

2001 DRAFTING REQUEST

Bill

Received: 07/10/2001

Received By: traderc

Wanted: As time permits

Identical to LRB:

For: David Hansen (608) 266-5670

By/Representing:

This file may be shown to any legislator: NO

Drafter: traderc

May Contact:

Addl. Drafters:

Subject: Environment - mining

Extra Copies:

Submit via email: NO

Pre Topic:

No specific pre topic given

Topic:

Environmental standards applicable to metallic mines

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>
/1	traderc 09/18/2001	wjackson 09/18/2001	kfollet 09/18/2001	_____	lrb_docadmin 09/18/2001	lrb_docadminState 09/28/2001	
				_____	lrb_docadmin 09/28/2001	lrb_docadmin 09/28/2001	
/2	traderc 10/01/2001	wjackson 10/01/2001	pgreensl 10/01/2001	_____	lrb_docadmin 10/01/2001	lrb_docadminState 10/01/2001	

FE Sent For:

LA+ intro

<END>

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/1	traderc 09/18/2001	wjackson 09/18/2001	kfollet 09/18/2001	<u>19/1</u>	lrb_docadmin 09/18/2001	lrb_docadminState 09/28/2001	

FE Sent For: 1/2 WLj 10/11

10/1 PG/ JH
p8 <END>

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May Contact:

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Subject: Environment - mining

Extra Copies:

Submit via email: NO

Requester's email:

Pre Topic:

No specific pre topic given

Topic:

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Instructions:

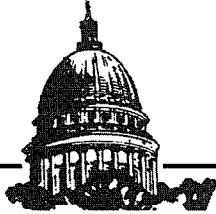
See Attached

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/?	traderc	1 wly 9/18	KJ 9/18	KJ/pj 9/18			

FE Sent For:

<END>



WISCONSIN STATE SENATE
DAVE HANSEN
SENATOR – 30TH DISTRICT

State Capitol P.O. Box 7882 Madison, Wisconsin 53707-7882 Phone: (608) 266-5670

To Whom It May Concern:

Enclosed is a mining regulation bill request. You may notice that I have taken the time to include specific drafting language and instructions. However, if you have any questions or concerns, please contact me at 266-5670. Also, please let my office know how long the drafting may take.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dave Hansen', is written over a large, stylized circular flourish.

Dave Hansen
State Senate

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.

Tradewell, Becky

From: Schuster, Rich
Sent: Friday, September 14, 2001 8:41 AM
To: Tradewell, Becky
Subject: FW: revisions in equal treatment language



revised equal
treatment drafti...

Becky,

Please include these provisions in the mining water regulations bill that you are drafting for Senator Hansen. If you have any questions, call Rich at 6-5670.

-----Original Message-----

From: Bill McClenahan [mailto:bill@martinschreiber.com]
Sent: Thursday, September 13, 2001 5:03 PM
To: Schuster, Rich
Subject: RE: revisions in equal treatment language

Good point!

Bill McClenahan
Martin Schreiber & Associates
bill@martinschreiber.com
608 / 259-1212 Ext. 4
414 / 405-1051 cellular

-----Original Message-----

From: Schuster, Rich [mailto:Rich.Schuster@legis.state.wi.us]
Sent: Thursday, September 13, 2001 3:52 PM
To: 'Bill McClenahan'
Subject: RE: revisions in equal treatment language

bill,

you didn't send an attachment

-----Original Message-----

From: Bill McClenahan [mailto:bill@martinschreiber.com]
Sent: Thursday, September 13, 2001 3:29 PM
To: Schuster, Rich
Subject: revisions in equal treatment language
Importance: High

Rich,

After various discussions, we would recommend slight changes to the equal treatment bill draft to do two things:

1. Insert language to address possible retroactivity concerns, and
2. Modify 293.93 to clarify that more stringent other standards that presently apply to mining should continue to apply.

The suggested changes to the drafting instructions are attached.

I apologize for any inconvenience to you or the drafting attorney.

Bill McClenahan
Martin Schreiber & Associates
bill@martinschreiber.com
608 / 259-1212 Ext. 4
414 / 405-1051 cellular

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. All rules promulgated under this subsection and applicable to mining that is permitted on or after [the effective date] 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 the resource conservation and recovery act, with respect to mining that is permitted on or after [the effective date], 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 any activity ~~any activities~~ also regulated under this chapter ~~the other state but such state or federal~~ or a more stringent standard ~~does not apply due to an exemption or other limitation on applicability for metallic mining activities, the~~ under other state rules or federal statutes or rules which specifically regulates would regulate in whole any activity 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 more

stringent standard shall be the controlling standard, and **any** 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. **Any such more stringent standard shall apply to any activity for which a mining permit is issued after [the effective date].**

MW550123_2.DOC MW550123_1.DOC



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3503/1

RCT: /.....
Wlj

Friday (9/21)

2001 BILL

ONote

1

AN ACT GEN ...; relating to: environmental regulation of mining.

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 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.

BILL

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

BILL

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

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

History: 1995 a. 227 ss. 530, 534.

17 **SECTION 4.** 291.01 (7)[✓] of the statutes is amended to read:

18 291.01 (7) "Hazardous waste" or "waste" means any solid waste identified by
19 the department as hazardous under s. 291.05 (1), (2), (2m), or (4).

History: 1995 a. 227 ss. 649, 992.

20 **SECTION 5.** 291.05 (2m)[✓] of the statutes is created to read:

21 291.05 (2m) Notwithstanding subs. (1)[✓] and (2)[✓] and any exemption under 42
22 USC 6921 (b), the department shall identify a solid waste as a hazardous waste if the
23 solid waste is from the extraction, beneficiation, or processing of ores and minerals[↑]

BILL**SECTION 5**

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 environmental
8 statute or regulation or state environmental law statute or rule, other than the rule
9 from which the exemption, modification, or variance is granted, or endanger public
10 health, safety or welfare or the environment.

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

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.

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

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,

BILL

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

History: 1977 c. 421; 1995 a. 227 s. 798; Stats. 1995 s. 293.93.

6 **SECTION 10. Initial applicability.**

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

9 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3503/1dn
RCT.....
W/Lj

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 in order 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 statutes. If this is a problem, 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
Phone: (608) 266-7290
E-mail: becky.tradewell@legis.state.wi.us

DRAFTER'S NOTE
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LRB-3503/1dn
RCT:wlj:kjf

September 18, 2001

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



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 18, 2001

MEMORANDUM

To: Senator Hansen

From: Rebecca C. Tradewell, Managing Attorney

Re: LRB-3503/1 Environmental standards applicable to metallic mines

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.

10/1/01 Per Rich -

Add the notice provisions from Rep. McLernick's
draft (01-3657/1). BK'd by Pat from Rep. McLernick's
office.

RET



State of Wisconsin
2001 - 2002 LEGISLATURE

LRB-3503P 2

RCT:wjl:km

Today

Ymn

2001 BILL

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

Insert A ✓

Insert
B
(subsub)

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

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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

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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,

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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

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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.

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)

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Inserts to - 3503/2

Insert A

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), 293.17 and
 3 293.38 of the statutes; **relating to:** environmental regulation of mining and
 4 notice to transferees of interests in mining sites.

Insert
B

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.

Insert
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:

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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).

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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: