

2001 DRAFTING REQUEST

Bill

Received: 08/22/2001

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Wanted: As time permits

Identical to LRB:

For: Terri McCormick (608) 266-7500

By/Representing: self

This file may be shown to any legislator: NO

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May Contact:

Addl. Drafters:

Subject: Environment - mining

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Environmental standards applied to mining, notice of those standards

Instructions:

See Attached

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 09/25/2001	wjackson 09/25/2001					State
/1			jfrantze 09/26/2001		lrb_docadmin 09/26/2001	lrb_docadmin 10/01/2001	

FE Sent For:

L At intro

<END>

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1?	traderc	1 wly 9/25	26 9/26	26 / 116 9/26			

FE Sent For:

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Applying General Environmental Regulations to Mining

- Metallic mining should be required to meet the same environmental standards as other activities.
 - Mining should not be permitted unless it is safe for the environment.
 - Mining should not be allowed to pollute more than other industries or activities.
 - Mines are often located in environmentally sensitive areas.
 - The proposed Crandon mine near the headwater of the Wolf River in an area of groundwater, wetlands, streams and lakes that flow into the Wolf.

- The proposed bill would repeal current mining exemptions from environmental standards.
 - Solid waste facilities at mines are subject to less stringent groundwater standards.
 - Landfills must generally meet groundwater standards 300 feet from landfill sites.
 - Mining waste sites can exceed groundwater standards up to 1,200 feet out.
 - The 2,200-foot-deep proposed Crandon mine would become a waste site as mining wastes are reburied in the mine.
 - The proposed Crandon mine would also have a 90-foot-deep tailings dump larger than 200 football fields.
 - The bill would require both the mine and the tailings dump to meet the same groundwater standards as other landfills.
 - Mining waste that has the characteristics of hazardous waste is not considered hazardous waste under current law.
 - The bill would require sites with hazardous mining waste to meet the same standards as other hazardous waste sites, with protections such as double walls.
 - Mines should be required to comply with the same regulations on wetland impacts as other activities.
 - The proposed bill would ensure that mines must meet general wetland regulations.

- The proposed bill would generally require that mines meet any environmental standards that are more stringent than those in the mining statute.

Section #. 293.15 (9) of the statutes

293.15 (9) Promulgate rules by which the department may grant an exemption, modification or variance, either making a requirement more or less restrictive, from any rule promulgated under ~~chs. 289 to 292~~ and this chapter, if the exemption, modification or variance does not result in the violation of any federal or state environmental law or endanger public health, safety or welfare or the environment.

History: 1995 a. 227 s. 748, 749, 754, 994.

Discussed w. rep. McCormick

MINING REGULATIONS BILL REQUEST: Require that metallic mines meet general state and federal environmental standards (unless ch. 293 provides a more stringent standard for metallic mining). Specifically provide that standards for solid waste facilities apply to mining waste facilities. Provide that if mining waste has the characteristics of hazardous waste, it will be regulated as hazardous waste (despite a federal exemption).

SOLID WASTE REGULATIONS

Amend Wis. Stat. section 289.05(2) to read:

289.05(2) With the advice and comment of the metallic mining council, the department shall promulgate rules for the identification and regulation of metallic mining wastes. The rules promulgated to identify metallic mining wastes and to regulate the location, design, construction, operation and maintenance of facilities for the disposal of metallic mining wastes shall be in accordance with any or all of the provisions under this chapter and chs. 30 and 283. The rules shall 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 wastes as well as any special environmental concerns that will arise as a result of the disposal of metallic mining wastes. In promulgating the rules, the department shall give consideration to research, studies, data and recommendations of the U.S. environmental protection agency on the subject of metallic mining wastes arising from the agency's efforts to implement the resource conservation and recovery act. The rules promulgated under this subsection shall be no less stringent than the rules promulgated under sub. (1) and (3).

HAZARDOUS WASTE REGULATION

Create new Wis. Stat. section 291.05(2m) to read:

291.05(2m) Notwithstanding any other provision under this chapter or any exemption under s. 6921 (b) of the resource conservation and recovery act, the department may not exclude from regulation as a hazardous waste any solid waste from the extraction, beneficiation and processing of ores and minerals that would otherwise be subject to the criteria under s. 6921 (a) or that would otherwise meet the characteristics or listing of s. 6921 (b) of the resource conservation and recovery act.

GENERAL ENVIRONMENTAL STANDARDS

Amend Wis. Stat. section 293.93 to read:

293.93 Effect of other statutes. If there is a more stringent standard under other state rules or federal statutes or rules which specifically regulates would regulate in whole an activity any activities also regulated under this chapter the other state but such state or federal standard does not apply due to an exemption or other limitation on applicability for metallic mining activities, the other state rules or federal statutes or rules shall be the controlling standard, and such exemption and limitation on applicability shall not be effective. If the other more stringent state rule or federal statute or rule only specifically regulates the activity in part, it shall only be controlling as to that part.

