

**2001 DRAFTING REQUEST**

**Senate Substitute Amendment (SSA-SB271)**

Received: **10/29/2001**

Received By: **traderc**

Wanted: **Today**

Identical to LRB:

For: **David Hansen (608) 266-5670**

By/Representing: **John Stolzenberg, Leg. Council**

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

Drafter: **traderc**

May Contact:

Addl. Drafters:

Subject: **Environment - mining**

Extra Copies:

Submit via email: **NO**

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Leave groundwater regulation under mining chapter and require testing of mining waste

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**Instructions:**

See Attached

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**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 10/29/2001	gilfokm 10/29/2001		_____			
/1			pgreensl 10/29/2001	_____	lrb_docadmin 10/29/2001	lrb_docadmin 10/29/2001	
/2	traderc 10/30/2001	gilfokm 10/30/2001	jfrantze 10/30/2001	_____	lrb_docadmin 10/30/2001	lrb_docadmin 10/30/2001	

FE Sent For:

<END>

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/?	traderc 10/29/2001	gilfokm 10/29/2001					
/1		<i>12-10/30</i> <i>King</i>	pgreensl 10/29/2001		lrb_docadmin 10/29/2001	lrb_docadmin 10/29/2001	

FE Sent For:

*10/30*  
*10/30*  
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1?	traderc	11-10/29 Kmg	12/29 pg	12/29 pg/ch			
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<END>

FE Sent For:

10/29/01 Per John Stolzenberg - Do a substituted amendment to SB 271 for Sen. Hanss that makes the following changes -

1. Leave groundwater regulation in ch. 29.3 but require 150 foot design management zone

2. Require testing of mining waste. They want the more stringent of mining or haz. waste requirements to apply

<sup>attached</sup>  
The language from Gudreau & Rahm may or may not accomplish this.

RET

**DRAFT**  
**REVISED EQUAL TREATMENT BILL.**

**Section 1.** 160.19(12) of the statutes is amended to read:

160.19(12). The requirements in this section shall not apply to rules governing an activity regulated under ch. 293, or to a solid waste facility regulated under subch. III of ch. 289 which is part of an activity regulated under ch. 293, except that the department shall may promulgate new rules or amend rules governing these types of activities, practices and facilities that require the following:

(a) The department may approve such an activity, practice or facility only if the department finds, based upon predictive modeling meeting the requirements of professional and scientific integrity, that there is no reasonable probability that disposal of mining waste will cause groundwater quality enforcement standards to be attained or exceeded beyond the design management zone, which the department shall define to extend no further than 150 feet from the outer waste boundary or the edge of the relevant facility or the boundary of the property owned by the applicant or the boundary of any river, stream, or other navigable watercourse, whichever distance is closest to the outer waste boundary or facility edge.

(b) Each such permitted activity, practice and facility shall comply with all of the groundwater response requirements applicable to solid waste disposal facilities, except that if a preventative action limit is exceeded beyond the design management zone, the department may not approve a no action response; provided that after response action has been taken, the department may determine that no additional response is necessary if monitoring results obtained after the response action are consistent with updated predictive modeling projections and indicate that the groundwater standards will not be attained or exceeded at the outer boundary of the design management zone this type of activity, practice or facility if the department determines that the amendment or promulgation of rules is necessary to protect public health, safety or welfare.

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

289.05(2). With the advise 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 department may not promulgate

rules under this subsection that are less stringent than the rules promulgated under subs. (1) and (3).

**Section 3.** 291.01(7) of the statutes is amended to read:

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

**Section 4.** 291.05(2m) of the statutes is created to read:

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

**Section 5.** 293.15(9) of the statutes is amended to read:

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

**Section 6.** 293.15(11) of the statutes is amended to read:

293.15(11). Notwithstanding chs. 289 and 291, promulgate rules establishing groundwater quality standards or groundwater quantity standards, or both, for any prospecting or mining activity, including standards for any mining waste site, provided such groundwater quality standards are consistent with the requirements of s. 160.19(12).

**Section 7.** 293.17 of the statutes is created to read:

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

**Section 8.** 293.38 of the statutes is created to read:

**293.38 Notice to transferee.** Before a person who holds an ownership interest in a mining site for which an application under §293.37 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 §§289.05(2), 291.05(2m), 293.13(2), 293.17, and 293.93 and of rules promulgated under those provisions.

