

2001 SENATE BILL 271

October 10, 2001 – Introduced by Senators HANSEN, ERPENBACH, SHIBILSKI and DECKER, cosponsored by Representatives McCORMICK, KRAWCZYK, MEYERHOFER, LA FAVE, SHERMAN, BLACK, BIES, UNDERHEIM, RYBA, MILLER and BERCEAU. Referred to Committee on Environmental Resources.

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
4 transferees of interests in mining sites.

Analysis by the Legislative Reference Bureau

Environmental requirements applicable to metallic mining

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

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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 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.

Notice to transferee

This bill requires a person who intends to transfer an ownership interest in a mining site for which a permit application is pending with DNR to provide written notice to the transferee of certain environmental statutes and rules applicable to mining operations.

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

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1 may not establish or apply criteria that provide for larger design management zones
2 for solid waste facilities regulated under subch. III of ch. 289 that are part of
3 activities regulated under ch. 293 than for other solid waste facilities regulated
4 under subch. III of ch. 289. The rule shall take into account different types of facility
5 designs. The design management zone which is applied to a facility utilizing the
6 criteria in the rule may be adjusted based on the following factors:

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

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

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

24 291.01 (7) "Hazardous waste" or "waste" means any solid waste identified by
25 the department as hazardous under s. 291.05 (1), (2), (2m), or (4).

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

2 291.05 **(2m)** Notwithstanding subs. (1) and (2) and any exemption under 42
3 USC 6921 (b), the department shall identify a solid waste as a hazardous waste if the
4 solid waste is from the extraction, beneficiation, or processing of ores and minerals,
5 and the solid waste otherwise satisfies the criteria under 42 USC 6921 (a) or has the
6 characteristics, or is listed, under 42 USC 6921 (b).

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

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

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

16 293.15 **(11)** ~~Notwithstanding chs. 289 and 291, promulgate~~ Promulgate rules
17 establishing ~~groundwater quality standards or groundwater quantity standards, or~~
18 ~~both,~~ for any prospecting or mining activity, including standards for any mining
19 waste site.

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

21 **293.17 Limitation on department power.** The department may not grant,
22 for the storage or disposal of solid waste from mining or prospecting, an exemption,
23 modification, or variance that makes less restrictive a requirement in a rule
24 promulgated under ch. 289 or 291.

25 **SECTION 9.** 293.38 of the statutes is created to read:

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1 **293.38 Notice to transferee.** Before a person who holds an ownership
2 interest in a mining site for which an application under s. 293.37 is pending with the
3 department transfers an ownership interest in that mining site, the person shall
4 notify the transferee in writing of the provisions of ss. 289.05 (2), 291.05 (2m), 293.13
5 (2), 293.17, and 293.93 and of rules promulgated under those provisions.

6 **SECTION 10.** 293.93 of the statutes is amended to read:

7 **293.93 Effect of other statutes.** If there is a standard under other state or
8 federal statutes, regulations, or rules which specifically regulates in whole an
9 activity also regulated under this chapter the other state or federal statutes,
10 regulations, or rules shall be the controlling standard, unless that standard is less
11 stringent than a standard under this chapter. If the ~~other~~ another state or federal
12 statute, regulation, or rule only specifically regulates the activity in part, it shall ~~only~~
13 be controlling as to that part, unless that standard is less stringent than a standard
14 under this chapter.

15 **SECTION 11. Initial applicability.**

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

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(END)