289.05(2)

293.93

Per Rep. McCormick.

1. Standardize types of regs. for mineings with other kinds of regulations
2. Require notice to purchaser of the environmental requirements notice of the provisions of these statutes

SO ON

2001 BILL

Note

sub-subhead Environmental requirements applicable to metallic mining
regenerate

1 AN ACT to repeal 160.19 (12); to amend 160.21 (2) (d) (intro.), 289.05 (2), 291.01
2 (7), 293.15 (9), 293.15 (11) and 293.93; and to create 291.05 (2m) and 293.17
3 of the statutes; relating to: environmental regulation of mining.

and notice to transferees of interests in mining sites

Analysis by the Legislative Reference Bureau

Under current law, the department of natural resources (DNR) regulates the mining of metallic minerals. Under the mining laws, DNR promulgates rules to regulate metallic mining. Under the solid waste and hazardous waste laws, DNR promulgates rules regulating the storage and disposal of solid waste and hazardous waste. Current law authorizes DNR to grant exemptions from the rules regulating mining and from the rules regulating the storage and disposal of solid waste and hazardous waste as they relate to mining waste, if the exemptions do not result in the violation of a state or federal environmental law or endanger public health, safety, or welfare or the environment.

This bill prohibits DNR from granting exemptions from its rules regulating the storage and disposal of solid waste and hazardous waste as they relate to mining waste.

Currently, the hazardous waste laws require DNR to promulgate by rule criteria identical to those promulgated by the federal environmental protection agency (EPA) for identifying the characteristics of hazardous waste. DNR is also required to promulgate by rule a list of hazardous wastes. The list must be identical to the list of hazardous wastes promulgated by EPA, except that DNR may include a waste that is not on EPA's list if DNR determines that the waste has the

BILL

characteristics of a hazardous waste and that inclusion on the list is necessary to protect public health, safety, or welfare. Currently, EPA's rules exclude from regulation as hazardous wastes certain wastes from the mining, processing, and refining of ores and minerals.

This bill requires DNR to regulate a waste from the mining, processing, and refining of ores and minerals as a hazardous waste if it has the characteristics of a hazardous waste, notwithstanding any federal exclusion.

Currently, under the groundwater law, a state agency is required to take actions necessary to ensure that the activities, practices, and facilities that are regulated by the state agency do not cause groundwater quality standards to be exceeded. Mining activities and facilities, including mining waste sites, are not subject to the groundwater quality standards under the groundwater law. Current law separately authorizes DNR to establish groundwater quality standards for mining activities, including mining waste sites. Current law requires DNR to establish criteria for design management zones for solid waste and hazardous waste disposal facilities. A facility must be designed so that groundwater quality standards will not be violated at the boundaries of the design management zone for the facility.

This bill eliminates the exemption of mining activities and facilities, including mining waste sites, from the groundwater quality standards under the groundwater law. The bill eliminates the separate provision authorizing DNR to establish groundwater quality standards for mining activities. The bill also prohibits DNR from using criteria that provide for larger design management zones for mining waste facilities than for other solid waste facilities.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 160.19 (12) of the statutes is repealed.

2 **SECTION 2.** 160.21 (2) (d) (intro.) of the statutes is amended to read:

3 160.21 (2) (d) (intro.) The department shall establish criteria for design
4 management zones by rule for the facilities specified under par. (c). The department
5 may not establish or apply criteria that provide for larger design management zones
6 for solid waste facilities regulated under subch. III of ch. 289 that are part of
7 activities regulated under ch. 293 than for other solid waste facilities regulated
8 under subch. III of ch. 289. The rule shall take into account different types of facility

Analysis
insert

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1 designs. The design management zone which is applied to a facility utilizing the
2 criteria in the rule may be adjusted based on the following factors:

3 **SECTION 3.** 289.05 (2) of the statutes is amended to read:

4 289.05 (2) With the advice and comment of the metallic mining council, the
5 department shall promulgate rules for the identification and regulation of metallic
6 mining wastes. The rules promulgated to identify metallic mining wastes and to
7 regulate the location, design, construction, operation and maintenance of facilities
8 for the disposal of metallic mining wastes shall be in accordance with ~~any or all of~~
9 the provisions under this chapter and chs. 30 and 283. The rules shall take into
10 consideration ~~the special requirements of metallic mining operations in the location,~~
11 ~~design, construction, operation and maintenance of facilities for the disposal of~~
12 ~~metallic mining wastes as well as any special environmental concerns that will arise~~
13 as a result of the disposal of metallic mining wastes. In promulgating the rules, the
14 department shall give consideration to research, studies, data and recommendations
15 of the U.S. environmental protection agency on the subject of metallic mining wastes
16 arising from the agency's efforts to implement the resource conservation and
17 recovery act. The department may not promulgate rules under this subsection that
18 are less stringent than the rules promulgated under subs. (1) and (3).

19 **SECTION 4.** 291.01 (7) of the statutes is amended to read:

20 291.01 (7) "Hazardous waste" or "waste" means any solid waste identified by
21 the department as hazardous under s. 291.05 (1), (2), (2m), or (4).

22 **SECTION 5.** 291.05 (2m) of the statutes is created to read:

23 291.05 (2m) Notwithstanding subs. (1) and (2) and any exemption under 42
24 USC 6921 (b), the department shall identify a solid waste as a hazardous waste if the
25 solid waste is from the extraction, beneficiation, or processing of ores and minerals,

BILL

1 and the solid waste otherwise satisfies the criteria under 42 USC 6921 (a) or has the
2 characteristics, or is listed, under 42 USC 6921 (b).

3 **SECTION 6.** 293.15 (9) of the statutes is amended to read:

4 **293.15 (9)** Promulgate rules by which the department may grant an exemption,
5 modification, or variance, either making a requirement more or less restrictive, from
6 any rule promulgated under ~~chs. 289 to 292~~ and this chapter, if the exemption,
7 modification, or variance does not result in the violation of any federal
8 environmental statute or regulation or state environmental law statute or rule, other
9 than the rule from which the exemption, modification, or variance is granted, or
10 endanger public health, safety, or welfare or the environment.

11 **SECTION 7.** 293.15 (11) of the statutes is amended to read:

12 **293.15 (11)** ~~Notwithstanding chs. 289 and 291, promulgate~~ Promulgate rules
13 establishing ~~groundwater quality standards or groundwater quantity standards, or~~
14 ~~both,~~ for any prospecting or mining activity, including standards for any mining
15 waste site.

16 **SECTION 8.** 293.17 of the statutes is created to read:

17 **293.17 Limitation on department power.** The department may not grant,
18 for the storage or disposal of solid waste from mining or prospecting, an exemption,
19 modification, or variance that makes less restrictive a requirement in a rule
20 promulgated under ch. 289 or 291.

21 **SECTION 9.** 293.93 of the statutes is amended to read:

22 **293.93 Effect of other statutes.** If there is a standard under other state or
23 federal statutes, regulations, or rules which specifically regulates in whole an
24 activity also regulated under this chapter the other state or federal statutes,
25 regulations, or rules shall be the controlling standard, unless that standard is less

Insect
4-20
→

BILL

1 stringent than a standard under this chapter. If ~~the other~~ another state or federal
2 statute, regulation, or rule only specifically regulates the activity in part, it shall ~~only~~
3 be controlling as to that part, unless that standard is less stringent than a standard
4 under this chapter.

5 **SECTION 10. Initial applicability.**

6 (1) ~~This act~~ first applies to mining operations for which the department of
7 natural resources issues a permit on the effective date of this subsection.

8 (END)

The treatment of sections 160.19(12)[↓], 160.21(2)(d) (intro.)[↓], 289.05(2)[↓],
291.01(7)[↓], 291.05(2m)[↓], 293.15(9)[↓] and (11)[↓], 293.17[↓], and 293.93[↓]

DNate

Analysis Insert

(subsubhead)

Notice to transferee

intends

intends to transfer

¶ This bill requires a person who ~~has~~ ^{owns} an

ownership interest in a mining site for which

a permit application is pending with ^{DNR} ~~the Department~~

to provide written notice to the transferee of certain

^{environmental}

statute and rules applicable to mining ^{operations}

Section #. (11; 293.38^v

② 293.38 Notice to transferee. Before a person who holds an ownership interest in a mining site for which an application under s. 293.39^v is pending with the department transfers an ownership interest in that mining site, the person shall notify the transferee in writing of the provisions of ss. 289.05(2)^v, 291.05(2m)^v, 293.13(2)^v, 293.17^v and 293.93^v and of rules promulgated under those provisions.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

365711 dn
LRB-8503/1dm
RCT:wlj:kjf

September 18, 2001

Please review proposed s. 293.38¹ carefully to ensure that it complies with your intent relating to notice to purchasers.

This is the draft concerning environmental standards applicable to metallic mining.

