was
18 revoked because of a failure to reclaim a mining site in the United States or Canada
19 in violation of ~~state or federal law~~ or because of any other violation of a law for the
20 protection of the natural environment.

21 SECTION 3. 293.37 (2) (e) 1. e. of the statutes is created to read:

22 293.37 (2) (e) 1. e. Any forfeiture or other civil penalty imposed by a court or
23 an administrative agency on the applicant, a related person or an officer or director
24 of the applicant at the conclusion of a contested judicial or administrative proceeding
25 or by consent decree or other agreement among the parties as the result of a violation

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1 of a law for the protection of the natural environment arising out of the operation of
2 a mining site in the United States or Canada.

3 SECTION 4. 293.37 (2) (em) of the statutes is created to read:

4 293.37 (2) (em) 1. The information specified in subd. 2. concerning any of the
5 following:

6 a. (a) A forfeiture, other civil penalty or fine that is unpaid at the time of
7 application and that was imposed on the applicant or a related person as the result
8 of a violation of a law for the protection of the natural environment arising out of the
9 operation of a mining site in the United States or Canada.

10 b. (b) A civil judgment that is unpaid at the time of application and that was
11 entered against the applicant or a related person as the result of environmental
12 damage caused by the operation of a mining site in the United States or Canada.

13 2. The applicant shall specify the name and address of the person involved in,
14 and the date and location of, each occurrence that resulted in a forfeiture, other civil
15 penalty, fine or civil judgement described in subd. 1.

16 SECTION 5. 293.41 (1) of the statutes is amended to read:

17 293.41 (1) A county, town, village, city or tribal government that requires an
18 operator to obtain an approval or permit under a zoning or land use ordinance and
19 a county, town, village or city in which any portion of a proposed mining site is located
20 or in which mined minerals are proposed to be processed may, individually or in
21 conjunction with other counties, towns, villages, cities, or tribal governments, enter
22 into one or more agreements with an operator for the development of a mining
23 operation. An agreement under this section may not be entered into before the
24 department prepares the environmental impact statement required by s. 293.39 for
25 the proposed mining operation.

Proposed w/ statute

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1 SECTION 6. 293.41 (2) (f) of the statutes is repealed.

2 SECTION 7. 293.49 (1) (a) 7. of the statutes is created to read:

3 293.49 (1) (a) 7. After the preparation of the environmental impact statement
4 required by s. 293.39 for the proposed mining operation, the governing body of each
5 county, town, village, city and tribal government that is authorized to enter into an
6 agreement under s. 293.41 either has approved an agreement with the operator or
7 has voted to waive the opportunity to enter into an agreement.

8 SECTION 8. 293.49 (2) (c) and (d) (intro.) and 1. of the statutes are amended to
9 read:

10 293.49 (2) (c) That the applicant, principal shareholder of the applicant or a
11 related person has within 10 years before the application is submitted forfeited a
12 mining reclamation bond that was posted in accordance with a permit or other
13 approval for a mining operation in the United States or Canada, unless the forfeiture
14 was by agreement with the entity for whose benefit the bond was posted and the
15 amount of the bond was sufficient to cover all costs of reclamation.

16 (d) (intro.) That the applicant, a related person or an officer or director of the
17 applicant has, within 10 years before the application is submitted, been convicted of
18 ~~more than one felony for violations of laws~~ a crime for violating a law for the
19 protection of the natural environment arising out of the operation of a mining site
20 in the United States or Canada, unless one of the following applies:

- 21 1. The person convicted has been pardoned for all of the felonies crimes.

22 SECTION 9. 293.49 (2) (d) 3. of the statutes is repealed.

23 SECTION 10. 293.49 (2) (e) and (f) of the statutes are amended to read:

24 293.49 (2) (e) That the applicant or a related person has, within 10 years before
25 the application is submitted, declared bankruptcy or undergone dissolution that

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1 resulted in the failure to reclaim a mining site in the United States or Canada in
2 violation of ~~a state or federal~~ law and that failure has not been remedied and is not
3 being remedied.

4 (f) That, within 10 years before the application is submitted, a mining permit
5 or other mining approval issued to the applicant or a related person was permanently
6 revoked because of a failure to reclaim a mining site in the United States or Canada
7 in violation of ~~state or federal law and that failure has not been and is not being~~
8 ~~remedied law or because of any other violation of a law for the protection of the~~
9 natural environment.

10 **SECTION 11.** 293.49 ^X(2) (g) of the statutes is created to read:

11 293.49 (2) (g) That, within 10 years before the application is submitted, the
12 applicant or a related person has been required to pay a total of more than \$50,000
13 in forfeitures or other civil penalties as the result of violations of laws for the
14 protection of the natural environment arising out of the operation of mining sites in
15 the United States or Canada.

16 **SECTION 12.** 293.49 ^X(2) (h) of the statutes is created to read:

17 293.49 (2) (h) That the applicant or a related person has not paid a forfeiture,
18 other civil penalty or fine that was imposed as the result of a violation of a law for
19 the protection of the natural environment arising out of the operation of a mining site
20 in the United States or Canada.

21 **SECTION 13.** 293.49 ^X(2) (i) of the statutes is created to read:

22 293.49 (2) (i) That the applicant or a related person has not paid a civil
23 judgment that was entered as the result of environmental damage caused by the
24 operation of a mining site in the United States or Canada.

25 **SECTION 14.** 293.49 ^X(3) of the statutes is amended to read:

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SECTION 14

1 293.49 (3) The department may not deny a mining permit under sub. (2) (c) to
 2 ~~(f)~~ (i) if the person subject to the convictions, forfeiture, permanent revocation,
 3 bankruptcy ~~or~~, dissolution or civil penalties is a related person but the applicant
 4 shows that the person was not the parent corporation of the applicant, a person that
 5 holds more than a 30% ownership in the applicant, or a subsidiary or affiliate of the
 6 applicant in which the applicant holds more than a 30% interest at the time of the
 7 convictions, forfeiture, permanent revocation, bankruptcy ~~or~~, dissolution or civil
 8 penalties.

9 **SECTION 15.** 293.49 (8) of the statutes is renumbered 293.49 (8) (intro.) and
 10 amended to read:

11 293.49 (8) (intro.) No operator may engage a general contractor or affiliate to
 12 operate a mining site or a subcontractor to participate in the operation of the mining
 13 site if the any of the following applies:

14 (a) The general contractor or, affiliate or subcontractor has been convicted of
 15 ~~more than one felony for violation of a crime for violating~~ a law for the protection of
 16 the natural environment arising out of the operation of a mining site in the United
 17 States or Canada within 10 years before the issuance of the operator's permit, unless
 18 ~~the general contractor or, affiliate receives the department's approval of a plan to~~
 19 ~~prevent the occurrence in this state of events similar to the events that directly~~
 20 ~~resulted in the convictions~~ operator proposes to engage the general contractor,
 21 affiliate or subcontractor.

22 **SECTION 16.** 293.49 (8) (b) to (f) of the statutes are created to read:

23 293.49 (8) (b) The general contractor, affiliate or subcontractor has violated
 24 and continues to fail to comply with this chapter or any rule adopted under this
 25 chapter.

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SENATE BILL 342

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(c) The general contractor, affiliate or subcontractor has within 10 years before the operator proposes to engage the general contractor, affiliate or subcontractor, forfeited a mining reclamation bond that was posted in accordance with a permit or other approval for a mining operation in the United States or Canada, unless the forfeiture was by agreement with the entity for whose benefit the bond was posted and the amount of the bond was sufficient to cover all costs of reclamation.

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(d) The general contractor, affiliate or subcontractor has, within 10 years before the operator proposes to engage the general contractor, affiliate or subcontractor, declared bankruptcy or undergone dissolution that resulted in the failure to reclaim a mining site in the United States or Canada in violation of law and that failure has not been remedied and is not being remedied.

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(e) Within 10 years before the operator proposes to engage the general contractor, affiliate or subcontractor, a mining permit or other mining approval issued to the general contractor, affiliate or subcontractor was permanently revoked because of a failure to reclaim a mining site in the United States or Canada in violation of law or because of any other violation of a law for the protection of the natural environment.

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(f) Within 10 years before the operator proposes to engage the general contractor, affiliate or subcontractor, the general contractor, affiliate or subcontractor has been required to pay a total of more than \$50,000 in forfeitures or other civil penalties as the result of violations of laws for the protection of the natural environment arising out of the operation of a mining site in the United States or

Insert 23
9-2324 →

(END)

Note

Insert 3-1

Section #. 293.01 (26) ^(intro.) of the statutes is amended to read:

293.01 (26) ^(intro.) "Related person" means any person that owns or operates a mining site in the United States ^{or Canada} ~~and~~ that is one of the following when an application for a mining permit is submitted to the department:

- (a) The parent corporation of the applicant.
- (b) A person that holds more than a 30% ownership interest in the applicant.
- (c) A subsidiary or affiliate of the applicant in which the applicant holds more than a 30% ownership interest.

