Mohr, Mark - GOV

From: Pyper, Thomas TMP (7122) <TPYPER@whdlaw.com>
Sent: Friday, May 13, 2011 7:10 PM
To: Roetker, Patrick - DOA
Subject: Re: Number from Jason Culotta

Thank you.

From: Roetker, Patrick - DOA [mailto:Patrick.Roetker@wisconsin.gov]
Sent: Friday, May 13, 2011 07:03 PM
To: Pyper, Thomas TMP (7122)
Subject: Number from Jason Culotta

Tom –

Jason asked me to get you this number for Larry Konopacki, the attorney from the Legislative Council: 608 267 0683

Thanks

Pat R

Mohr, Mark - GOV

From: Culotta, Jason - GOV
Sent: Wednesday, May 18, 2011 6:20 PM
To: TPYPER@HDLAW.com
Subject: FW: Drafts of Pre-Application Language and Checklist

Importance: High

From: Culotta, Jason - GOV
Sent: Wednesday, May 18, 2011 6:19 PM
To: 'tpyper@hdlaw.com'
Subject: FW: Drafts of Pre-Application Language and Checklist
Importance: High

Tom,
Just back to the office.
Here you go!
--Jason

From: Shea, Allen K - DNR
Sent: Wednesday, May 18, 2011 4:42 PM
To: Moroney, Matt S - DNR; Culotta, Jason - GOV
Cc: Stevens, Patrick K - DNR; Shea, Allen K - DNR; Coakley, Ann M - DNR
Subject: Drafts of Pre-Application Language and Checklist

Jason and Matt,

As requested, I am forwarding to you drafts of two items:

1. Stat. language for the Pre-application Process; and

2. The Filing Requirements (completeness checklist) to be used under the bill. We based the checklist on content in both the Flambeau and Crandon mine EISs, as well as the checklist that PSC uses for their reviews. Also, please note that this draft was developed in less than one day and, believe it or not, could be missing some key information or could be overly onerous in other areas.

As you can see, the checklist is not suitable for inclusion in stat. language. This would best be included in a guidance document governed by categorical language in a rule or statute. A middle ground would be for the drafters to include the major headings of information in the checklist in the bill, with a clear indication that the Department shall develop a detailed list of filing requirements. Ideally, the applicant and the department would cooperate in the pre-application process and jointly develop the checklist, so that the filing requirements are tailored to the specific project.

Al

Preapplication Process for Min...

Ferrous Mining
Filing Requirem...

Al Shea
Director
Office of Business Support and Sustainability
Wisconsin Department of Natural Resources
(☎) phone (cell): (608) 219-6427
(☎) phone (office): (608) 266-5896
(✉) e-mail: allen.shea@wisconsin.gov

Mohr, Mark - GOV

From: Pyper, Thomas TMP (7122) <TPYPER@whdlaw.com>
Sent: Thursday, May 19, 2011 5:31 PM
To: Culotta, Jason - GOV
Subject: FW: LRB analysis 2035/1
Attachments: LRB analysis 2035_1(WHD_7864824_1) (2).DOC

Jason:

Attached are my suggested track changes to the LRB Analysis based on the amendments being proposed and the original issues we had with the Analysis.

Tom Pyper
Shareholder
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and the other ~~new~~ approvals differ in some respects from the ~~standards,~~ procedures, and requirements under current law, as described below.

Current law requires DNR to promulgate rules specifying standards for metallic mining and for the reclamation of mining sites. The rules relating to mining must contain standards for grading and stabilization, backfilling, vegetative cover, prevention of pollution resulting from leaching of waste materials, and prevention of significant environmental pollution. The rules relating to reclamation must contain provisions for disposal of wastes in disposal facilities licensed under the solid waste laws or otherwise in an environmentally sound manner, for management of runoff so as to prevent soil erosion, flooding, and water pollution, and for minimization of disturbance to wetlands. DNR has promulgated rules on these matters.

The bill places some of the current standards for iron mining and for the reclamation of iron mining sites in the statutes, ~~rather than requiring rule-making~~which are not in the existing mining statutes. The standards in the bill are similar in many respects to DNR's current rules ~~and are less stringent in other respects~~. It will be up to the DNR as to what additional standards should be established through rule-making

APPLICATION FOR MINING PERMIT

Under current law, a person who wishes to obtain a permit for metallic mining must submit an application to DNR that includes a mining plan, a reclamation plan, information about the owners of the mining site, and information related to the failure to reclaim mining sites and to any criminal convictions for violations of environmental laws in the course of mining by persons involved in the proposed mining. The application must also include evidence that the applicant has applied for necessary approvals under applicable zoning ordinances and for any approvals issued by DNR that are necessary to conduct the mining, such as air pollution permits and wastewater discharge permits.

This bill includes similar provisions for the application for an iron mining permit, except that the applicant may provide evidence that the applicant will apply, rather than has applied, for necessary zoning approvals and other approvals issued by DNR.

The required content of the mining plan for iron mining under the bill is similar to that required under current statutes and DNR rules~~, but the applicant is not required to include a risk assessment of accidental health and environmental hazards potentially associated with the mining operation~~. The required content of the reclamation plan for iron mining is also similar to that required under current law.

DNR's current rules require the applicant for a metallic mining permit to show that the mining and reclamation will comply with specified minimum standards. The bill requires showings by the applicant for an iron mining permit that differ in some ways from DNR's rules. For example, the rules require a demonstration that water runoff from the mining site will be managed so as to prevent soil erosion to the extent practicable, flooding, damage to agricultural lands or livestock, damage to wild animals, pollution of ground or surface waters, damage to public health, and threats to public safety. The bill requires a showing that water runoff from an iron mining site will be managed in compliance with any approval that regulates construction site

erosion control or storm water management. It will be up to the DNR whether to set additional standards through rule-making as it has done under current law.

PERMITTING PROCESS

Environmental impact statement

Current law requires DNR to prepare an environmental impact statement (EIS) for every proposed metallic mine. An EIS contains detailed information about the environmental impact of a proposed project, including any adverse environmental effects that cannot be avoided if the proposal is implemented, alternatives to the proposed project, the beneficial aspects of the proposal, and the economic advantages and disadvantages of the proposal. For a metallic mining project, current law requires a description of significant long-term and short-term impacts, including impacts after the mining has ended, on tourism, employment, schools, social services, the tax base, the local economy, and "other significant factors."

This bill requires DNR to prepare an EIS for every proposed iron mine. The bill also requires DNR to include a description of significant impacts ~~on most of the same matters as under current metallic mining law~~to the environment by the proposed project.

Under current law, when a person applies for a permit or other approval for which DNR is required to complete an EIS, DNR is generally authorized to require the applicant to prepare an environmental impact report (EIR) that discloses environmental impacts of the proposed project to assist DNR in preparing the EIS. Current ~~law authorizes~~ DNR rules authorize it to enter into an agreement with a person considering applying to DNR for approval of a project that is large, complex, or environmentally sensitive to provide preapplication services necessary to evaluate the environmental impact of the project and to expedite the anticipated preparation of an EIS for the project.

The bill requires the applicant for a mining permit to prepare an EIR.

The bill ~~requires DNR to meet with~~ adopts a new preapplication procedure that requires any person considering an iron mining project to meet with the DNR before the person applies for a mining permit ~~and to~~so that the DNR may provide the person with available information to evaluate the environmental impact of the project, ~~and~~ to expedite the preparation of the EIR and the EIS, to identify the permits needed and to tell the person the information the DNR will need to evaluate the application.

The bill also authorizes a person considering a mining project to provide to DNR a preliminary description of the proposed project. After receiving the description, DNR must provide to the person any available information relevant to the potential impact of the project on threatened or endangered species and historic or cultural resources and any other information relevant to impacts that are required to be considered in the EIS. Within 20 days, DNR must also provide the person with information about the preparation of an EIR, a list of any approvals issued by DNR that may be required for the mining project, and a description of any other information that the person must provide for an application for a mining permit, any other approval that may be required, and the EIR.

The bill requires the applicant for a mining permit to submit the EIR within 30 days after submitting the application for the mining permit. If the applicant does not do so, the deadline for DNR to act on the mining permit, described below, is extended by the number of days that the EIR is late.

Current law authorizes DNR to conduct the processes related to an EIS jointly with other agencies who have responsibilities related to a proposed project.

The bill requires DNR to conduct its environmental review process for a proposed iron mine jointly with other state agencies and requires the preparation of one joint EIS. The bill requires DNR to conduct its environmental review process jointly with any federal or local agency that consents to a joint process.

Current law requires DNR to hold at least one informational meeting on a preliminary environmental report for a mining project before it issues the EIS. This bill does not require such an informational meeting.

Preapplication Description

The bill creates a new requirement that, prior to filing a mining permit application, the person intending to engage in mining will file a preapplication description of the project, which will be part of the public informational hearing to be conducted on the bulk sampling plan, which is discussed below.

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Mining hearing

Current law requires DNR to hold a hearing on an application for a metallic mining permit. The hearing includes both a contested case hearing, with testimony under oath and the opportunity for cross-examination, and a public informational hearing. The law requires that the hearing cover the EIS and cover all other approvals issued by DNR that are required for the mining project, to the extent possible. Under current law, the provisions related to notice, hearing, and comment in the metallic mining law apply to any other needed approval, unless the applicant fails to make an application for an approval in time for it to be considered at the hearing on the mining permit.

This bill requires DNR to hold a public informational hearing for a proposed iron mining project. The hearing does not include a contested case hearing. The hearing must cover the mining permit, the EIS, and all other approvals issued by DNR that are required for the mining project, unless the application for an approval is filed too late to allow the approval to be considered at the mining hearing. Under the bill, the provisions related to notice, hearing, and comment in the metallic mining law apply to any other needed approval.

Deadlines; automatic approval

Current law does not specify a time, after the application for a mining permit is filed, within which DNR must act on a metallic mining permit application. It does require the mining hearing to be held between 120 days and 180 days after DNR issues the EIS and requires DNR to act on the permit within 90 days after the completion of the record for the public hearing.

The bill requires DNR to act on an application for an iron mining permit no more than ~~300~~ 360 days after the application is considered to be complete, unless the applicant submitted the EIR more than 30 days after submitting the application for the mining permit. Under the bill, if the applicant submits the application for another approval within 60 days after the application for the mining permit is considered to be complete, DNR must also act on the application for that approval by the ~~300~~360-day deadline. If the applicant files the application for another approval more than 60 days after the application for the mining permit is considered to be complete, the deadline for DNR's action on the approval is extended by the number of days the application is late.

If DNR does not act within the deadline for acting on the application for an iron mining permit, the application is automatically approved. The 360-day permitting period and the automatic approval provisions are consistent with the approval process for a large utility project.

Under the bill, the application for a mining permit is considered to be complete on the ~~14~~30th day after DNR receives it, unless, before that day DNR provides the applicant with written notification that a mining plan, reclamation plan, or waste site feasibility study and plan of operation is missing from the application. DNR may not consider the quality of the information provided in determining whether the application is complete.

The bill authorizes DNR to request additional information needed to process the application for a mining permit after the application is considered to be complete, but it may not delay the determination that the application is complete based on a request for additional information unless the information required to be included in the application under the bill is missing.

GRANT OR DENIAL OF MINING PERMIT

Grounds for denial

Current law requires DNR to deny an application for a metallic mining permit for a proposed surface mine if the site is unsuitable for surface mining. A site is unsuitable for surface mining if the surface mining may reasonably be expected to destroy or damage either: 1) habitats required for the survival of endangered species of vegetation or wildlife that cannot be firmly reestablished elsewhere; or 2) unique features of the land, as determined by state or federal designation, as, for example, wilderness areas, national or state parks, archaeological areas, and other lands of a type specified by DNR by rule, as unique or unsuitable for surface mining. DNR has designated more than 150 specific scientific areas for the purposes of the determination of unsuitability.

This bill requires DNR to deny an application for an iron mining permit under the same standards for unsuitability as under current law, except that archaeological areas and other areas designated by DNR as being unique or unsuitable for surface mining are not considered for the purposes of determining unsuitability. They are currently part of the Wisconsin Environmental Protection Act ("WEPA") analysis, which is not changed by the bill.

Current law requires DNR to deny an application for a mining permit if the mining operation is reasonably expected to cause any of the following: 1) hazards resulting in irreparable

damage to specified kinds of structures, such as residences, schools, or commercial buildings, to public roads, or to other public property designated by DNR by rule, if the damage cannot be prevented under the mining laws, avoided by removal from the area of hazard, or mitigated by purchase or by obtaining the consent of the owner; 2) irreparable environmental damage to lake or stream bodies despite adherence to the metallic mining laws, unless DNR has authorized the activity that causes the damage; 3) landslides or substantial deposition in stream or lake beds that cannot be feasibly prevented; or 4) the destruction or filling in of a lake bed.

The bill requires DNR to deny an application for an iron mining permit if the mining operation is reasonably expected to cause any of the following: 1) hazards resulting in irreparable damage to specified kinds of structures, such as residences, schools, or commercial buildings, or to public roads, but not to other public property designated by DNR by rule, if the damage cannot be prevented under the mining laws, avoided by removal from the area of hazard, or mitigated by purchase or by obtaining the consent of the owner; or 2) irreparable environmental damage to lake or stream bodies despite adherence to the metallic mining laws, and 3) landslides or substantial deposition in stream or lake beds that cannot be feasibly prevented; or 4) the destruction or filling in of a lake bed unless DNR has authorized the activity that causes the damage~~, but not on the bases described in 3) or 4) above~~. With regard to items 3 or 4, if the DNR authorizes depositions in stream or lake beds, any impacts to public water bodies must be offset through the reclamation or addition of up to 1.5 acres of public water bodies for every acre impacted.

As under the current metallic mining laws, the bill requires DNR to deny a mining permit if the applicant has violated and continues to fail to comply with this state's mining laws. As also provided under current metallic mining law, the bill contains requirements for the denial of an iron mining permit based on the failure to reclaim mining sites and based on criminal convictions for violations of environmental laws in the course of mining in the United States by persons involved in the proposed iron mining.

Standards for approval

Under current law, if none of the grounds for denial of the application for a metallic mining permit apply, DNR must issue the mining permit if it finds the following: 1) the mining plan and reclamation plan are reasonably certain to result in reclamation of the mining site as required by current law and DNR has approved the mining plan; 2) the proposed mining operation will comply with all applicable air, groundwater, surface water, and solid and hazardous waste management statutes and rules; 3) the proposed mine will not endanger public health, safety, or welfare; 4) the proposed mine will result in a net positive economic impact in the area expected to be most impacted by the mine; and 5) the proposed mining operation conforms with all applicable zoning ordinances.

~~Under this bill, the standards for approval of an iron mining permit differ in some respects from the standards under current law.~~ Under the bill, if none of the grounds for denial of the application for an iron mining permit apply, DNR must issue an iron mining permit if it finds the following: 1) the mining plan and reclamation plan are reasonably certain to result in reclamation of the mining site as required by the provisions of this bill; 2) the applicant has committed to conducting the proposed iron mining in compliance with the mining permit and

any other approvals issued by DNR; 3) the proposed iron mining is not likely to result in substantial adverse impacts to public health, safety, or welfare; 4) the proposed iron mine will result in a net positive economic impact in the area expected to be most impacted by the mine; 5) the applicant will obtain all applicable zoning approvals; and 6) the waste site feasibility study and plan of operation comply with the provisions of this bill.

REVIEW OF DNR DECISIONS

Currently, any person aggrieved by a decision of DNR under the metallic mining laws may obtain a contested case administrative hearing under this state's administrative procedure laws.

Under this bill, no person is entitled to a contested case hearing on a decision by the DNR under the iron mining laws or a decision by DNR on any environmental approval needed for iron mining or bulk sampling. Similar to federal law, judicial review of such a decision, on the administrative record before DNR, is the exclusive method for challenging the decision.

Current law authorizes citizen suits against a person alleged to be in violation of the metallic mining laws and against DNR when there is alleged to be a failure of DNR to perform a duty under those laws.

The bill does not provide for citizen suits related to iron mining. Instead, it allows citizens the right to intervene in enforcement actions brought by the Wisconsin Department of Justice.

WETLANDS

This bill makes various changes in current law relating to iron mining and impacts to wetlands and establishes different requirements than those found under current law but that comply with the Wisconsin Public Trust Doctrine. All of the changes explained below regarding wetlands apply to wetlands that are impacted by iron mining.

Wetland water quality certification

Under the current permitting process there are two permitting procedures for discharging dredged or fill material into a wetland depending on whether the wetland is subjected to federal jurisdiction. Under federal law, activities involving the discharge of dredged or fill material into waters subject to federal jurisdiction must comply with certain guidelines contained in regulations promulgated by the federal Environmental Protection Agency in order for a federal permit to be issued by the U.S. Army Corps of Engineers (ACE). Wetlands are usually the type of waters involved (federal wetlands). Wetlands that are exempt from federal jurisdiction are those that are nonnavigable and isolated, intrastate waters. Current state law regulates discharges and other activities in these wetlands (nonfederal wetlands).

Current law relating to wetlands also makes a distinction between wetlands that are in, or in close proximity to, an area of special natural resource interest (ASNRI wetlands) and wetlands that are outside these areas. Current law defines "an area of special natural resource interest" as being an area that has significant ecological, cultural, aesthetic, educational, recreational, or

scientific values and specifically lists certain areas, including Lake Michigan and Lake Superior, state forests, and state parks.

Under current law, before ACE may issue a federal permit, DNR must issue a water quality certification that certifies that the discharge complies with state water quality standards applicable to wetlands. For a discharge into nonfederal wetlands, DNR must issue a water quality certification that certifies that the discharge complies with these water quality standards. In issuing water quality certification for both federal wetlands and nonfederal wetlands, DNR may impose conditions that must be met as part of the water quality certification.

This bill limits DNR's authority in imposing conditions for federal permits as part of the water quality certification. If DNR determines that implementation of the federal compensatory mitigation requirements will offset any significant adverse impact to the wetlands or if for federal ASNRI wetlands avoidance and minimization of adverse impacts has occurred to the extent practicable and any remaining significant adverse impacts are offset by federally allowed compensation or mitigation, DNR may not impose any additional conditions. If DNR does not make this determination, DNR may impose only the conditions necessary to offset significant adverse impacts that are not offset by the federal compensatory mitigation requirements. The bill also provides that DNR may not increase the number of acres to be mitigated under the federal compensatory mitigation requirements.

For issuing a wetland water quality certification for nonfederal wetlands, if DNR determines that avoidance and minimization of impacts to the wetland will be avoided or minimized to the extent practicable, any remaining impacts to nonfederal wetlands or an area of special natural resource interest, may not be used as a basis for denying certification if any remaining significant adverse impacts to the wetland or an area of special natural resource interest will be offset by compensation or mitigation similar to its federal process. Under the bill, DNR must issue water quality certification for nonfederal wetlands if DNR determines that all practicable measures will be taken to minimize the adverse impacts to wetlands and any remaining significant adverse impacts are offset through compensation or mitigation.

The bill requires that an applicant for a wetland water quality certification for a nonfederal wetland submit a siting analysis as to various configurations for the iron mining site to DNR for review. These are limited to configurations associated with the proposed areas of iron deposits to be mined and areas contiguous to these deposits. In reviewing the analysis, DNR must recognize limitations associated with the proposed locations for iron mining, the need for waste sites and processing facilities to be contiguous to the location of the iron deposits, and the presumption that nonfederal wetlands will be impacted. If it is impracticable to avoid an impact or use of a nonfederal wetland, the applicant shall identify in the analysis the configurations that would result in impacts to the fewest acres. DNR then determines which configuration will affect the fewest acres and evaluates how that configuration will impact the functional values and water quality of the nonfederal wetland, as in existing DNR rules.

Wetland water quality standards

Under rules promulgated by DNR, the state wetland water quality standards require that various functional values of the wetlands be protected from adverse impacts. These functional

values include providing protection from flooding, recharging groundwaters, providing habitat for wildlife, and providing protection to shorelines from erosion. Current law also sets forth criteria to be used to assure the maintenance or enhancement of these functional values. These criteria include requiring that certain solids, debris, or toxic substances be absent. This bill incorporates all of the functional values and criteria that are contained in the DNR rules for water quality certifications for wetlands. The wetland water quality standards under the bill require that the impacts must be minimized and that any remaining significant impacts be offset by compensation or mitigation. The bill also requires that in evaluating the significant adverse impacts, DNR must compare the functional values of the wetlands that will be impacted by the mining site with other wetlands and water bodies in the region.

Mitigation and compensation

Under current law, DNR is authorized, but is not required, to consider mitigation in determining whether to grant a water quality certification or other permit or approval affecting wetlands. Under current law, wetland mitigation consists of a project that restores, enhances, or creates (improves) a wetland to offset adverse impacts to other wetlands or that uses credits from a wetlands mitigation bank. A wetlands mitigation bank is a system of accounting for wetland loss that includes one or more sites where wetlands are improved to provide transferable credits to be subsequently applied to offset adverse impacts to other wetlands. Mitigation is based on a ratio of acres improved compared to the number of acres adversely impacted. The bill requires DNR to consider mitigation or compensation when issuing water quality certifications for both federal and nonfederal wetlands.

Under the bill, compensation allows for the offsetting of adverse impacts to other water quality functions besides those in wetlands. Compensation may include ~~preservation of ecologically important wetlands under certain circumstances and other~~ projects such as riparian restoration projects and shoreline stabilization projects if such projects are at locations that are more than one-half mile from the mining site.

Under current ~~law~~DNR rules, the ratio of acres for purposes of mitigation requires that 1.5 acres of wetlands be improved to every one acre that is adversely impacted with limited exception allowing the ratio to be one acre to one acre. The bill specifies that the ratio for mitigation may not exceed 1.5 acres. Under current ~~law~~DNR rules, in determining calculating the number of credits a person will receive in implementing mitigation, each acre restored receives one credit, the range of credits for each acre enhanced is from no credits to one credit, and each acre created receives one-half credit with a limited exception. Under the bill, each acre improved or preserved receives one credit.

Current law prohibits DNR from considering wetlands mitigation in reviewing whether to grant a permit or other approval for a project that adversely affects an area of special natural resource interest or an ASNRI wetland. Under the bill, mitigation and compensation to offset significant adverse impacts to these areas and ASNRI wetlands are allowed like under federal law.

Under current ~~law~~DNR rules, mitigation must occur within one-half mile of the impacted wetland (on-site). If DNR determines that it is not practicable or ecologically preferable that the

mitigation occur on-site, DNR shall allow mitigation to be preformed as near as practicable to the location of the adversely impacted wetland. Under the bill, if it is not practicable or ecologically preferable to conduct compensation or mitigation at an on-site location or if there is insufficient wetland acreage on-site, off-site compensation or mitigation may be performed. This may include purchases of credits from a mitigation bank located anywhere in the state. The bill also authorizes other persons to perform compensation or mitigation, subject to DNR approval.

Exemptions

Under current law, artificial wetlands are exempt from the wetland water quality standards unless DNR determines significant functional values are present. This bill exempts these same artificial wetlands from the wetland water quality standards and eliminates the exception to the exemption for wetlands with certain significant functional values.

Under current law, certain activities in nonfederal wetlands are exempt from the water quality certification requirements for wetlands. These include maintenance of drainage and irrigation ditches, damaged parts of structures that are in bodies of waters, and maintenance of certain temporary mining roads. Under current law, these activities lose their exemption under certain circumstances, such as using a wetland for a use for which it was not previous used, or conducting an activity that may impair the flow of a body of water. Under the bill, very similar exemptions apply to iron mining activities. However, the provision regarding losing the exemption does not apply. Instead, the exemptions only apply if the person conducting the activity first minimizes the adverse effect to the environment.

~~The bill also exempts from the water quality certification requirements isolated wetlands that do not exceed five acres in size. A similar exemption exists under the rules relating to the use of wetlands in other types of metallic mineral mining.~~

Other provisions

Under current law, for purposes of delineating the boundary of a wetland, DNR shall use the procedures contained in the wetlands delineation manual published by the ACE. The bill provides that if the applicant has provided information to DNR that is identified in the manual as being sufficient for determining where a wetland is or for delineating a wetland's boundaries, DNR ~~must accept the information and~~ may ~~not discontinue processing the application for purposes of~~ visiting the site ~~or~~and gather~~ing~~ additional site-specific data but doing so does not lengthen the 360 day review period.

Current law requires a permit holder to grant DNR an easement to ensure that an improved wetland is not destroyed or substantially degraded by subsequent owners. This bill imposes this requirement on persons who receive a water quality certification and requires DNR to suspend the certification if the permit holder fails to grant the easement within the time limit set forth in the mining permit.

GROUNDWATER QUALITY

Groundwater quality standards

Under current law, DNR and the Department of Health Services (DHS) establish groundwater quality standards, consisting of enforcement standards and preventive action limits, for substances that contaminate groundwater. The preventive action limit for a substance is 10 percent, 20 percent, or 50 percent of the enforcement limit depending on the type of substance.

Under this bill, the enforcement standards and preventive action limits established by DNR and DHS continue to apply to iron mining operations.

Point of standards application

Current law generally requires each state regulatory agency, including DNR, to promulgate rules containing design and operational criteria for facilities and activities affecting groundwater that are designed, to the extent technically and economically feasible, to minimize the level of substances in groundwater and to maintain compliance with preventive action limits, unless compliance with the preventive action limits is not technically and economically feasible. Current law requires each regulatory agency to promulgate rules that specify the range of responses that the regulatory agency may take or that it may require the person controlling a facility or activity to take if a preventive action limit is attained or exceeded at what is called a point of standards application. Under current law and under this bill, any point at which groundwater is monitored is a point of standards application to determine whether a preventive action limit has been attained or exceeded.

Current law generally prohibits a regulatory agency from promulgating rules containing design and operational criteria that allow an enforcement standard to be exceeded at a point of standards application. Under current law and under this bill, for determining whether an enforcement standard has been attained or exceeded, a point of standards application is any point beyond the boundary of the property on which the regulated facility or activity is located, any point of present groundwater use, and, for certain facilities, such as waste disposal facilities, any point beyond a three-dimensional design management zone (DMZ) established by DNR by rule.

Design management zone

Current mining statutes do not define a DMZ. Under DNR's rules, the horizontal dimensions of a DMZ vary depending on the type of facility. For a metallic mining waste site, the horizontal distance to the boundary of the DMZ is generally 1,200 feet from the outer waste boundary or at the boundary of the property owned or leased by the applicant, whichever distance is less. For a metallic surface mine, the horizontal distance to the boundary of the DMZ is generally 1,200 feet from the edge of the mining excavation or at the property boundary, whichever distance is less. Generally, the smaller the DMZ, the more likely that a preventive action limit or enforcement standard will be attained or exceeded at the boundary and the more likely that the operator will be required to implement a response.

Under this bill, for an iron mining site, the horizontal distance to the boundary of the DMZ is ~~generally~~ 1,200 feet from the engineered structures of a mining waste site, including any wastewater and sludge storage or treatment lagoon, the edge of the mine and adjacent mine mill and ferrous mineral processing and other facilities or at the property boundary, whichever distance is less.

Under current rules, DNR may reduce the horizontal distance to the boundary of the DMZ on a metallic mining site if certain conditions are met, but may not expand it.

Under the bill, DNR may expand the horizontal distance to the boundary of the DMZ on a metallic mining site by an additional 1,200 feet in any direction if DNR determines that preventive action limits and enforcement standards will be met at the boundary of the expanded DMZ and that preventive action limits and enforcement standards cannot be met at the boundary of the DMZ if it is not expanded.