I have searched the state statutes and rules for provisions under which mining is, or could be, subject to less stringent standards than are other activities. As a result, the draft includes several provisions in addition to the provisions identified in the proposed language provided to me. ~~Section 293.15 (9) authorizes DNR to grant exemptions from its rules under the solid and hazardous waste laws for mining waste facilities. It seemed to me that you might want to eliminate this authority to accomplish your intent. If you do not, please let me know.~~ Section 160.19 (12) exempts mining activities and facilities from the groundwater law, while s. 293.15 (11) separately authorizes DNR to establish groundwater quality standards for mining activities. DNR's rules establish a larger design management zone for mining waste facilities than for other solid waste facilities, which means that groundwater standards do not have to be met as close to the area in which the waste is disposed of. This draft eliminates the mining exemption from the groundwater law and the separate authorization for mining groundwater standards. It also prohibits DNR from establishing larger design management zones for mining waste facilities than for other solid waste facilities.

Section 289.05 (2) instructs DNR, in promulgating its rules for mining waste facilities, to take the special requirements of metallic mining operations into account. This language seems inconsistent with the idea that the mining waste rules may not be less stringent than the rules for other solid waste facilities, so this draft eliminates that language.

The proposed modification to s. 293.93 appears to be intended to result in having federal laws apply to metallic mineral mining that would otherwise not apply. The effect of this language obviously could not be to cause an action that would otherwise be legal under federal law to be illegal under federal law. Instead it attempts to incorporate a modified version of federal law into state law. This seems to have practical as well as potential legal problems. It would seem to be difficult for anyone to be certain that he or she has discovered all of the federal laws or regulations that might become applicable to mining under the proposed language. There are likely to be some federal provisions that result in different treatment for mining for which it is hard to tell whether the different treatment qualifies as "an exemption or other limitation on applicability." A federal law might contain an exemption or limitation for a category of activities that includes mining as well as other activities, and questions

would arise about the applicability of the federal law. Legal issues might include a lack of notice as to the applicable law as well as the broad delegation of legislative authority.

This state's environmental statutes and rules generally are as stringent as federal statutes and regulations, in part because the state wants to have EPA approve state, rather than federal, administration. Therefore, it seems to me that if the draft eliminates the state law exemptions and other limitations on applicability that you consider to be undesirable, it is possible to achieve the intent of this drafting request without needing to try to get unspecified, otherwise inapplicable federal provisions to apply. Typically when the legislature wants this state to have a law that is similar to a federal law, potential practical and legal problems are reduced by placing the specific provisions of the law into the state statutes or rules. If the approach in this draft is not adequate, we should try to identify the otherwise inapplicable federal provisions that you want to have apply to mining in this state.

~~The revised drafting instructions indicated that the changes made by this proposal should only apply to mining for which DNR issues a permit after the effective date of the bill. I have added an initial applicability provision to accomplish this. We often use initial applicability provisions for this purpose, and it avoids the somewhat awkward language involved in putting the applicability provisions in the statute. If this is a problem, please let me know.~~

you would prefer a different applicability.

Please feel free to contact me if you have questions, wish to discuss issues related to the draft, or have redraft instructions.

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

included

provide that this proposal would only apply to mining for which DNR issues a permit after the effective date of the bill

X

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3657/1dn
RCT:wlj:jf

September 26, 2001

This is the draft concerning environmental standards applicable to metallic mining.

Please review proposed s. 293.38 carefully to ensure that it complies with your intent relating to notice to purchasers.

I have searched the state statutes and rules for provisions under which mining is, or could be, subject to less stringent standards than are other activities. As a result, the draft includes several provisions in addition to the provisions identified in the proposed language provided to me. Section 160.19 (12) exempts mining activities and facilities from the groundwater law, while s. 293.15 (11) separately authorizes DNR to establish groundwater quality standards for mining activities. DNR's rules establish a larger design management zone for mining waste facilities than for other solid waste facilities, which means that groundwater standards do not have to be met as close to the area in which the waste is disposed of. This draft eliminates the mining exemption from the groundwater law and the separate authorization for mining groundwater standards. It also prohibits DNR from establishing larger design management zones for mining waste facilities than for other solid waste facilities.

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I have included an initial applicability provision to provide that this proposal would only apply to mining for which DNR issues a permit after the effective date of the bill. If you would prefer a different applicability, please let me know.

Please feel free to contact me if you have questions, wish to discuss issues related to the draft, or have redraft instructions.

Rebecca C. Tradewell
Managing Attorney
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State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

STEPHEN R. MILLER
CHIEF

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

September 26, 2001

MEMORANDUM

To: Representative McCormick

From: Rebecca C. Tradewell, Managing Attorney

Re: LRB-3657/1 Environmental standards applied to mining, notice of those standards

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-7290 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.