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

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

**Section 10. Initial applicability.**

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

MW559120\_1.DOC

Kingé  
1/1/01

Today  
Senate substitute amendment  
to **2001 SENATE BILL 271**

Note

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.

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  
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



**SENATE BILL 271**

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:***

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

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

160.21 (2) (d) (intro.) The department shall establish criteria for design management zones by rule for the facilities specified under par. (c). The department

## SENATE BILL 271

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).

## SENATE BILL 271

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) <sup>stat.-plain</sup> Notwithstanding ~~chs. 289 and 291~~, promulgate ~~Promulgate~~ rules  
17 <sup>stat.-plain</sup> establishing ~~groundwater quality standards or groundwater quantity standards, or~~  
18 <sup>stat.-plain</sup> ~~both, for any prospecting or mining activity, including standards for any mining~~  
19 <sup>stat.-plain</sup> waste site. <sup>Insert 4-19</sup>

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:



Insert 4-19 ✓

NO. 9

IF the department establishes groundwater quality standards under this subsection, the department shall require the use of a 3-dimensional design management zone for purposes of facility design, the review of facility performance, and enforcement that extends no further than ~~the boundary of the property owned by the applicant~~ <sup>than</sup> 150 feet from the outer waste boundary or the edge of the relevant facility or no further than the boundary of the property owned by the applicant, whichever distance is less.

Note:

Rich Schuster:

1. This is a draft of a substitute amendment to SB-271 which I have drafted following discussions with John Stolzenberg of the Legislative Council.

2. This draft leaves the mining groundwater provisions in ch. <sup>293</sup> 293 of the statutes to deal with what I understand to be DNR's concerns about reusing <sup>for mining waste sites</sup> (designating). The draft specifies that the design management zone may not be larger than 150 feet.

3. It is my understanding from John that you want to ensure that mining waste is tested to determine whether it is hazardous. I believe<sup>e</sup> that current s. 291.21 will require that testing. I also understand that you want <sup>DNR to apply</sup> the <sup>more</sup> stringent of hazardous waste <sup>rules</sup> or mining rules ~~to be controlling~~. I believe that

s. 293.93 of the statutes, as modified by this draft,

would accomplish that. This <sup>may</sup> depend <sup>on</sup> how broadly

DNR interprets "standard" in <sup>s. 293.93</sup> ~~that statute~~. You

may wish to ask DNR's experts to review the draft

to determine <sup>whether they would interpret</sup> ~~their interpretation~~ of these provisions  
in a way that is consistent with your intent!

P.S. Please do not hesitate to ~~call~~ contact me

with questions or redraft instructions.

RT

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBs0223/1dn  
RCT:kmg:pg

October 29, 2001

Rich Schuster:

1. This is a draft of a substitute amendment to SB 271 which I have drafted following discussions with John Stolzenberg of the Legislative Council.
2. This draft leaves the mining groundwater provisions in ch. 293 of the statutes to deal with what I understand to be DNR's concerns about requiring modeling for mining waste sites. The draft specifies that the design management zone may not be larger than 150 feet.
3. It is my understanding from John that you want to ensure that mining waste is tested to determine whether it is hazardous. I believe that current s. 291.21 will require that testing. I also understand that you want DNR to apply the more stringent of hazardous waste rules or mining rules. I believe that s. 293.93 of the statutes, as modified by this draft, would accomplish that. This may depend how broadly DNR interprets "standard" in s. 293.93. You may wish to ask DNR's experts to review the draft to determine whether they would interpret these provisions in a way that is consistent with your intent.
4. Please do not hesitate to contact me with questions or redraft instructions.

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



10/30/01 Per John S.

& would be more clear on a 3 line 9 to see  
"a facility other than a waste facility" and I  
always add "or leased" after "owned" -

Rich Schuster says to make these changes



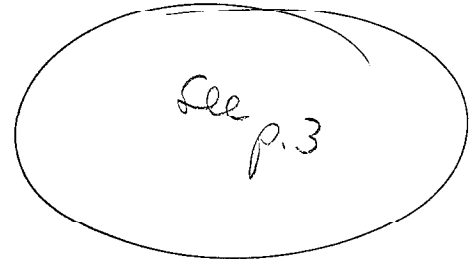
State of Wisconsin  
2001 - 2002 LEGISLATURE

LRBs0223/2  
RCT:kmg&wlj:pg

lam.

rnr

**SENATE SUBSTITUTE AMENDMENT ,  
TO 2001 SENATE BILL 271**



1 **AN ACT** *to amend* 289.05 (2), 291.01 (7), 293.15 (9), 293.15 (11) and 293.93; and  
2 *to create* 291.05 (2m), 293.17 and 293.38 of the statutes; **relating to:**  
3 environmental regulation of mining and notice to transferees of interests in  
4 mining sites.