Current mining statutes do not set a vertical DMZ distance. Under DNR's rules, a DMZ extends vertically from the land surface through all saturated geological formations. Under the bill, the vertical distance to the boundary of the DMZ on an iron mining site extends ~~no deeper than~~ 1,000 feet into the Precambrian bedrock or to the depth of the excavation of the mining site, whichever is deeper.

Mandatory intervention boundary

Current~~ly~~, mining statutes do not provide for a mandatory intervention boundary. ~~f~~For metallic mining waste sites and metallic mines, in addition to the DMZ, DNR's rules provide for a mandatory intervention boundary that is 150 feet from the outer waste boundary or the edge of the mine. Under the rules, if a preventive action limit or an enforcement standard is exceeded beyond the mandatory intervention boundary, the department must require a response by the operator.

The bill also does not provide a mandatory intervention boundary for an iron mining site. It will be up to the DNR whether to create a rule for ferrous mining that includes a mandatory intervention boundary.

Response when preventive action limit is attained or exceeded

Current mining statutes do not set a preventative action limit or designate responses when they are exceeded. Under DNR's groundwater rules, when a preventive action limit is attained or exceeded at a point of standards application, DNR must determine the appropriate response, taking into consideration ~~the~~any response proposed by the operator that is. ~~The response must be designed and implemented~~ to minimize the concentration of the substance in groundwater at the point of standards application to the extent feasible, to regain and maintain compliance with the preventive action limit, and ensure that the enforcement standard is not attained or exceeded at the point of standards application. DNR's rules specify a range of responses for when a preventive action limit is attained or exceeded at a point of standards application, including requiring a revision of operational procedures and requiring remedial action to restore groundwater quality. The DNR may implement those or alternate responses.

Under the bill, when a preventive action limit is attained or exceeded at a point of standards application and the quality of groundwater is statistically significantly different from the quality of the groundwater unaffected by the iron mining, DNR designates the appropriate response. In doing so, the DNR evaluates ~~must evaluate~~ the range of responses proposed by the operator, including alternate responses to the responses specified in DNR's rules~~, and designate the appropriate response~~. DNR may determine that no response is necessary if it determines that the preventive action limit will not be attained or exceeded at any point outside the DMZ or, in some cases, if the natural concentration of the substance is above the preventive action limit. It will be up to the DNR whether to create new rules to address this issue further.

Response when enforcement standard is attained or exceeded

Current mining statutes do not designate enforcement standards or designate responses when they are exceeded. Under DNR's groundwater rules, when an enforcement standard is attained or exceeded at a point of standards application for a solid or hazardous waste facility, DNR must require responses as necessary to prevent any new releases of the substance from traveling beyond the DMZ and to restore the contaminated groundwater within a reasonable period. When an enforcement standard is attained or exceeded at a point of standards application for a facility that is not a solid or hazardous waste facility, DNR must generally prohibit the activity that uses or produces the substance and require remedial actions, unless it can be shown that an alternative response will achieve compliance with the enforcement standard at the point of standards application.

Under the bill, when an enforcement standard is attained or exceeded at a point of standards application and the quality of groundwater is statistically significantly different from the quality of the groundwater unaffected by the iron mining, DNR must designate an appropriate response, and in doing so it evaluates the operator's proposed range of responses, ~~and designate an appropriate response.~~ DNR may not prohibit an activity or require closure of a mining waste site unless DNR determines that no other remedial action would prevent the violation of the enforcement standard at the point of standards application.

DISPOSAL OF MINING WASTE

Approval of facility

Under current law, no person may construct or operate a solid waste disposal facility, such as a landfill, without the approval of DNR under the solid waste statutes and rules. The rules under which metallic mining waste facilities are regulated under current law, however, differ in some ways from the rules for other solid waste facilities.

Under this bill, the current solid waste laws do not apply to iron mining waste facilities. Instead, the standards for an iron mining waste facility are specified in the iron mining laws and the process for approving an iron mining waste facility is part of the process for approving the iron mining permit. Just like under current DNR rules, the standards do not differ significantly from the solid waste statutes and rules. Under the bill, if a mining site will include a disposal facility for waste that is not mining waste, such as trash from an office or cafeteria, the current solid waste laws apply to that disposal facility.

Location of facility

Current law requires DNR to promulgate rules for the location of solid waste facilities. Unless DNR grants an exemption, as described below (in the section on exemptions), the rules prohibit the location of a mining waste site in any of the following areas: 1) within 1,000 feet of a state trunk highway, a state park or scenic easement or overlook, a scenic or wild river, or a hiking or bike trail, unless the proposed waste site is visually inconspicuous or is screened; 2) within an area designated in the statutes as being unsuitable for surface mining, such as a wilderness area, a wildlife refuge, or a state or national park; 3) within 200 feet of the property boundary; 4) within a floodplain; 5) within 300 feet of a navigable river or stream; 6) within 1,000 feet of a lake; or 6) within 1,200 feet of a private or public water supply well.

This bill includes ~~some of~~ the same locational limits for an iron mining waste site, but it ~~does not prohibit~~ permits an iron mining waste site ~~from~~ to ~~being~~ located ~~within an area designated in the statutes as being unsuitable for surface mining;~~ within 200 feet of the property boundary; within a floodplain; within 300 feet of a navigable river or stream; or within 1,000 feet of a lake if approved under the water withdrawal and navigable water sections of the bill.

Waste site feasibility study and plan of operation

The current solid waste statutes require an applicant for the approval of a solid waste disposal facility to submit a waste site feasibility study, to demonstrate the suitability of the site for the disposal of solid waste, and a plan of operation for the facility. DNR's rules concerning metallic mining waste facilities contain extensive requirements for the waste site feasibility study and plan of operation.

This bill requires an applicant for an iron mining permit to submit a waste site feasibility study and plan of operation as part of the application for the mining permit. The bill contains extensive requirements for the waste site feasibility study and plan of operation that are not required under current mining statutes, many of which are similar to the requirements in DNR's current rules. Some of the technical requirements in the bill differ from the current rules. It will be up to the DNR to determine if additional requirements should be added through rule-making.

The bill requires the applicant to perform analyses to assess the potential environmental impact of mining waste handling, storage, and disposal. The applicant must conduct investigations on the proposed waste site and in the laboratory to determine the characteristics of the site through measures such as soil borings and tests and determining groundwater levels and flow patterns and premining groundwater quality. The applicant must provide information about the ecosystems and climatology in the vicinity of the proposed mining waste site and about the geology, zoning, and land use in the area.

Under the bill, the applicant must submit a proposed waste site design that includes proposed methods for controlling water that has been contaminated by dissolved materials (leachate) and for controlling access to the facility and engineering plans and must submit a description of typical daily operations of the iron mining waste facility.

Proof of financial responsibility

Under current law and under this bill, the operator of a mine must furnish to DNR a bond or other security in an amount sufficient to cover the cost of reclamation of the mining site.

Current law also requires the operator of a mining waste facility to provide proof of financial responsibility for the costs of the care, maintenance, and monitoring of the facility after it is closed (long-term care). The obligation to provide proof of financial responsibility for long-term care continues until DNR terminates that requirement, which it may not do until at least 40 years after closure of the mine.

Under this bill, the operator of an iron mining waste facility is also required to provide proof of financial responsibility for the costs of the long-term care of the facility. Under the bill, the operator of an iron mine may apply to DNR for termination of its obligation to provide proof of financial responsibility for long-term care of the mining waste facility after the facility has been closed for at least 20 years by submitting an application that demonstrates that proof of financial responsibility for long-term care is no longer necessary for adequate protection of public health or the environment. If DNR decides that additional proof of financial responsibility for long-term care is still needed, the operator may not submit another application for five years. There is no time period set by which the DNR must allow termination of the proof of financial responsibility. Under the bill, even after the requirement to provide proof of financial responsibility has been terminated by the DNR, the Spill Responsibility Law still applies.

WATER WITHDRAWALS

Under current law, no person may withdraw water from a stream or lake without a permit (surface water withdrawal permit) issued by DNR. Current law also regulates withdrawals of groundwater. That law prohibits a property owner from withdrawing water from or constructing a well that, together with other wells on the same property, has a capacity of more than 100,000 gallons per day without an approval from DNR (high capacity well approval). DNR must review, using an environmental review process specified in DNR's rules, every application for an approval of a high capacity well that has a water loss of more than 95 percent of the amount of water withdrawn, that may have a significant environmental impact on a spring, or that is located in a groundwater protection area. A groundwater protection area is an area within 1,200 feet of certain outstanding or exceptional resource waters or certain trout streams. Current law also provides that if DNR determines that a proposed high capacity well may impair the water supply of a public utility, then DNR may not approve the well unless it includes certain approval conditions that will ensure that the water supply of the public utility will not be impaired and if DNR determines that a proposed high capacity well that has a water loss of 95 percent of the amount of water withdrawn, may have a significant impact on a spring or is located in a groundwater protection area, then DNR generally may not approve the well unless it includes certain approval conditions that will ensure that the high capacity well will not cause significant adverse environmental impact.

Current law also provides that if a person to whom DNR has issued a surface water withdrawal permit or a high capacity well approval proposes to begin a new withdrawal or increase an existing withdrawal that will result in a water loss beyond a specified threshold

amount, then that person must apply for a new or modified surface water withdrawal permit or high capacity well approval (water loss application). A water loss is a loss of water from the basin from which it is withdrawn as a result of interbasin diversion or consumptive use. The water loss application must contain certain information including the place and source of the proposed withdrawal, the estimated average volumes and rates of water loss, the anticipated costs of any proposed construction, and a description of the conservation practices that the applicant intends to follow. If DNR approves the water loss application then DNR must modify the applicant's existing surface water withdrawal permit or high capacity well approval or issue a new permit or approval that specifies certain conditions with regard to the water withdrawal.

This bill establishes different procedural requirements for surface water and groundwater withdrawals relating to iron mining. In lieu of a surface water withdrawal permit, a high capacity well approval, and a water loss application, a person who, as part of an iron mining operation or bulk sampling (explained below), engages in a surface water withdrawal or withdrawal of groundwater or the dewatering of mines that exceeds 100,000 gallons a day, must obtain a single water withdrawal permit from DNR (mining water withdrawal permit). The bill specifies that a person who applies for a mining water withdrawal permit need not be a riparian owner. If the withdrawal of water will involve one or more high capacity wells, DNR must require the applicant to submit a siting analysis that includes alternate proposed locations for each well. In evaluating the siting analysis, DNR must recognize that there is a need for mining waste sites and processing facilities to be contiguous to the location of the ferrous mineral deposits and must allow any high capacity well to be located so that need will be met. DNR must also determine which location has the fewest overall adverse environmental impacts to the extent practicable. In determining what is practicable, DNR must take into consideration the ability to implement certain conservation measures.

The bill requires DNR to issue a mining water withdrawal permit if the withdrawal substantially meets certain requirements (general requirements). Among those requirements is that the proposed withdrawal and use of the water is substantially consistent with the protection of public health, safety, and welfare; that it will not be ~~substantially~~ significantly detrimental to the quantity or quality of the waters of this state; that it will not ~~substantially~~ significantly impair the rights of riparian owners or the applicant obtains the consent of riparian owners; and that it will not result in ~~substantial~~ significant injury to public rights in navigable waters. The bill provides that if an applicant cannot meet the general requirements ~~but is able to~~ without implementing specified conservation measures, such as mitigation or compensation by offsetting impacts to public water bodies by reclaiming or adding up to 1.5 acres of public water bodies for each one acre impacted, DNR may, nonetheless issue the permit if it finds that by doing so the general requirements have been met. The bill further provides that if the applicant cannot meet either the general requirements or the conservation measures, DNR may issue the mining water withdrawal permit if DNR determines that the public benefits resulting from the iron mining operation exceed any injury to public rights in a body of water that is affected by the mining operation. In making this determination, DNR is required to recognize certain factors, including the extent to which public rights in a navigable body of water may be substantially and irreparably injured by the proposed withdrawal, public benefits that may be provided, such as increased employment, from the iron mining operation, and the social benefits and costs that will result from the mining operation. This is consistent with the existing Wisconsin Public Trust Doctrine.

The bill authorizes DNR to impose certain reasonable conditions in the mining water withdrawal permit, but the conditions may not interfere with, or limit the water supply needed for, the iron mining operation or bulk sampling. Like existing law, ~~T~~the bill also allows an iron mining operator to request a modification of any condition in the mining water withdrawal permit and establishes certain deadlines under which DNR must approve or deny the request for modification. The bill specifies that if a request for modification results in an existing withdrawal resulting in a water loss averaging more than a specified number of gallons per day in a 30-day period, then DNR must determine whether, under its rules, it is required to prepare an environmental assessment or environmental impact statement. If so, then DNR must prepare the environmental assessment or environmental impact statement.

NAVIGABLE WATERS

Under current law, DNR regulates certain activities that occur in or near navigable waterways. In order for a person to conduct such an activity, the person may be required to obtain one or more permits from DNR. Among the permits that DNR issues are permits to place structures or deposits in navigable waters, permits to construct or maintain bridges and culverts, permits to enlarge or connect waterways, permits to change the courses of streams and rivers, and permits to remove material from beds of navigable waterways. Current law also requires that DNR have in place general permits for some of these activities. Under current law, some activities are exempt from these requirements.

In order to receive an individual permit for the navigable waters activities regulated by DNR, the activity must meet certain requirements. These requirements vary depending on the type of permit issued, and may include requirements that address possible obstruction to navigation, reduction to flood flow capacity, and interference with the rights of other riparian owners. The bill modifies the requirements for the purpose of issuing individual permits associated with iron mining and provides that the same requirements apply to all of these permits. Under the bill, a navigable waters permit will be issued if it will not ~~substantially~~ significantly impair the public's rights and interests in navigable waters, will not ~~substantially~~ significantly reduce flood flow capacity, will not ~~substantially~~ significantly affect riparian rights without consent, and will not ~~substantially~~ significantly degrade water quality (no significant impact requirements). The bill provides that if the activity does not meet these requirements, DNR must nevertheless issue a permit for the activity if the applicant for the permit implements one or more measures approved by DNR, ~~such as obtaining consent from any riparian owner whose rights may be affected,~~ taking steps to improve public rights or interests in navigable waters, or implementing certain compensation, mitigation, or conservation measures, but only if doing so allows the DNR to find that the no significant impact requirements have been met. Where public water bodies have been impacted, the applicant must offset such impacts by reclaiming or adding up to 1.5 acres of public water bodies for each acre impacted.

Under current law, to qualify for some of the individual or general permits or to conduct activities under certain permit exemptions, the person must be an owner of riparian (waterfront) property. Under the bill for purposes of iron mining, the requirement of being a riparian owner does not apply.

EXEMPTIONS

Current law authorizes DNR to promulgate rules under which it may grant to an applicant for a metallic mining permit an exemption to a rule promulgated under the solid waste, hazardous waste, or metallic mining laws if the exemption does not result in a violation of any federal or state environmental statute or endanger public health, safety, or welfare or the environment.

This bill authorizes an applicant for an iron mining permit to request an exemption from any requirement in the iron mining laws applicable to a mining permit application, a mining permit, or any other approval issued by DNR that is needed to conduct the iron mining. DNR must grant or deny the exemption within 15 days. DNR must grant the exemption if it is consistent with the purposes of the iron mining laws; it does not violate other applicable environmental laws; and either: 1) it will not result in substantial adverse environmental impacts, or 2) it will result in substantial adverse environmental impacts but the applicant will offset those impacts through compensation, mitigation, or conservation measures, except that DNR may not grant the exemption or variance if granting it would violate federal law.

RELATION TO OTHER LAWS

Current law provides that if there is a standard under other state or federal statutes or rules that specifically regulates in whole an activity also regulated under the metallic mining law, the standard under the other statutes or rules is the controlling standard. If the other federal or state statute or rule only specifically regulates the activity in part, it is controlling as to that part.

Under this bill, if there is a conflict between a provision of the iron mining laws and a provision in another state environmental law, the provision in the iron mining laws controls.

EXPLORATION

Current law requires a person who intends to engage in exploration to be licensed by DNR. Exploration is drilling to search for minerals or to establish the nature of a known mineral deposit. The law requires DNR to promulgate rules containing minimum standards for exploration and for the reclamation of exploration sites.

This bill also requires a person who intends to engage in exploration for iron ore to be licensed by the department. The bill requires an applicant for an exploration license to file an exploration plan and a reclamation plan that include provisions related to the matters for which DNR is required to establish standards under current law. The bill contains requirements for filling drillholes once exploration has been completed that are similar to the requirements in DNR's current rules.

Under the current rules, DNR must deny the application for an exploration license if it finds that the exploration will not comply with the standards for exploration and reclamation or if the explorer is in violation of the rules.

Under the bill, DNR must deny the application for an exploration license if it concludes that, after the reclamation plan has been completed, the exploration will have a substantial and irreparable adverse impact on the environment or present a substantial risk of injury to public health and welfare. If DNR intends to deny a license, it must notify the applicant of that intent

and the reasons for the intended denial and give the applicant ten days to correct the problems with its application.

As under current DNR rules, the bill generally requires DNR to issue or deny an application for an exploration license within ten business days of receipt of the application. Under the bill, however, if DNR does not comply with that deadline, the exploration license is automatically issued.

BULK SAMPLING AND PREAPPLICATION DESCRIPTION

Under current law, a person who intends to apply for a permit for mining for metallic ore must notify DNR before collecting data intended to be used to support the application. DNR is required to provide public notice when it receives such a notification. After considering public comments, DNR must tell the person who filed the notice of intent what information DNR believes is needed to support an application for a mining permit. The person must submit the information as soon as it is in final form.

Under this bill, there is no notice of intent requirement for a person who intends to submit an application for a permit to mine for iron ore. There is the preapplication process requiring consultation with the DNR before an application is filed, as described above.

Under current law, a person may not prospect for metallic ore without a prospecting permit from DNR. Prospecting is examining an area to determine the quantity and quality of metallic minerals by means other than drilling, for example, by excavating.

Under the bill, a person intending to examine an area to determine the quantity and quality of iron ore by means other than drilling is not required to obtain a prospecting license.

Instead, ~~T~~the bill ~~does~~ authorizes a person who intends to engage in bulk sampling to file a bulk sampling plan with DNR. Bulk sampling is excavating in a potential mining site to assess the quality and quantity of iron ore deposits and to collect and analyze data to prepare the application for a mining permit or other approval. A person who files a bulk sampling plan must do all of the following:

1. Describe the bulk sampling site and the methods to be used for bulk sampling.

2. Submit a plan for controlling surface erosion that identifies how adverse impacts to plant and wildlife habitats will be avoided or minimized to the extent practicable.

3. Submit a plan for revegetation that describes how adverse environmental impacts will be avoided or minimized to the extent practicable, how the site will be revegetated and stabilized, and how adverse impacts to plant and wildlife habitats will be avoided or minimized to the extent practicable.

4. Describe any known adverse environmental impacts that are likely to be caused by bulk sampling and how those impacts will be avoided or minimized to the extent practicable.

The bill requires DNR, within 14 days of receipt of a bulk sampling plan, to identify in writing any kind of approval that DNR issues that is needed to conduct the proposed bulk sampling, such as a wastewater discharge permit or a wetland water quality certification, and any potentially available waivers, exemptions, or exceptions to those approvals that may be available.

The bill requires a person submitting a bulk sampling plan to submit at the same time all applications for approvals and for waivers, exemptions, or exceptions to approvals for the bulk sampling.

The bill also requires the person who files a bulk sampling plan to file a preapplication description of the proposed mining project. The description must include a description of the proposed mining site with a map, water table elevations, a general description of the nature, extent and final configuration of the proposed excavation and mining site and a conceptual description of the likely operating procedures, where the waste site and processing facilities are likely to be located and a general description of each.

The bill specifies deadlines for DNR to act on approvals needed to conduct bulk sampling that would not otherwise apply to those types of approvals. When a person who files a bulk sampling plan applies for an approval or a waiver, exemption, or exception to an approval, the application is considered to be complete on the 30th day after the department receives the application, unless before that day DNR informs the person that the application is not complete. Once an application is considered to be complete, DNR must act within 30 days on an application for a waiver, exemption, or exception to an approval, for a determination that an activity is below the threshold that requires an approval, or for a determination of eligibility for coverage under a general permit or a registration permit. For other approvals, DNR must act within 60 days after the application is considered to be complete, except that if it is not possible for DNR to act on approval for an individual permit, such as a wastewater discharge permit, for which federal law requires an opportunity for public comment or the ability to request a hearing before issuance of the permit within 60 days, it must act within 180 days. Before an approval is issued, the DNR shall provide notice to the public, provide a 30-day public comment period and hold a public informational hearing on the proposed approvals and the preapplication mining project description.

Under current law, if a proposed state agency action, such as the issuance of a permit, authorization, or exception, will affect any site that is significant in the history, prehistory, architecture, archaeology, or culture of this state (historic property), the state agency must notify the director of the State Historical Society (SHS) or his or her designee (state historic preservation officer). If the state historic preservation officer determines that the proposed agency action will have an adverse effect on a historic property that is listed on the national or state register of historic places, the Wisconsin inventory of historic places, or SHS' list of locally designated historic places, that officer may require negotiations with the state agency to reduce that adverse effect.

The bill requires a bulk sampling plan to include: 1) a description of any adverse effects that the bulk sampling might have on any historic property or on any scenic or recreational areas; and 2) plans to avoid or minimize those adverse effects to the extent practicable. The bill also

provides that if DNR determines that an applicant has taken measures to minimize the adverse effects of proposed bulk sampling on a historic property, DNR is not required to notify the state historic preservation officer, and the state historic preservation officer may not require negotiations to reduce that adverse effect. If that adverse effect cannot practicably be minimized, any negotiations between DNR and the state historic preservation officer must be completed within 60 days.

DNR is not required to prepare an environmental impact statement for proposed bulk sampling. Also, the bill requires DNR to act on any required construction site erosion control or storm water management approval, even if DNR has authorized a local program to issue approvals for construction site erosion control or stormwater management.

FEES

Under current ~~law~~DNR rules, a person who ~~gives notice of intent to apply~~files an application for a metallic mining permit must pay a $10,000 fee ~~established by DNR by rule~~ designed to cover the costs incurred by DNR in connection with its review of the ~~proposed mining~~ application during the year following receipt of the ~~proposed notice~~application. The person must also pay fees for any approvals other than the mining permit that are needed to conduct the mining. The law requires DNR to annually compare the fees paid by an applicant with the costs incurred by DNR in connection with the proposed mining. If the costs incurred by DNR exceed the fees paid, the person must pay a fee equal to the difference.

Under this bill, the filing fee for a mining permit is $10,000. The applicant is not required to pay an application or filing fee for any approval other than a mining permit. ~~No annual payments are required. Upon completion of DNR's action on all approvals for a mine, the applicant must pay the amount by which the costs to DNR for evaluating the mining project, including all of the approvals, exceed $10,000, but not more than $750,000.~~The applicant must also pay $100,000 when a bulk sampling plan is filed and up to four additional $250,000 payments if DNR's actual costs require such payments to a total applicant payment of $1.1 million.

Current law imposes fees on the disposal of solid waste that are called tonnage fees or tipping fees. Under the bill, the operator of a mining waste site must pay the groundwater fee, ~~and~~ the environmental repair fee, ~~but is not subject to~~ and the waste facility siting board fee. ~~or the~~A recycling fee is not required.

NET PROCEEDS OCCUPATION TAX

Under current law, the state imposes a net proceeds occupation tax on the mining of metallic minerals in this state. The tax is based, generally, on a percentage of net income from the sale of ore or minerals after certain mining processes have been applied to the ore or minerals. For purposes of administering the net proceeds occupation tax and assessing manufacturing property in this state for property tax purposes, the Department of Revenue (DOR) assesses the value of the lands from which metalliferous minerals are extracted, but excludes the value of the metalliferous mineral content of the land from the assessment.

Under the bill, the maximum amount of the net proceeds occupation tax on the mining of metallic minerals in this state, as it relates to the mining of ferrous metallic minerals in any year, is an amount equal to $1.35 for each 2,240 pounds of iron product sold in that year. Also, DOR continues to assess the value of lands from which ferrous or nonferrous metallic minerals are extracted, but excludes from the assessment the value of the ferrous or nonferrous metallic mineral content of the land and the value of the facilities and improvements used for processing the ferrous or nonferrous metallic minerals.

Under current law, the revenue collected from the net proceeds occupation tax is deposited into the investment and local impact fund. The fund is managed by the local impact fund board. The revenue is then, generally, distributed to the counties and municipalities in which metallic minerals are being mined. Part of the revenue is distributed to counties and municipalities as "first-dollar payments" equal to $100,000, adjusted to reflect the annual change in gross national product. Additional payments are then made after the first dollar payments.

Under current law, each county, municipality, or Native American community that contains at least 15 percent of a minable ore body for which construction, but not extraction, has begun at a metalliferous mining site receives a one-time payment of $100,000. Under current law, each person constructing a metallic mining site must pay a construction fee in an amount sufficient to make the one-time construction payments. Under the bill, each county, municipality, or Native American community that contains at least 15 percent of a minable ore body for which construction, but not extraction, has begun at a nonferrous metallic mining site receives a one-time payment of $100,000 and each person constructing a nonferrous metallic mining site pays the construction fee.

~~Under current law, a school district may receive payments from the investment and local impact fund if the local impact fund board finds that the school district has incurred costs attributable to enrollment resulting from the operation of a metallic mineral mine. Under the bill, a school district may receive such payments only if the school district has incurred costs attributable to enrollment resulting from the operation of a nonferrous metallic mineral mine.~~

OTHER

Shoreland and floodplain zoning

Current law prohibits locating a solid waste facility in an area that is covered by a shoreland or floodplain zoning ordinance unless the facility is authorized under a permit issued by DNR. This bill requires DNR to specify in the mining permit the authorized location, height, or size of the facility that may be located in the area. ~~This bill also specifies that DNR may not prohibit a waste site, structure, building, fill, or other development or construction activity (activity) to be located in an area that would otherwise be prohibited under a shoreland or floodplain zoning ordinance if the activity is authorized by DNR as part of a mining operation covered by an iron mining permit.~~

Current law provides that a structure, building, fill, or development (structure) that is placed or maintained in a floodplain in violation of a floodplain zoning ordinance is a public nuisance and provides that any person placing or maintaining the structure may be subject to a

fine. The bill specifies that these provisions do not apply to a structure placed or maintained as part of a mining operation covered by an iron mining permit issued by DNR.

~~**Local impact committees**~~

~~Current law authorizes a local or tribal government likely to be substantially affected by proposed metallic mining to establish a local impact committee for purposes that include facilitating communications with the mining company, reviewing and commenting on reclamation plans, and negotiating an agreement between the local or tribal government and the mining company. The law requires the mining company to appoint a person to be the liaison with the local impact committee and requires the mining company to make reasonable efforts to design and carry out mining operations in harmony with community development objectives. Under some circumstances, a local impact committee may receive funding from the investment and local impact fund board.~~

~~This bill does not provide for local impact committees for proposed iron mines.~~

Rights and conditions relating to mining contracts and leases

Current law establishes certain rights and imposes certain conditions with respect to private party contracts or leases that authorize a person to dig for ores and minerals, including the conditions under which a miner may retain ore and minerals discovered on another person's~~the~~ land, a miner's obligation to keep and to provide certain records concerning mine operations, and the consequences to a miner who conceals or disposes of any ores or minerals for the purpose of defrauding a lessor. Current law also establishes a maximum term for exploration mining leases with regard to minerals that contain metals.

This bill limits these current law provisions to mining activities relating to nonferrous metallic mining.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

Mohr, Mark - GOV

From: Pyper, Thomas TMP (7122) <TPYPER@whdlaw.com>
Sent: Friday, May 20, 2011 4:09 PM
To: Culotta, Jason - GOV
Subject: RE: Question regarding cross-reference in drafting instructions.

Yes, it is a problem from a general standpoint. I'm not yet sure if it is a problem for my client. Give me a call.

Tom Pyper
Shareholder
Whyte Hirschboeck Dudek S.C.
33 East Main Street, Suite 300
Madison, WI 53703-4655
(608) 258-7122
(608) 258-7138
tpyper@whdlaw.com

From: Culotta, Jason - GOV [mailto:Jason.Culotta@wisconsin.gov]
Sent: Friday, May 20, 2011 4:05 PM
To: Pyper, Thomas TMP (7122)
Subject: RE: Question regarding cross-reference in drafting instructions.

I'm going to be calling you in a few minutes about the bulk sampling plan.

On page 74, line 20, a bulk sampling plan "may" and not "shall" be submitted.
Is that a problem to make shall?

From: Pyper, Thomas TMP (7122) [mailto:TPYPER@whdlaw.com]
Sent: Friday, May 20, 2011 3:51 PM
To: Culotta, Jason - GOV
Subject: RE: Question regarding cross-reference in drafting instructions.

OK, I'm good at "disregarding."

Tom Pyper
Shareholder
Whyte Hirschboeck Dudek S.C.
33 East Main Street, Suite 300
Madison, WI 53703-4655

(608) 258-7122
(608) 258-7138
tpyper@whdlaw.com

From: Culotta, Jason - GOV [mailto:Jason.Culotta@wisconsin.gov]
Sent: Friday, May 20, 2011 3:50 PM
To: Pyper, Thomas TMP (7122)
Subject: FW: Question regarding cross-reference in drafting instructions.

Tom,
Disregard.
She figured it out.
--Jason

From: Culotta, Jason - GOV
Sent: Friday, May 20, 2011 3:49 PM
To: 'tpyper@whdlaw.com'
Subject: FW: Question regarding cross-reference in drafting instructions.

From: Gibson-Glass, Mary [mailto:Mary.Gibson-Glass@legis.wisconsin.gov]
Sent: Friday, May 20, 2011 1:39 PM
To: Culotta, Jason - GOV
Subject: Question regarding cross-reference in drafting instructions.

Jason,

The cross reference to "par (a) 7.-8. on page 11 (in the instructions for 295.51 (1m) makes no sense to me. There is no par. (a) 7 or 8 near there. Is the cross-reference supposed to be just to par. (a) in general?

Thanks,

Mary

To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including any attachments, was not intended or written to be used, and cannot be used, by any person for the purpose of (i) avoiding any penalties that may be imposed by the Internal Revenue Service, or (ii) promoting, marketing or recommending to another person any tax-related matter addressed herein.

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the attorney/client privilege. It is intended solely for the addressee(s); access to anyone else is unauthorized. If this message has been sent to you in error, do not review, disseminate, distribute or copy it. Please reply to the sender that you have received the message in error, then delete it. Thank you for your cooperation.

Mohr, Mark - GOV

From: Culotta, Jason - GOV
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Subject: RE: Question regarding cross-reference in drafting instructions.

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Sent: Friday, May 20, 2011 3:51 PM
To: Culotta, Jason - GOV
Subject: RE: Question regarding cross-reference in drafting instructions.

OK, I'm good at "disregarding."

Tom Pyper
Shareholder
Whyte Hirschboeck Dudek S.C.
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Madison, WI 53703-4655

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(608) 258-7138
tpyper@whdlaw.com

From: Culotta, Jason - GOV [mailto:Jason.Culotta@wisconsin.gov]
Sent: Friday, May 20, 2011 3:50 PM
To: Pyper, Thomas TMP (7122)
Subject: FW: Question regarding cross-reference in drafting instructions.

Tom,
Disregard.
She figured it out.
--Jason

From: Culotta, Jason - GOV
Sent: Friday, May 20, 2011 3:49 PM
To: 'tpyper@whdlaw.com'
Subject: FW: Question regarding cross-reference in drafting instructions.

From: Gibson-Glass, Mary [mailto:Mary.Gibson-Glass@legis.wisconsin.gov]
Sent: Friday, May 20, 2011 1:39 PM
To: Culotta, Jason - GOV
Subject: Question regarding cross-reference in drafting instructions.

Jason,

The cross reference to "par (a) 7.-8. on page 11 (in the instructions for 295.51 (1m) makes no sense to me. There is no par. (a) 7 or 8 near there. Is the cross-reference supposed to be just to par. (a) in general?

Thanks,

Mary

this message has been sent to you in error, do not review, disseminate, distribute or copy it. Please reply to the sender that you have received the message in error, then delete it. Thank you for your cooperation.

CORRECTIONS

The document provided yesterday contained the following on page 4:

Section 295.46, page 81, should include the following after line 13:

"(6) If no bulk sampling plan is filed under s. 295.45 or no approvals are required for bulk sampling, the notice and public information procedures under s. 295.45(10)(b), (c) and (e) shall apply to the general description of the proposed mining project under this section."

The reference back to s. 295.45(10)(b), (c) and (e) does not work because some of the language applies to approvals needed and is inapplicable to a public informational hearing only on a general description of the proposed mining project. Accordingly, please substitute the following:

Section 295.46, page 86 (page cite corrected), after line 13 add:

(6) If no bulk sampling plan is filed under s. 295.45 or the department provides notice to the applicant under s. 295.45(3) that no approvals are needed for bulk sampling, the department shall publish a Class I notice of a public informational hearing in accordance with ch. 985, Stats. at the same time it provides notice that no approvals are required for bulk sampling or after the preapplication description is filed with the department if no bulk sampling plan is filed. The notice shall describe the availability of the preapplication description and the opportunity to submit comments within 30 days after the notice is published. The notice shall also specify the date, time and location of the public information hearing, which shall be held in the county where the majority of the proposed mining will take place within 30 days after publication of the notice. The department shall also send the notice to all known departments and agencies that may be required to grant any approval for the mining project, to any regional planning commission within which the affected area lies, to the governing bodies of all towns, villages, cities and counties within which any part of the proposed mining site lies, to the governing bodies of all towns, villages or cities contiguous to any town, village or city within which any part of the proposed mining site lies, any affected states and to any interested persons who have requested such notification.

The following two citations to the Bill in the document provided yesterday should have been:

On page 4, the fifth (5th) reference should have been:

Section 295.46, page 86, line 4, instead of Section 295.45.

On page 7, the fourth (4th) reference should have been:

Section 295.61(4)(bn), page 156, lines 8-9, instead of to lines 7-13.

Mohr, Mark - GOV

From: Culotta, Jason - GOV
Sent: Monday, May 23, 2011 1:50 PM
To: Pyper, Thomas TMP (7122)
Subject: FW: Draft review: LRB 11-2035/2 Topic: Regulation of mining for ferrous metallic minerals
Attachments: LRB-2035_2.pdf; LRB-2035_2 Drafters_Note.pdf

Importance: High

Tom,
Please review this!
We would like to be able to share this with others in the morning, but wanted to let you look it over first.
--Jason

Mohr, Mark - GOV

From: Pyper, Thomas TMP (7122) <TPYPER@whdlaw.com>
Sent: Monday, May 23, 2011 2:06 PM
To: Culotta, Jason - GOV
Cc: BUZECKY, Jennifer D. JDB (5749)
Subject: RE: Draft review: LRB 11-2035/2 Topic: Regulation of mining for ferrous metallic minerals

We will start looking it over. As a spot check, I looked at the Analysis description of the Mandatory Intervention Boundary. They included none of our suggested clarifying language. I continue to believe that the way they have presented that issue is mis-leading. They are comparing the existing DNR Rule to the new statutory language. Without a statement that, just like the Bill, the existing statutes in Ch 293 likewise make no mention of the Boundary, it makes it sound like this is a change when instead it simply leaves it up to the DNR as to whether it wants to add through rule-making the same Boundary for ferrous mining.

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From: Culotta, Jason - GOV [mailto:Jason.Culotta@wisconsin.gov]
Sent: Monday, May 23, 2011 1:50 PM
To: Pyper, Thomas TMP (7122)
Subject: FW: Draft review: LRB 11-2035/2 Topic: Regulation of mining for ferrous metallic minerals
Importance: High

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--Jason

Mohr, Mark - GOV

From: Pyper, Thomas TMP (7122) <TPYPER@whdlaw.com>
Sent: Tuesday, May 24, 2011 5:11 PM
To: Culotta, Jason - GOV
Subject: Revisions to Special Session LRB-2035/2
Attachments: changes to LRB 2035_2 NOT REDLINED(WHD_7875068_1).DOC^.DOC

Please attached.

Tom Pyper
Shareholder
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CHANGES TO LRB-2035/2

Section 295.48(3)(hr), page 90, lines 23-25 and page 91, lines 1-3 was taken directly from Wis. Admin. Code s. NR 132.07(3)(i):

> "The applicant shall prepare a risk assessment of possible accidental health and environmental hazards potentially associated with the mine operation. Contingency measures with respect to these risks and hazards, and the assumptions in this assessment, shall be explicitly stated."

The original LRB Analysis stated that the risk assessment provision in the Rule had not been included in the Bill. The wording should match the language of the Rule.

Section 295.49(2)(g), page 95, line 5 delete "a" and add "an applicable" before "groundwater quality standard"

Section 295.51, page 96, line 4-5 should be amended as follows:

> "295.51 Mining waste site feasibility study and plan of operation"

Delete reference to "location criteria." Throughout the Bill, references are made to the "mining waste site feasibility study and plan of operation." The title should match.

Section 295.51(5)(o)9., page 106, lines 8-9 should be amended to read:

> "...1,000 feet into the depth of the Precambrian bedrock or to the final depth of the mining excavation, whichever is greater"

The final depth of the mining excavation may be greater than 1,000 feet into the Precambrian bedrock, as opposed to 1,000 feet into the mining excavation.

Section 295.645(1)(a), page 173, line 10-11 – delete "under s. NR 140.28, Wis. Adm. Code" – The alternatives in the Bill govern whether an exemption should be given, not those in the Rule.

Section 295.645(2)(c), page 174, line 13 should be amended to read:

"feet into the Precambrian bedrock or to the final depth of the mining excavation,"

Section 295.645(3)(b), page 175, line 6 should be amended to read:

"or to the final depth of the mining excavation, whichever is greater, is a point of"

Section 295.69(2)(c), page 183, add paragraph (d) between lines 17 and 18 as follows:

"Despite the termination of responsibility for providing proof of financial responsibility for long-term care, s. 292.11(3) shall continue to apply."

This is a request from DNR, which wants the spill law expressly referenced.

Section 295.56(2)(c)2., page 123, lines 6-7, replace as follows:

"provided in s. 295.60; or through additional measures as provide in s. 295.605; or through conservation measures as provided in s. 295.61."

The "measures" in s. 295.605(4)(b) are not all "conservation measures." The word "conservation" should be deleted before "measures" from p. 150, line 14. The LRB describes the measures in both 295.605 and 295.61 as "conservation measures," which is incorrect. Please separate as per above language, which is what was proposed.

Section 112, page 192, line 23, amend as follows: "500 to 555, 600 to 679 and other rules under s. 289.05 and 289.06(1)"

This makes it consistent with page 192, line 19.

Fees

Section 295.73(3), page 184, lines 16-25 and page 185, lines 1-15 shall be replaced as follows:

"$1,100,000. The assessed amount shall be paid as follows:

1. $100,000 at the time the bulk sampling plan and pre-application general description are filed under ss. 295.45 and 295.46, or at the time that the preapplication description is given under s. 295.465, whichever is first.

2. $250,000 when the department provides cost information demonstrating that the payment under par. 3(b)1. has been fully allocated against actual costs.

3. $250,000 when the department provides cost information demonstrating that the payment under par. 3(b)2. has been fully allocated against actual costs.

4. $250,000 when the department provides cost information demonstrating that the payment under par. 3(b)3. has been fully allocated against actual costs.

5. $250,000 when the department provides cost information demonstrating that the payment under par. 3(b)4. has been fully allocated against actual costs.

6. If at any time the applicant withdraws the mining permit application, any amount of the payments in par. 3(b)1.-5. not then fully allocated against actual costs shall be refunded to the applicant."

Explanation: There is to be no estimate. This is called paying costs in arrears. The $100,000 is paid and then DNR applies actual costs incurred thereafter against the $100,000. When it is gone, $250,000 is deposited. New costs are applied against it and so on. These are not quarterly payments of a fixed amount. This way, the DNR always has security against future costs until the cap is reached. The LRB analysis does not reflect what is intended. The above original language proposed does and needs to be inserted.

Bulk Sampling and Preapplication Description

\Section 295.45(8), page 82 line 24, delete "measures" and replace with "compensation and mitigation, additional measures or conservation measures"

See comments to s. 295.56(S)(c)2., page 123, lines 6-7 above.

Section 295.45(10)(b), page 83, line 23 should be amended as follows:

"determinations relating to the approval, the preapplication description in s. 295.46, any additional information that a law"

Section 295.45(10)(e), page 84, line 18 should be amended as follows:

"approvals and the preapplication description in s. 295.46. If possible the department shall include consideration of any approval"

Section 295.46, page 85, line 15 should be amended to read:

"the bulk sampling plan, a general description of the proposed mining project. If a bulk sampling plan is not filed, a person proposing to engage in a mining project shall file a general description of the proposed mining project with the department at the time the person provides the notice of intention to file for a mining permit under s. 295.465."

Section 295.46, page 81, should include the following after line 13:

"(6) If no bulk sampling plan is filed under s. 295.45 or no approvals are required for bulk sampling, the notice and public information procedures under s. 295.45(10)(b), (c) and (e) shall apply to the general description of the proposed mining project under this section."

Section 295.46, page 85, line 22, amend "with 1,000 feet" to "within 1,000 feet"

Section 295.45, page 86, line 4 should be amended as follows:

"The federal natural resources conservation service land capabilities classifications"

Section 295.465 Preapplication notification and Section 295.53 Environmental Impact Statement

Section 295.465(1), page 86, line 16 should be amended as follows:

"notify the department in writing of the intention to file an application for a mining permit."

Section 295.465(2), page 87, delete lines 3-5.

Explanation: The purpose of the general description of the project under s. 295.46 is not to give information to the DNR. It is to give information to the public so that it can be discussed at a public informational hearing. This has been addressed above.

Determination of Administrative Completeness

Section 295.57(2), page 124, lines 8, 9, and 10-11 – replace "meets the requirements of" with "includes the categories of information identified in"

This is a major change. This is to remain an objective analysis to see only if the categories of items have been included (*see* s. 295.57(2)(b), lines 12 and 13). The phrase "meets the requirements of" is a qualitative test. This needs to change to the above, which is what was requested.

Wetland Impacts

Section 295.60(3), page 140. The DNR wanted to clarify that it can do its own wetland delineation. Our proposed language was not included by the LRB. To accommodate the DNR's request, lines 3-5 on p. 140 should be amended to read:

> "department may visit the site to conduct surveys or gather additional site-specific quantitative data so long as it does not discontinue processing the application to do so."

Navigable Waters

Section 295.605(4)(b), page 150, lines 11-19 and 24 – replace as follows:

> (b) "Additional measures." The person applying for a permit or contract shall submit a plan to the department containing proposed additional measures to offset significant impacts to the requirements in par. (a) and a proposed schedule for implementing the additional measures. The plan shall include one or more of the following additional measures:
>
> 1. Measures to offset significant impacts to navigable waters by restoring, reclaiming, enlarging or providing up to 1.5 acres of

Section 295.61(4)(b), page 155, lines 5-10 should be replaced with the following:

> "(b) Conservation measures. The person applying for the permit shall submit a plan to the department containing conservation measures to offset significant impacts to the requirements in par. (a) and a proposed schedule for implementing the conservation measures. The plan shall include one or more of the following measures:"

Section 295.61(4)(b)10., page 156, replace lines 2-4 as follows:

> "10. Measures to offset significant impacts to navigable waters by restoring, reclaiming, enlarging or providing up to 1.5 acres of navigable waters for each acre of navigable waters that is significantly impacted."

As before, providing additional public access to navigable waters needs to be included along with enlarging, restoring or reclaiming.

Section 295.61(4)(b)12., page 156, line 6 – replace "conservation" with "additional"

Section 295.61(4)(bn), page 156, lines 7-13 should be amended to read:

> "that conservation measures additional to, or in conjunction with, one or more of those specified in par. (b)1. to 12."

Section 295.61(4)(f), page 157, line 13, change "(b)" to "(bn)"

Regarding Drafter's Note 6 on pages 1 and 2 (Attorney Robin Kite):

1. Please add the following to s. 295.443(1)(g), page 76, line 16:

> "(g) Negotiating one or more local agreements between one or more counties, towns, villages, cities or tribal governments with an operator for the development of a mining operation. The local agreement may include:

(i) A legal description of the land subject to the agreement and the names of its legal and equitable owners.

(ii) The duration of the agreement.

(iii) The uses permitted on the land.

(iv) A description of any conditions, terms, restrictions or other requirements determined to be necessary by the county, town, village, city or tribal government for the public health, safety or welfare of its residents.

(v) A description of any obligation undertaken by the county, town, village, city or tribal government to enable the development to proceed.

(vi) The applicability or nonapplicability of county, town, village, city or tribal ordinances, approvals or resolutions.

(vii) A provision for the amendment of the agreement.

(viii) Other provisions deemed reasonable and necessary by the parties to the agreement."

2. Section 70.395(2)(dc)1., page 34, lines 19 and 21 should be amended to read:

Line 19: "permit under s. 293.49 or 295.47 shall pay $50,000 to the department of revenue for deposit"

Line 21: "department of natural resources under s. 293.31(1) or s. 295.465 of that intent."

Mohr, Mark - GOV

From: Culotta, Jason - GOV
Sent: Wednesday, May 25, 2011 4:57 PM
To: Pyper, Thomas TMP (7122)
Subject: FW: "additional measures" vs "conservation measures" in mining bill

Tom,
This is a question Mary will call you about in the morning.
--Jason

From: Gibson-Glass, Mary [mailto:Mary.Gibson-Glass@legis.wisconsin.gov]
Sent: Wednesday, May 25, 2011 4:07 PM
To: Culotta, Jason - GOV
Subject: "additional measures" vs "conservation measures" in mining bill

Jason,

I do not understand in the suggested language that under s. 295.605 the redrafting instructions want "additional measures" In addition to what? And then in s. 295.61 , the drafting instructions want to continue to use "conservation measures". When we use different terms in the statutes, even though undefined, it raises an inference of statutory interpretation that these two types of measures are different. However, in the bill, lots of these measures are similar or overlap

Can someone explain this to me?

Thanks,

Mary

Mary Gibson-Glass

Senior Legislative Attorney

Legislative Reference Bureau

608 267 3215

Mohr, Mark - GOV

From: Culotta, Jason - GOV
Sent: Wednesday, May 25, 2011 5:11 PM
To: Tradewell, Becky - LEGIS
Subject: RE: Comments and questions on the redrafting instructions

Becky,
Thank you for sending this over.
I will work on tracking down answers to these for you promptly, but will likely have them in the morning.
Thanks again,
--Jason

From: Tradewell, Becky [mailto:Becky.Tradewell@legis.wisconsin.gov]
Sent: Wednesday, May 25, 2011 5:10 PM
To: Culotta, Jason - GOV
Cc: Kite, Robin - LEGIS
Subject: Comments and questions on the redrafting instructions

Jason:

I have some questions and comments about the drafting instructions. I am happy to receive responses in writing (including email), by phone, or in a meeting, which ever would work best for you.

1) The 3rd instruction on page 1 of the document titled "Changes to LRB-2035/2," sent Tuesday at 5:23, indicates that the title for proposed s. 295.51 should be changed. The title must reflect the contents of the section and the location criteria are in that section. I could move the location criteria into a new section or I could narrow the references in other parts of the bill so that they refer to "waste site feasibility study and plan of operation under s. 295.51 (2)." Perhaps the title could be changed to read "Mining waste site location criteria; feasibility study and plan of operation." Please let me know if I should make one of these changes.

2) The 5th instruction on page 1 of the document referenced in point 1) indicates that the reference to s. NR 140.28, Wis. Adm. Code on page 173, lines 10-11 should be deleted, because "the alternatives in the bill govern whether an exemption should be given, not those in the Rule." This explanation is not clear to me. I am not aware that the draft includes language that provides alternatives governing whether exemptions to groundwater quality standards should be given.

I see that the first set of instructions, which were provided to Robin while I was away, eliminated the reference to s. NR 140.28 in proposed s. 295.645 (8). I do not understand the intent behind that change. If it is intended to allow DNR to grant exemptions without providing any guidance, that is probably an invalid delegation of legislative intent.

Note that NR 140 applies under the draft to the extent that it does not conflict with proposed s. 295.645. Also, the draft includes several specific references to provisions in ch. NR 140, including another reference to s. NR 140.28 on page 176, line 16.

Please provide some clarification of these issues.

3) The 2nd instruction on page 5 of the document referenced in point 1) indicates that the language on page 124, lines 8,9, and 10-11 should be replaced with the language proposed last week. My understanding is that Robin did not use the proposed language because it is not clear. I agree that "includes the categories of information identified in" is not clear. I am working on alternatives.

4) Fees. Looking at the language of proposed s. 295.73 in LRB-2035/1, the instructions sent to Robin last week, and the instructions beginning on the bottom of page 2 of the document referenced in point 1), I find that the proposed language is unclear in some respects. Proposed s. 295.73 (1) requires a $10,000 filing fee for a mining permit. I see no instructions to change this. Proposed s. 295.73 (3) (a) in LRB-2035/1 requires DNR to determine its costs for evaluating the mining projects **upon completion of its action on all approvals.** I see no instructions to change this. Proposed s. 295.73 (3) (b) in LRB-2035/1 requires DNR to assess the lesser of the amount by which its costs exceed the $10,000 filing fee or $750,000, whichever is less. The only requested change I see to this is to change $750,000 to $1,100,000. The instructions then require the "assessed" amount to be paid in installments, starting with a $100,000 payment to be made when the preapplication general description is given. This would be before the $10,000 filing fee is to be paid.

The $10,000 filing fee does not seem to make sense if the mining company has already been required to pay $100,000. Should the filing fee be eliminated? Shouldn't the language in sub. (3) (a) be eliminated or changed to require DNR to just keep track of its costs? And shouldn't the existing language in sub. (3) (b) be modified to reflect the requested approach of "paying costs in arrears"?

Also, the proposed language does not seem to clearly address the situation in which the applicant has made one or more of the $250,000 payments when DNR approves or denies the permit application, but its total costs do not use up the last $250,000 payment. Do you want the draft to require a refund in this situation?

5) About the changes to the mining waste site location criteria. Robin changed proposed s. 295.51 (1m) as requested last week. I think that the changes may have an unintended effect, however. In the /1 version of the draft, the exception in sub. (1m) (b) only applied to the 6 location restrictions then in par. (a). By adding the 4 additional location restrictions to par. (a) without changing par. (b), the exception in par. (b) applies to the 4 new restrictions as well as the 6 preexisting ones. So, for example, a waste site may be located in a floodplain if the waste site is visually screened. That is not the intent is it? If not, I will change the draft. It would be more logical to place the new restrictions outside of par. (a), as is already the case with sub. (1m) (c) and (d).

I will let you know of any other issues that come up.

Please do not hesitate to let me know if there are questions about this message.

Becky Tradewell
Managing Attorney
Legislative Reference Bureau
266-7290

Mohr, Mark - GOV

From: Culotta, Jason - GOV
Sent: Thursday, May 26, 2011 8:40 AM
To: Pyper, Thomas TMP (7122)
Subject: RE: Comments and questions on the redrafting instructions

Yes, absolutely.

From: Pyper, Thomas TMP (7122) [mailto:TPYPER@whdlaw.com]
Sent: Wednesday, May 25, 2011 5:47 PM
To: Culotta, Jason - GOV
Subject: RE: Comments and questions on the redrafting instructions

Is it ok if either Jennifer or I just call her directly?

Tom Pyper
Shareholder
Whyte Hirschboeck Dudek S.C.
33 East Main Street, Suite 300
Madison, WI 53703-4655

(608) 258-7122
(608) 258-7138
tpyper@whdlaw.com

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Sent: Wednesday, May 25, 2011 5:11 PM
To: Pyper, Thomas TMP (7122)
Subject: FW: Comments and questions on the redrafting instructions

---

From: Tradewell, Becky [mailto:Becky.Tradewell@legis.wisconsin.gov]
Sent: Wednesday, May 25, 2011 5:10 PM
To: Culotta, Jason - GOV
Cc: Kite, Robin - LEGIS
Subject: Comments and questions on the redrafting instructions

Jason:

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Becky Tradewell
Managing Attorney
Legislative Reference Bureau
266-7290

Mohr, Mark - GOV

From: Pyper, Thomas TMP (7122) <TPYPER@whdlaw.com>
Sent: Thursday, May 26, 2011 2:32 PM
To: Tradewell, Becky - LEGIS
Cc: BUZECKY, Jennifer D. JDB (5749); Culotta, Jason - GOV
Subject: RE: Comments and questions on the redrafting instructions

I think that is ok. However, I know DNR has requested that the Environmental Impact Report (without a trailing phrase per our modification) and a list of permits applied for be added to the list for the completeness determination. Did you get that request and our response?

Tom Pyper
Shareholder
Whyte Hirschboeck Dudek S.C.
33 East Main Street, Suite 300
Madison, WI 53703-4655
(608) 258-7122
(608) 258-7138
tpyper@whdlaw.com

From: Tradewell, Becky [mailto:Becky.Tradewell@legis.wisconsin.gov]
Sent: Thursday, May 26, 2011 2:14 PM
To: Pyper, Thomas TMP (7122)
Cc: BUZECKY, Jennifer D. JDB (5749)
Subject: RE: Comments and questions on the redrafting instructions

Tom,

What I am thinking about for the determination of administrative completeness is:

The department may determine that an application is not administratively complete only if the applicant does not submit one of the following:

1. The fee under sub. (1) (a).

2. A mining plan that contains the types of information specified in s. 295.48 (1), (2), (3), and (4).

3. A reclamation plan that contains the types of information specified in s. 295.49 (1), (2), and (3).

4. A mining waste site feasibility study and plan of operation that contains the types of information specified in s. 295.51 (5), (6), and (7).

How does that sound?
Becky

BILL

AN ACT to repeal 70.375 (2m), 70.395 (2) (d) 5. a. and b., 107.001 (2) and 293.01 (8); to renumber and amend 30.123 (8) (c), 70.395 (2) (d) 5. c. and 87.30 (2); to amend 20.370 (2) (gh), 20.455 (1) (gh), 29.604 (4) (intro.), 29.604 (4) (c) (intro.), 30.12 (3m) (c) (intro.), 30.133 (2), 30.19 (4) (c) (intro.), 30.195 (2) (c) (intro.), 44.40 (5), 70.375 (1) (ab), 70.375 (1) (ad), 70.375 (1) (as), 70.375 (1) (bm), 70.375 (1) (d), 70.375 (2) (a), 70.375 (3) (intro.), 70.375 (3) (g), 70.375 (4) (intro.), 70.375 (4) (a), 70.375 (4) (c), 70.375 (4) (d), 70.375 (4) (f), 70.375 (4) (i), 70.375 (4) (j), 70.375 (5) (intro.), 70.375 (6), 70.38 (1), 70.38 (2), 70.39 (3), 70.395 (2) (d) (intro.), 70.395 (2) (d) 1., 70.395 (2) (d) 1m., 70.395 (2) (d) 2., 70.395 (2) (d) 3. a., 70.395 (2) (dc) 1., 70.395 (2) (dg), 70.395 (2) (f), 70.395 (2) (g) 6., 70.395 (2) (h) 1., 70.395 (2) (h) 2., 70.395 (2) (h) 3., 70.396 (2), 70.396 (3), 70.397 (3) (a), 70.995 (1) (a), 70.995 (5), 107.001 (1), 107.01 (intro.), 107.01 (2), 107.02, 107.03, 107.04, 107.11, 107.12, 107.20 (1), 107.20 (2), 107.30 (1), 107.30 (18), 107.30 (20), 160.19 (12), 196.491 (4) (b) 2., 281.65 (2) (a), 281.75 (17) (b), 287.13 (5) (e), 289.35, 289.62 (2) (g) 2. and 6., 292.01 (1m), chapter 293 (title), 293.01 (5), 293.01 (7), 293.01 (9), 293.01 (12), 293.01 (18), 293.01 (25), 293.21 (1) (a), 293.25 (2) (a), 293.25 (4), 293.37(4) (b), 293.47 (1) (b), 293.50 (1) (b), 293.50 (2) (intro.), 293.50 (2) (a), 293.50 (2) (b), 293.51 (1), 293.65 (3) (a), 293.65 (3) (b), 293.86, chapter 295 (title), 295.16 (4) (f), 299.85 (7) (a) 2. and 4., 299.95, 323.60 (5) (d) 3. and 710.02 (2) (d); and to create 20.370 (2) (gi), 29.604 (7m), 31.23 (3) (e), 70.375 (7), 87.30 (2) (b), 293.01 (12m), subchapter III of chapter 295 [precedes 295.40] and 323.60 (1) (gm) of the statutes; relating to: regulation of ferrous metallic mining and related activities, the net proceeds occupation tax on ferrous and nonferrous metallic minerals mining, making an appropriation, and providing penalties.

Analysis by the Legislative Reference Bureau

OVERVIEW

Under current law, the Department of Natural Resources (DNR) regulates mining for metallic minerals. The laws under which DNR regulates metallic mining apply to mining for ferrous minerals (iron) and mining for nonferrous minerals, such as copper or zinc.

This bill creates new statutes for regulating iron mining and modifies the current laws regulating metallic mining so that they cover only mining for nonferrous minerals.

Under current law, a person who proposes to mine for metallic minerals must obtain a mining permit and any other permit, license, certification, or other authorization (approval) that is required under the environmental and natural resources laws, other than the mining laws, for example, wastewater discharge permits, high capacity well approvals, and water quality certifications for wetlands.

Under the bill, a person who proposes to mine for iron ore must obtain an iron mining permit. The person must obtain ~~some of~~all the approvals under other environmental and natural resources laws, for example, wastewater discharge permits, ~~but~~and the bill provides new ~~approvals~~ permit requirements in lieu of some current ~~approvals~~ requirements, for example, high capacity well approvals and water quality certifications for wetlands. The ~~standards and~~ permit requirements and procedures for granting, and the requirements related to, an iron mining permit

Mohr, Mark - GOV

From: BUZECKY, Jennifer D. JDB (5749) <jbuzecky@whdlaw.com>
Sent: Thursday, May 26, 2011 3:26 PM
To: Tradewell, Becky - LEGIS; Pyper, Thomas TMP (7122)
Cc: Culotta, Jason - GOV
Subject: RE: Comments and questions on the redrafting instructions

The language "excluding the portion of the mining site from which ferrous minerals are extracted and that is backfilled with mining waste" should apply to all of the locational criteria in (1m) - this would include (1m)(a) 1.-10. as well as (1m)(c) and (1m)(d).

From: Tradewell, Becky [mailto:Becky.Tradewell@legis.wisconsin.gov]
Sent: Thursday, May 26, 2011 2:38 PM
To: Pyper, Thomas TMP (7122)
Cc: BUZECKY, Jennifer D. JDB (5749); Culotta, Jason - GOV
Subject: RE: Comments and questions on the redrafting instructions

I believe so.

On my point 5 below, should any of the new location criteria (page 97, lines 12 to 14) include the following language from the current introduction to s. 295.51 (1m) (a): "excluding the portion of a mining site from which ferrous minerals are extracted and that is backfilled with mining waste"?

From: Pyper, Thomas TMP (7122) [mailto:TPYPER@whdlaw.com]
Sent: Thursday, May 26, 2011 2:32 PM
To: Tradewell, Becky
Cc: BUZECKY, Jennifer D. JDB (5749); Culotta, Jason - GOV
Subject: RE: Comments and questions on the redrafting instructions

I think that is ok. However, I know DNR has requested that the Environmental Impact Report (without a trailing phrase per our modification) and a list of permits applied for be added to the list for the completeness determination. Did you get that request and our response?

Tom Pyper
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(608) 258-7122
(608) 258-7138
tpyper@whdlaw.com

From: Tradewell, Becky [mailto:Becky.Tradewell@legis.wisconsin.gov]
Sent: Thursday, May 26, 2011 2:14 PM
To: Pyper, Thomas TMP (7122)

Cc: BUZECKY, Jennifer D. JDB (5749)
Subject: RE: Comments and questions on the redrafting instructions

Tom,

What I am thinking about for the determination of administrative completeness is:

The department may determine that an application is not administratively complete only if the applicant does not submit one of the following:

1. The fee under sub. (1) (a).

2. A mining plan that contains the types of information specified in s. 295.48 (1), (2), (3), and (4).

3. A reclamation plan that contains the types of information specified in s. 295.49 (1), (2), and (3).

4. A mining waste site feasibility study and plan of operation that contains the types of information specified in s. 295.51 (5), (6), and (7).

How does that sound?
Becky

From: Pyper, Thomas TMP (7122) [mailto:TPYPER@whdlaw.com]
Sent: Thursday, May 26, 2011 1:21 PM
To: Tradewell, Becky
Cc: BUZECKY, Jennifer D. JDB (5749); Culotta, Jason - GOV
Subject: FW: Comments and questions on the redrafting instructions

Becky:

Jason asked that I respond to your inquires. Please see responses below. Please let me know if you have any further questions. Thanks for your help.

Tom Pyper
Shareholder
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(608) 258-7122
(608) 258-7138
tpyper@whdlaw.com

From: Tradewell, Becky [mailto:Becky.Tradewell@legis.wisconsin.gov]
Sent: Wednesday, May 25, 2011 5:10 PM
To: Culotta, Jason - GOV
Cc: Kite, Robin - LEGIS
Subject: Comments and questions on the redrafting instructions

Jason:

I have some questions and comments about the drafting instructions. I am happy to receive responses in writing (including email), by phone, or in a meeting, which ever would work best for you.

1) The 3rd instruction on page 1 of the document titled "Changes to LRB-2035/2," sent Tuesday at 5:23, indicates that the title for proposed s. 295.51 should be changed. The title must reflect the contents of the section and the location criteria are in that section. I could move the location criteria into a new section or I could narrow the references in other parts of the bill so that they refer to "waste site feasibility study and plan of operation under s. 295.51 (2)." Perhaps the title could be changed to read "Mining waste site location criteria; feasibility study and plan of operation." Changing the title as you suggest is fine. Please let me know if I should make one of these changes.

2) The 5th instruction on page 1 of the document referenced in point 1) indicates that the reference to s. NR 140.28, Wis. Adm. Code on page 173, lines 10-11 should be deleted, because "the alternatives in the bill govern whether an exemption should be given, not those in the Rule." This explanation is not clear to me. I am not aware that the draft includes language that provides alternatives governing whether exemptions to groundwater quality standards should be given.

I see that the first set of instructions, which were provided to Robin while I was away, eliminated the reference to s. NR 140.28 in proposed s. 295.645 (8). I do not understand the intent behind that change. If it is intended to allow DNR to grant exemptions without providing any guidance, that is probably an invalid delegation of legislative intent.

Note that NR 140 applies under the draft to the extent that it does not conflict with proposed s. 295.645. Also, the draft includes several specific references to provisions in ch. NR 140, including another reference to s. NR 140.28 on page 176, line 16.

Please provide some clarification of these issues.

The elimination of the references to NR 140.28 was not intended to eliminate the applicability of NR 140.28. As you indicate, NR 140 applies to the extent it does not conflict. Referencing NR 140.28 for the only provision to request an exemption may be too limiting. We want to preserve the ability to request exemptions pursuant to any applicable exemption provisions that currently exist under law, including s. 295.56. So deleting the reference preserves all options available under law, including NR 140.28.

3) The 2nd instruction on page 5 of the document referenced in point 1) indicates that the language on page 124, lines 8,9, and 10-11 should be replaced with the language proposed last week. My understanding is that Robin did not use the proposed language because it is not clear. I agree that "includes the categories of information identified in" is not clear. I am working on alternatives. OK. The issue is that this needs to remain an objective, quantitative "check the box" type of review by the DNR. If you cannot figure a way to ensure that is the case, then please just eliminate everything after "plan" in lines 7 and 8 and after "operation" in line 9 (i.e., reverting to where we were before the last round of changes).

4) Fees. Looking at the language of proposed s. 295.73 in LRB-2035/1, the instructions sent to Robin last week, and the instructions beginning on the bottom of page 2 of the document referenced in point 1), I find that the proposed language is unclear in some respects. Proposed s. 295.73 (1) requires a $10,000 filing fee for a mining permit. I see no instructions to change this. Proposed s. 295.73 (3) (a) in LRB-2035/1 requires DNR to determine its costs for evaluating the mining projects

upon completion of its action on all approvals. I see no instructions to change this. Proposed s. 295.73 (3) (b) in LRB-2035/1 requires DNR to assess the lesser of the amount by which its costs exceed the $10,000 filing fee or $750,000, whichever is less. The only requested change I see to this is to change $750,000 to $1,100,000. The instructions then require the "assessed" amount to be paid in installments, starting with a $100,000 payment to be made when the preapplication general description is given. This would be before the $10,000 filing fee is to be paid.

The $10,000 filing fee does not seem to make sense if the mining company has already been required to pay $100,000. Should the filing fee be eliminated? Shouldn't the language in sub. (3) (a) be eliminated or changed to require DNR to just keep track of its costs? And shouldn't the existing language in sub. (3) (b) be modified to reflect the requested approach of "paying costs in arrears"? You are correct. Sub. (1) lines 6-9 and (3)(a) lines 14-18 should be eliminated and sub. (b) lines 19-21 on p. 178 should be modified to indicate that the fee is "up to $1.1 million" and that it is paid out in arrears as indicated in the language we did include. If you could do that (as you propose), that would be great. Then have the payout periods be as outlined in what you received.

Also, the proposed language does not seem to clearly address the situation in which the applicant has made one or more of the $250,000 payments when DNR approves or denies the permit application, but its total costs do not use up the last $250,000 payment. Do you want the draft to require a refund in this situation? You are correct that #6 only addresses refund in the event the application is withdrawn. I expect it will be unlikely that the money is not fully allocated against actual costs by the time the permit is approved or denied, but it won't hurt to cover that issue. Maybe you could add that to #6.

5) About the changes to the mining waste site location criteria. Robin changed proposed s. 295.51 (1m) as requested last week. I think that the changes may have an unintended effect, however. In the /1 version of the draft, the exception in sub. (1m) (b) only applied to the 6 location restrictions then in par. (a). By adding the 4 additional location restrictions to par. (a) without changing par. (b), the exception in par. (b) applies to the 4 new restrictions as well as the 6 preexisting ones. So, for example, a waste site may be located in a floodplain if the waste site is visually screened. That is not the intent is it? If not, I will change the draft. It would be more logical to place the new restrictions outside of par. (a), as is already the case with sub. (1m) (c) and (d). We agree that the exception in sub. (1m)(b) should only apply to the location restrictions of (1m)(a)1.-6. and that the new restrictions can be located outside of par. (a).

I will let you know of any other issues that come up.

Please do not hesitate to let me know if there are questions about this message.

Becky Tradewell
Managing Attorney
Legislative Reference Bureau
266-7290

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Mohr, Mark - GOV

From: Pyper, Thomas TMP (7122) <TPYPER@whdlaw.com>
Sent: Thursday, May 26, 2011 11:55 AM
To: Culotta, Jason - GOV
Subject: DNR Proposed Changes
Attachments: additional amendments to LRB-20352.doc

Attached are responses to DNR's proposed changes. Let me know if you need anything further from us. Otherwise, we will assume that you will get those changes to which we agreed, as modified, down to LRB. Thanks.

Tom Pyper
Shareholder
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(608) 258-7122
(608) 258-7138
tpyper@whdlaw.com

Suggested Revisions/Clarifications LRB–2035/2

1. Clarification of Pre-Application Process

Goals:

- *To provide certainty to the process for the mine applicant, the department, and the public.*
- *To maximize timely completeness determination of the mine permit application.*

There are 2 main problems with the proposals in this section (and other revisions are addressed in the edits below).[2]

(1) The 180 days is not workable for a number of reasons. The applicant and the DNR should meet early and often before the applications are filed. However, predicting in advance when the application will be filed and working backward 18 months to schedule the first meeting is extremely difficult. In most cases the applicant will not know whether it intends to proceed until it receives the results of the analysis from the samples extracted from exploration and on the bulk sampling. Also, the bulk sampling allows the applicant to gather the type of information that will be needed for the application. Accordingly, we have provided that the first meeting will take place no later than 12 months before the mining permit application is filed. This allows exploration and bulk sampling to be completed before the required meeting. Nothing prevents the applicant and the DNR from meeting earlier to begin the process that will be formalized by the required meeting.

