

Report From Agency

REPORT TO LEGISLATURE S. 227.19(3), Wis. Stat.

NR 103, 123, 130, 131, 132, 135, 140, 182, 213, 214, 350, 406, 500, 502, 503, 504, 506, 507, 508, 509, 510, 512, 514, 516, 518, 520, 524, 526, 528, 538, 700, 812, and 815, Wis. Adm. Code

Board Order No. WA-14-13
Clearinghouse Rule No. CR 13-057

Basis and Purpose of the Proposed Rule - The proposed Board Order revises existing administrative rules series as directed by Section 103 of 2013 Wisconsin Act 1 (hereafter the Act). The Act modified existing laws relating to metallic mining and created subch. III of ch. 295, Stats., for the regulation of ferrous metallic mining. A "ferrous mineral" is an ore that exists primarily in the form of an iron oxide, including taconite and hematite. Section 103 of the Act directed the Department to propose revisions to certain rules so that the rules are consistent with the new ferrous mining law, subch. III of chapter 295, Stats., and with the other statutory revisions made by the Act.

The changes proposed in this Board Order clarify that ferrous mining activities are regulated under the new subch. III of chapter 295, Stats., created by the Act. The proposed rules 1) revise the mining regulations in chs. NR 130, 131, 132, and 182, Wis. Adm. Code, to clarify that these rules apply only to nonferrous mining; 2) revise the solid waste regulations in chs. NR 500 to 538, Wis. Adm. Code, to be consistent with the new ferrous mining law and to clarify that the rules apply only to solid waste facilities that are not regulated under the mining laws; and 3) revise sections of other regulations that currently provide an exemption for metallic mining activities so that the rules are consistent with the Act.

Summary of Public Comments - The department conducted two (2) hearings on the proposed rules in the fall of 2013 in Ashland, Wisconsin on November 11, 2013 and in Madison, Wisconsin on November 15, 2013. The public comment period ended on December 2, 2013. A total of approximately thirty-eight (38) people attended the hearings. The Department received seven (7) written comments by email or letter prior to the end of the December 2, 2013 public comment period. Two written comments provided suggestions on clarifying specific language in the public hearing draft of the proposed rule. Other commenters voiced their concerns regarding the proposed Gogebic Taconite project contemplated for Iron County, 2013 Wisconsin Act 1, and mining activity in general.

Modifications Made – Below is a summary of changes made as a result of public comments.

- **Definition of "Nonferrous Metallic Mineral":** The department modified the definition of "Nonferrous Metallic Mineral" to use the statutory definition in s. 293.01(12m), Stats., with a note to provide additional clarity on the minerals covered by the nonferrous metallic mineral definition.
- **Water Quality Standards and Wetlands:** The department added language to s. 350.02 to clarify ch. NR 350 would not apply to wetland mitigation that is subject to an approval issued under the standards in section 295.60, Stats.
- **Metallic Mining program:** The department made several changes to clarify that chs. NR 131, 132, and 182 apply only to nonferrous metallic mining. The department added the sentence "This chapter also does not apply to ferrous metallic mining regulated under subch. III of ch. 295, Stats." to s. NR 131.02 Wis. Adm. Code. The department added similar sentences to s. NR 132.02(1) and s. NR 182.02. The department added the word "nonferrous" to the definition of "ore" in s. NR 132.03(17). The department added a definition of "mine" in s. NR 182.04 and removed references from Table 2 of s. NR 182.18(3) to tonnage fees for "nonacid producing taconite" tailings solids and waste rock.