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

5 **SECTION 1.** 289.05 (2) of the statutes is amended to read:  
6 289.05 (2) With the advice and comment of the metallic mining council, the  
7 department shall promulgate rules for the identification and regulation of metallic  
8 mining wastes. The rules promulgated to identify metallic mining wastes and to  
9 regulate the location, design, construction, operation, and maintenance of facilities  
10 for the disposal of metallic mining wastes shall be in accordance with ~~any or all of~~  
11 the provisions under this chapter and chs. 30 and 283. The rules shall take into  
12 consideration ~~the special requirements of metallic mining operations in the location,~~

1 design, construction, operation and maintenance of facilities for the disposal of  
2 metallic mining wastes as well as any special environmental concerns that will arise  
3 as a result of the disposal of metallic mining wastes. In promulgating the rules, the  
4 department shall give consideration to research, studies, data, and  
5 recommendations of the U.S. environmental protection agency on the subject of  
6 metallic mining wastes arising from the agency's efforts to implement the resource  
7 conservation and recovery act. The department may not promulgate rules under this  
8 subsection that are less stringent than the rules promulgated under subs. (1) and (3).

9 **SECTION 2.** 291.01 (7) of the statutes is amended to read:

10 291.01 (7) "Hazardous waste" or "waste" means any solid waste identified by  
11 the department as hazardous under s. 291.05 (1), (2), (2m), or (4).

12 **SECTION 3.** 291.05 (2m) of the statutes is created to read:

13 291.05 (2m) Notwithstanding subs. (1) and (2) and any exemption under 42  
14 USC 6921 (b), the department shall identify a solid waste as a hazardous waste if the  
15 solid waste is from the extraction, beneficiation, or processing of ores and minerals,  
16 and the solid waste otherwise satisfies the criteria under 42 USC 6921 (a) or has the  
17 characteristics, or is listed, under 42 USC 6921 (b).

18 **SECTION 4.** 293.15 (9) of the statutes is amended to read:

19 293.15 (9) Promulgate rules by which the department may grant an exemption,  
20 modification, or variance, either making a requirement more or less restrictive, from  
21 any rule promulgated under ~~chs. 289 to 292~~ and this chapter, if the exemption,  
22 modification, or variance does not result in the violation of any federal  
23 environmental statute or regulation or state environmental law statute or rule, other  
24 than the rule from which the exemption, modification, or variance is granted, or  
25 endanger public health, safety, or welfare or the environment.

1           **SECTION 5.** 293.15 (11) of the statutes is amended to read:

2           293.15 (11) Notwithstanding chs. 289 and 291, promulgate rules establishing  
3           groundwater quality standards or groundwater quantity standards, or both, for any  
4           prospecting or mining activity, including standards for any mining waste site. If the  
5           department establishes groundwater quality standards under this subsection, the  
6           department shall require the use of a 3-dimensional design management zone for  
7           purposes of facility design, the review of facility performance, and enforcement that  
8           extends no further than 150 feet from the outer waste boundary or the edge of the  
9           relevant facility<sup>a</sup> for no further than the boundary of the property owned<sup>or leased</sup> by the  
10          applicant, whichever distance is less.

11          **SECTION 6.** 293.17 of the statutes is created to read:

12          **293.17 Limitation on department power.** The department may not grant,  
13          for the storage or disposal of solid waste from mining or prospecting, an exemption,  
14          modification, or variance that makes less restrictive a requirement in a rule  
15          promulgated under ch. 289 or 291.

16          **SECTION 7.** 293.38 of the statutes is created to read:

17          **293.38 Notice to transferee.** Before a person who holds an ownership  
18          interest in a mining site for which an application under s. 293.37 is pending with the  
19          department transfers an ownership interest in that mining site, the person shall  
20          notify the transferee in writing of the provisions of ss. 289.05 (2), 291.05 (2m), 293.13  
21          (2), 293.17, and 293.93 and of rules promulgated under those provisions.

22          **SECTION 8.** 293.93 of the statutes is amended to read:

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

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.

6 **SECTION 9. 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)