History: 1973 c. 318; 1977 c. 377 s. 29m; 1977 c. 421, 447; 1983 a. 27, 517; 1987 a. 395; 1991 a. 260; 1995 a. 227 ss. 721 to 742, 994; Stats. 1995 s. 293.01.

BILL

Insert 9-23, p. 1

1 f. Any criminal penalty or any civil penalty of more than \$10,000 Canadian or
 2 any requirement to pay restitution in an amount of more than \$10,000 Canadian or
 3 to remedy environmental pollution, if the cost of the remedy was more than \$10,000
 4 Canadian, imposed by a court or an administrative agency on the applicant, a related
 5 person or an officer or director of the applicant at the conclusion of a contested
 6 judicial or administrative proceeding or by consent decree or other agreement among
 7 the parties as the result of a violation of a law for the protection of the natural
 8 environment arising out of the operation of a mining site in Canada.

SECTION 2. 293.49 (2) (d) 3. of the statutes is repealed.

SECTION 3. 293.49 (2) (g) of the statutes is created to read:

9 293.49 (2) (g) That the applicant, a related person or an officer or director of
 10 the applicant has demonstrated, by a pattern of behavior that resulted in
 11 occurrences that are required to be reported under s. 293.37 (2) (e) 1., an
 12 unwillingness or inability to comply with environmental protection laws.
 13
 14

SECTION 4. Nonstatutory provisions.

15 (1) If a person has applied for a mining permit under section 293.37 of the
 16 statutes before the effective date of this subsection and the department of natural
 17 resources has not approved or denied the application before the effective date of this
 18 subsection, the person shall submit the information required by section 293.37 (2)
 19 (e) 1. e. and ^(em) of the statutes, as created by this act, no later than the first day of the
 20 3rd month beginning after the effective date of this subsection and the department
 21 may not approve the application before the person submits the information.
 22
 23

SECTION 5. Initial applicability.

of the statutes

*and the additional information
 required under section 293.37(2)(e) 1.
 a. to d., as affected by this act,*



1999

Insert A-23, p. 2

Nonstat File Sequence: **EEE**

LRB _____ / _____
_____ : _____ : _____

INITIAL APPLICABILITY

- In the component bar:
For the action phrase, execute: create → action: → *NS: → inappl
For the budget action phrase, execute: create → action: → *NS: → 93XX
For the text, execute: create → text: → *NS: → inappl
- Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, for the budget, fill in the 9300 department code; and fill in "___" or "()" only if a "frozen" number is needed.

SECTION # 93 **Initial applicability;**

(#1) ()

..... The treatment of sections ...
 293.37 (2) (e), a, to d, and e, and (em), and 293.49 (2) (c)
 and (d) (intro.), 1, and 3, (e), (f), (g), (h) and (i) and (3) ...
 of the statutes
 first applies to ... an application for a mining permit that ...
 the department of natural resources approves or denies ...
 on the effective date of this subsection.

- In the component bar:
For the action phrase, execute: create → action: → *NS: → inappl
For the text, execute: create → text: → *NS: → inappl
- Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, fill in "___" or "()" only if a "frozen" number is needed.

SECTION # _____ **Initial applicability;**

(#1) () This act first ap-

plies to (END OF INSERT)

-1807/ldn
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Date

I have added an initial applicability provision to this draft to provide that the "bad actor" portions of the draft apply to an applicant for a mining permit if the ~~per~~ application was filed before this draft takes effect ^{but} ~~per~~ DNR has not approved or denied the permit when the draft takes effect.

Please let me know if this is not consistent with your intent.

Ret

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1807/1dn
RCT:cmh&ksh:jf

February 9, 1999

I have added an initial applicability provision to this draft to provide that the "bad actor" portions of the draft apply to an applicant for a mining permit if the application was filed before this draft takes effect but DNR has not approved or denied the permit when the draft takes effect. Please let me know if this is not consistent with your intent.

Rebecca C. Tradewell
Managing Attorney
Phone: (608) 266-7290
E-mail: Becky.Tradewell@legis.state.wi.us

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 2/10/99

To: Senator Decker

Relating to LRB drafting number: LRB-1807

Topic

Past acts of mining permit applicants and local mining agreements

Subject(s)

Environment - mining

1. **JACKET** the draft for introduction



in the **Senate** or the **Assembly** (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT**. See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Rebecca C. Tradewell, Managing Attorney
Telephone: (608) 266-7290