- Industrial Wastewater program: The department added the words “approved under” to s. NR 213.02 (2) (b) concerning lagoons approved under subch. III of ch. 295, Stats.
- Drinking and Groundwater program: The department added language to clarify the application of ch. NR 140 under subch. III of ch. 295, Stats. The department deleted language to clarify that NR 812.02 (4) does not apply to water withdrawal or use that is associated with mining operations or bulk sampling regulated under subch. III of ch. 295. The department amended ss. NR 812.05(5)(e) and 815.06 to provide similar exceptions at ferrous and nonferrous mines for the placement of backfill into an underground mine. The department substituted the phrase “as approved under” for the phrase “in accordance with” in s. NR 815.11(7).
- Solid Waste Management program: The department amended language added to the applicability sections of the ch. NR 500 series to clarify that the solid waste rules do not apply to ferrous mining operations including mining wastes and mining waste sites that are regulated under subch. III of ch. 295, Stats. The department added further clarifying language to s. NR 528 (3)(j) regarding materials associated with metallic mining operations, including sediment from stormwater management structures regulated under subch. III of ch. 295, Stats.
- Remediation and Redevelopment program: To reflect the amended definition of “approved mining facility” in s. 292.01(1), Stats., the department amended the definition of facility in section NR 700.03(21), Wis. Adm. Code and amended the note in section NR 700.03(21).

Appearances at the Public Hearing - A total of approximately thirty-eight (38) people attended the hearings in Ashland (November 11, 2013) and Madison (November 15, 2013). Comments at the hearings did not focus on the proposed rule language. Commenters generally expressed their concerns regarding the Gogebic Taconite project contemplated for Iron County, 2013 Wisconsin Act 1, and mining activity in general. Unless noted in parenthesis, these commenters represented themselves.

Ashland Hearing. At the Ashland hearing, approximately thirty-five (35) attended and nine (9) provided oral testimony.

- In support: None
- As interest may appear: Donna Williamson
- No position was checked: Pete Russo (Ashland County Board Chair)
- In opposition and provided oral testimony: David Joe Bates, Jordan Grunen, Jim Jensen, Bruce Prentice, Krow Saty, Jeff Silbert, and Alexander Waters
- Dorine Damm submitted an appearance slip in opposition but provided no oral testimony. She provided some written comments on her appearance slip regarding her concern with public health and environmental impacts from mining activity.

Madison Hearing. At the Madison hearing, three (3) people attended. Two (2) people provided oral comments or wrote comments on their appearance slips.

- In support: None
- As interest may appear: Paula Mohan (oral testimony)
- In opposition: Karen Dean submitted written comments on her appearance slip. Her comments were that she is a property owner on Lake Superior and is concerned with pollution emanating from the proposed mine site.

Changes to Rule Analysis and Fiscal Estimate – The modifications made by the Department in response to written comments on the proposed rule generally were technical clarifications. No changes to the fiscal analysis were made as a result of the modifications to the proposed rule.

As directed by section 103 of the Act, the Department reviewed all relevant chapters of the Wisconsin Administrative Code administered by the Department. The Department determined that some rules identified in section 103 do not require revision. The Department did not propose revisions to chs. NR 540 to 555 of the solid waste rules because these rules do not apply to metallic mining. The Department did not propose revisions to chs. NR 660 to 679, the hazardous waste rules,

because the applicable rules are required by federal law and thus the existing rules are in accordance with s. 295.51(1e)(b), Stats. of the new ferrous mining law.

The Department also determined that certain rules initially identified in the scope statement did not require amendment. No changes to ch. NR 150, Wis. Adm. Code, were required because language in s. NR 150.30(1)(j) applies equally to ferrous and nonferrous mining and provides that if there are conflicting procedures for environmental review in statutes, including ch. 295, Stats., those procedures govern. No changes were required to the fee exemption provision of ch. NR 216, Wis. Adm. Code, provided for nonferrous metallic mining storm water permits because no storm water permit fee will be required for a ferrous mining storm water permit application. Fees for ferrous mining projects are set forth in s. 295.73, Stats.

Response to Legislative Council Rules Clearinghouse Report - The Legislative Council Rules Clearinghouse submitted comments on August 13, 2014. Changes to the proposed rule were made to address all recommendations by the Legislative Council Rules Clearinghouse.

Final Regulatory Flexibility Analysis – The proposed rules align the Department's administrative rules with the statutory changes made in 2013 Act 1. The proposed rule changes do not themselves have any fiscal effect. Because there is no significant fiscal effect on the private sector or small businesses, under s. 227.19(3m), Stats., a final regulatory flexibility analysis is not required.

Response to Small Business Regulatory Review Board Report - The Small Business Regulatory Review Board did not prepare a report on this rule proposal.