



2009 SENATE BILL 139

March 31, 2009 - Introduced by Senators HANSEN, LEHMAN, TAYLOR, RISSER and LASSA, cosponsored by Representatives BLACK, SOLETSKI, BERCEAU, MOLEPSKE JR., A. OTT, POCAN and SPANBAUER. Referred to Committee on Transportation, Tourism, Forestry, and Natural Resources.

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

Analysis by the Legislative Reference Bureau

Under current law, the Department of Natural Resources (DNR) regulates the mining of metallic minerals. This bill makes several changes in the laws relating to mining of metallic minerals.

Metallic mining and groundwater requirements

Current law 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. Under current DNR rules, the design management zone for a mining waste facility may extend as far as 1200 feet from the boundary of the facility, but not farther than the boundary of the property owned or leased by the operator of the mining facility. DNR may reduce or expand the size of the design management zone for a particular facility.

This bill requires DNR to use a design management zone for a mining facility that extends no farther than 150 feet from the boundary of the waste disposal area,

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or of the boundary of a facility other than a waste facility, or no farther than the boundary of the property owned or leased by the operator of the mining facility, whichever distance is less.

Metallic mining and hazardous waste regulation

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.

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

Metallic mining and exemptions from rules

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, and do not 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.

Applicability of other laws to metallic mining

Under current law, if an activity regulated under this state's mining law is also regulated under another state law or a federal law, the other law is controlling.

Under this bill, if an activity regulated under this state's mining law is also regulated under another state law or a federal law, the other law is only controlling if it is more stringent than this state's mining law.

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.

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

2 289.05 (1) The department shall promulgate rules establishing minimum
3 standards for the location, design, construction, sanitation, operation, monitoring
4 and maintenance of solid waste facilities. Following a public hearing, the
5 department shall promulgate rules relating to the operation and maintenance of
6 solid waste facilities as it deems necessary to ensure compliance and consistency
7 with the purposes of and standards established under the resource conservation and
8 recovery act, except that the rules relating to open burning shall be consistent with
9 s. 289.51. ~~The rules promulgated under this subsection shall conform to the rules~~
10 ~~promulgated under sub. (2).~~

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

12 289.05 (2) With the advice and comment of the metallic mining council, the
13 department shall promulgate rules for the identification and regulation of metallic
14 mining wastes. The rules promulgated to identify metallic mining wastes and to
15 regulate the location, design, construction, operation, and maintenance of facilities
16 for the disposal of metallic mining wastes shall be in accordance with ~~any or all of~~
17 the provisions under this chapter and chs. 30 and 283. The rules shall take into
18 consideration ~~the special requirements of metallic mining operations in the location,~~
19 ~~design, construction, operation and maintenance of facilities for the disposal of~~
20 ~~metallic mining wastes as well as any special environmental concerns that will arise~~
21 as a result of the disposal of metallic mining wastes. In promulgating the rules, the

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1 department shall give consideration to research, studies, data, and
2 recommendations of the U.S. environmental protection agency on the subject of
3 metallic mining wastes arising from the agency's efforts to implement the resource
4 conservation and recovery act. The department may not promulgate rules under this
5 subsection that are less stringent than the rules promulgated under subs. (1) and (3).

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

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

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

10 291.05 (2m) Notwithstanding subs. (1) and (2) and any exemption under 42
11 USC 6921 (b), the department shall identify a solid waste as a hazardous waste if the
12 solid waste is from the extraction, beneficiation, or processing of ores and minerals,
13 and the solid waste otherwise satisfies the criteria under 42 USC 6921 (a) or has the
14 characteristics, or is listed, under 42 USC 6921 (b).

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

16 293.15 (9) Promulgate rules by which the department may grant an exemption,
17 modification, or variance, either making a requirement more or less restrictive, from
18 any rule promulgated under ~~chs. 289 to 292~~ and this chapter, if the exemption,
19 modification, or variance does not result in the violation of any federal
20 environmental statute or regulation or state environmental law ~~or statute or rule,~~
21 other than the rule from which the exemption, modification, or variance is granted,
22 and does not endanger public health, safety, or welfare or the environment.

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

24 293.15 (11) Notwithstanding chs. 289 and 291, promulgate rules establishing
25 groundwater quality standards or groundwater quantity standards, or both, for any

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1 prospecting or mining activity, including standards for any mining waste site. If the
2 department establishes groundwater quality standards under this subsection, the
3 department shall require the use of a 3-dimensional design management zone for
4 purposes of facility design, review of facility performance, and enforcement that
5 extends no farther than 150 feet from the outer boundary of the waste disposal area
6 or the edge of a facility other than a waste facility or no farther than the boundary
7 of the property owned or leased by the applicant, whichever distance is less.

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

9 **293.17 Limitation on department power.** The department may not grant
10 an exemption, modification, or variance for the storage or disposal of solid waste from
11 mining or prospecting if the exemption, modification, or variance would make less
12 restrictive a requirement in a rule promulgated under ch. 289 or 291.

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

14 **293.38 Notice to transferee.** Before a person who holds an ownership
15 interest in a mining site for which an application under s. 293.37 is pending with the
16 department transfers an ownership interest in that mining site, the person shall
17 notify the transferee in writing of the provisions of ss. 289.05 (2), 291.05 (2m), 293.13
18 (2), 293.17, and 293.93 and of rules promulgated under those provisions.

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

20 **293.93 Effect of other statutes.** If there is a standard under other state or
21 federal statutes, regulations, or rules which that specifically regulates in whole an
22 activity also regulated under this chapter, the other state or federal statutes,
23 regulations, or rules shall be the controlling standard, unless that standard is less
24 stringent than a standard under this chapter. ~~If the other~~ another state or federal
25 statute, regulation, or rule only specifically regulates the activity in part, it shall ~~only~~

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1 be controlling as to that part, unless that standard is less stringent than a standard
2 under this chapter.

3 **SECTION 10. Initial applicability.**

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

6 (END)