(2) The requirement that the EIR be filed with the mining permit application and the it "provide[] information sufficient to complete the EIS transforms the completeness test from an objective, quantitative test to a subjective, qualitative test. That allows the DNR to delay the completeness determination on the qualitative basis that the EIS does not have sufficient information. That eliminates the 360 day permitting period and makes it indefinite. That proposed change has not been accepted. An EIS is required under s. 196.491 (and must be final before the CPCN hearing because it is a required exhibit for the hearing record, which requires it to be available within app. 300 days at the latest to allow for the hearing, post hearing briefing and time for the decision) and is always completed within the 360 day period. The applicant takes the risk in not providing sufficient information to enable the department to complete an EIS because both the Sate and federal EIS must be done in sufficient time to meet all applicable permit time periods or the permits do not issue.

Specific edits to the proposed changes are included below.

The bill includes two separate sections [(295.465(10 and 295.53(1)] with provisions for pre-application or pre-submittal meetings with the Department. The goal here is a clear process in the bill. In concept, it would make sense to consolidate these sections into one process, whereby:

1. At least XX months prior to a mine permit application, applicant notifies DNR and provides enough detail to allow for a consultation meeting or meetings with Department staff.

2. Within XX days of the meeting, DNR shall provide: a detailed list of all permits and approvals required, a list of the information required in an EIR, and a detailed list of filing requirements for each permit or approval.

3. Within XX days of the meeting, the DNR shall provide any pertinent data and maps to the applicant for use in preparing the application materials

4. Applicant submits a package that includes: a document that outlines where each item in #2 is addressed; fee; mining plan; reclamation plan; mine waste feasibility study and Plan of Op; and an EIR that includes details required in wetland compensation program and navigable waters mitigation measures.

5. Within 30 days, completeness determination.

Here are suggested language changes to accomplish the above:

295.465 Preapplication notification. (1) At least ~~1~~12 months prior to~~Before~~ filing an application for a mining permit under s. 295.47, a person proposing to engage in a mining project shall notify the department of the intention to file an application for a mining permit. ~~and shall provide a general project plan that addresses the information in 295.46.~~ After receiving the notification ~~and project plan~~, the department shall hold at least one meeting with ~~confer with~~ the person to make a preliminary assessment of the project's scope, to make an analysis of alternatives, to identify potential interested persons, and to ensure that the person making the proposal is aware of all of the following:

(a) The approvals, including the filing requirements for the approvals, that the person may be required to obtain for the mining project.

(b) The requirements for submission of an environmental impact report and for submission of any other information required by the department to prepare an environmental impact statement under s. 295.53.

(c) The information the department will require to enable the department to process the application for the mining permit in a timely manner.

(2) If the person proposing to engage in mining did not file a bulk sampling plan under s. 295.45, the person shall include in the notification to the department under sub. (1) the information required under s. 295.46.

(3) Within 60 days of the meeting in sub. (1), the department shall provide to the applicant a written detailed summary of filing requirements to address sub. (1) (a)-(c).

(4) Within 60 days of the meeting in sub. (1), the department shall provide to the perason any available information relevant to potential impacts of the mining project on rare, threatened, or endangered species and historic or cultural resources and any other information relevant to potential

Comment [TMP1]: This language is unnecessary. If a bulk sampling plan has been filed, the info required by s. 295.46 will already have been fikled with the DNR. If no bulk sampling plan has been filed, sub (2) to this section requires it to be filed with the notice required by this section.

impacts that may occur from the project that are required to be considered under s. 1.11. The department shall also provide to the person available information to evaluate the environmental impact of the project and to expedite the preparation of the environmental impact report and the environmental impact statement, including information concerning preliminary environmental reviews, field studies, and investigations; monitoring programs to establish baseline water quality; laboratory studies and investigations; advisory services; and the timing and the processes associated with any necessary consultations with other state or federal agencies and within the department, such as those required for endangered resources and cultural resource consultations and approvals.

295.53 Environmental impact statement. (1) ~~ASSISTANCE TO APPLICANTS.~~
~~(a) Before filing with the department an application for a mining permit or other approval associated with a mining project, a person considering a mining project may provide the department with a preliminary description of the anticipated by-products and pollutant discharges.~~
~~(b) Following the receipt of a preliminary description under par. (a), the department shall provide to the person any available information relevant to the potential impacts of the mining project on rare, threatened, or endangered species and historic or cultural resources and any other information relevant to potential impacts that may occur from the project that are required to be considered under s. 1.11.~~
~~(c) The department shall meet with any person considering a mining project upon the person's request, before or after the submission of a preliminary description under par. (a) or an application for a mining permit or other approval. The department shall also provide to the person available information to evaluate the environmental impact of the project and to expedite the preparation of the environmental impact report and the environmental impact statement, including information concerning preliminary environmental reviews, field studies, and investigations; monitoring programs to establish baseline water quality; laboratory studies and investigations; advisory services; and the timing and the processes associated with any necessary consultations with other state or federal agencies and within the department, such as those required for endangered resources and cultural resource consultations and approvals.~~USE OF CONSULTANTS.
~~(d)~~ The department may enter into contracts for environmental consultant services under s. 23.41 to assist in the preparation of an environmental impact statement or to provide assistance to applicants.
~~(e) Within 20 calendar days of receipt of a preliminary description under par. (a), the department shall provide the person with all of the following in writing:~~
~~1. Notice of the requirement to prepare an environmental impact report, including the format, required content, level of detail, and number of copies to be submitted.~~
~~2. A list of any approvals that may be required.~~
~~3. A description of any other information that the person must collect for an application for a mining permit or for any other approval that may be required and for the environmental impact report.~~

~~4. Any relevant time frames associated with the environmental impact report, environmental impact statement or studies, evaluations, or data collection that the department may need for its environmental review or approvals.~~

(2) NOTICE. After the department receives an application for a mining permit, it shall notify the public and affected agencies that an environmental impact statement will be prepared for the proposed mine and that the process of identifying major issues under s. NR 150.21 (3), Wis. Adm. Code, is beginning.

(3) ENVIRONMENTAL IMPACT REPORT. (a) An applicant shall prepare an environmental impact report for the mining project. In the environmental impact report, the applicant shall provide a description of the proposed mining project, the present environmental conditions in the area and the ~~that would be~~ anticipated ~~to be~~impact~~sed by~~ of the proposed mining project, the present socio-economic conditions in the area and the anticipated impacts of the proposed mining project, details on the wetland compensation program as required under 295.60(8), the conservation measures for navigable waters under 295.605(4), proposed changes to forestry land designations ~~practices~~ under 295.53 (4)(c), and the alternatives to the proposed mining project. As the applicant provides more information or makes modifications to the proposed mining project, the department may revise the requirements it specified under 295.465(4)~~sub. (1) (e)~~ to ensure the potential environmental effects can be identified in the department's environmental impact statement.

(b) The department shall assist the applicant in meeting the deadlines for ultimate submission and review of those analyses consistent with this subchapter. If a particular scientific analysis is not completed as of the date the environmental impact report is required to be submitted, the applicant shall identify in the environmental impact report the scope of the analysis and anticipated date that it will be submitted.

(c) 1. The applicant shall submit the environmental impact report ~~no later than 30 days after submitting~~ with the application for the mining permit.

~~2. If an applicant submits the environmental impact report more than 30 days after submitting the application for the mining permit, the 360–day deadlines under s. 295.57 (7) (a) and (8) (a) are extended by the number of days over 30 days between the submittal of the application for the mining permit and the submittal of the environmental impact report.~~

~~3~~2. Upon receipt of the environmental impact report, the department shall review the environmental impact report and, if the department finds that the environmental impact report does not contain information reasonably necessary for the department to evaluate the proposed mining project and its environmental effects, the department may request additional information from the applicant.

(d) The department shall accept original data from an environmental impact report for use in the environmental impact statement and need not verify all original data provided by the applicant to accept the data as accurate. The department shall use original data from an environmental impact report in the environmental impact statement if the data contains the information identified in sub. (1) (e) 1. and any of the following conditions is met:

Comment [s2]: Suggest moving to EIS procedures under sub (4).

Comment [TMP3]: We have reinserted these provisions but required that the EIR be filed with the application..

1. The department, its consultant, or a cooperating state or federal agency collects sufficient data to perform a limited statistical comparison with data from the environmental impact report that demonstrates that the data sets are statistically similar within a reasonable confidence limit.
2. An expert who is employed by, or is a consultant to, the department or is employed by, or is a consultant to, a cooperating state or federal agency determines that the data is within the range of expected results.
3. The department, its consultant or a cooperating state or federal agency determines that the methodology used in the environmental impact report is scientifically and technically adequate for the tests being performed.

295.57(2) DETERMINATION OF ADMINISTRATIVE COMPLETENESS. (a) An application for a mining permit is administratively complete on the 30th day after the department receives the application, unless, before that day, the department provides the applicant with written notification that the application is not administratively complete. The department may determine that an application is not administratively complete only if the applicant does not submit one of the following:
1. The fee under sub. (1) (a).
2. A mining plan that meets the requirements of s. 295.48.
3. A reclamation plan that meets the requirements of s. 295.49.
4. A mining waste site feasibility study and plan of operation that meets the requirements of s. 295.51.
5. An Environmental Impact Report ~~.that meets the requirements of 295.53 and provides information sufficient to complete the EIS~~
6. A list of all department permits and approvals the applicant has applied for as called for under 295.47 (2)(g).
(b) In making the determination under par. (a), the department may not consider the quality of the information provided.
(c) In a notice provided under par. (a), the department shall specify what is missing from the application.
(d) The running of the 30−day period under par. (a) is tolled from the day on which the department provides notification, in compliance with par. (a), that an application is not administratively complete until the day on which the applicant submits the missing fee, mining plan, reclamation plan, ~~or~~ mining waste site feasibility study and plan of operation, EIR, or list of permits and approvals. The department shall notify the applicant when it receives the missing fee, mining plan, reclamation plan, ~~or~~ waste site feasibility study and plan of operation , EIR, or list of permits and approvals. The application is administratively complete on the day on which the department provides the notification to the applicant or on the expiration of the remainder of the 30−day period, whichever is sooner.

Comment [TMP4]: This was changed lin 2, 3 and 4 to read "includes the categories of information identified in" to eliminate a qualitative review of the information and leave it as a quantitative review for the reasons expressed above.

2. Avoidance of impacts to water supplies as a result of a water withdrawal

Goal: To ensure mitigation of nearby residential and public water supply wells affected by water withdrawal from a mining operation.

We are ok with the following as a substitute for what you have proposed below:

p. 154, create s. 295.61(4)(a)(7) between lines 4-5 to read:

"(d) Public or Private Water Supplies. If the proposed withdrawal of water would result in significant impacts to public or private water supplies, then the applicant shall offset the significant impacts as approved by the department. Provisions to offset significant impacts may include, when necessary, procedures to provide replacement water supplies of similar quality or to provide an increased amount of water to the public or private water supply.

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1) p. 154 - Under s, 295.61(4)(a) create a new par. 7. or add this language to par. 3.:

The proposed withdrawal and uses of the water will not result in the unreasonable detriment of public or private water supplies.

2) p. 155 – Create new s. 295.61(4)(b)13 to read:

13. Measures to mitigate impacts to public and private water supplies including, when necessary, procedures to provide replacement water supplies of similar quality and quantity.

3. Confidentiality

Goal: To ensure a balance between protecting confidential information related to a proposed mine with the public right to know (Open Record Law).

The confidentiality provisions below should not be modified. There are already similar provisions in Ch. 107, which have been made to apply only to nonferrous mining. So we used them the language of s. 107(4)(f) as a model:

"Exploration data and samples … shall be kept confidential until December 31 of the 3rd year following the date of submission. The confidentiality of the data and samples obtained during prospecting or mining shall extend to the time of the abandonment of the site subsequent to prospecting, the termination of mining if mining occurs, or 10 years after the core samples or drill cuttings were obtained, whichever is earlier."

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See also Noranda Exploration, Inc. v. Ostrom, 113 Wis. 2d 612, 335 N.W.2d 596 (1983)(public disclosure of confidential mining exploration data and core samples is an unconstitutional taking of property without just compensation.).

Also, Wis. Stat. s. 289.09(2)(b) makes confidential production or sales figures, or to processes or production unique to an owner or operator of a solid waste facility or that would tend to adversely affect the competitive position of the owner or operator if made public. Thus there is precedent for the type of confidentiality provisions in the bill. Accordingly, the information should be classified as confidential without the need to go through the NR 2.19 procedure.

Proposed Revisions:

Pg 65 – 295.44 **Exploration.** 295.44(2m) CONFIDENTIALITY. The department shall protect as confidential any information, other than effluent data, contained in an application for an exploration license, upon a showing that the information is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c). ~~, and any information relating to the location, quality, or quantity of a ferrous mineral deposit, to production or sales figures, or to processes or production unique to the applicant or that would tend to adversely affect the competitive position of the applicant if made public.~~

Pg 79 – **295.45 Bulk sampling plan.** 295.45(2m) The department shall protect as confidential any information, other than effluent data, contained in a bulk sampling plan and in any application for an approval that is required before the bulk sampling may be implemented, upon a showing that the information is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c). ~~, and any information relating to the location, quality, or quantity of a ferrous mineral deposit, to production or sales figures, or to processes or production unique to the applicant or that would tend to adversely affect the competitive position of the applicant if made public.~~

Pg 123 – **295.57 Application procedure. (1)**(b) The department and the state geologist shall protect as confidential any information, other than effluent data, contained in an application for a mining permit, upon a showing that the information is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c). ~~, and any information relating to production or sales figures or to processes or production unique to the applicant or that would tend to adversely affect the competitive position of the applicant if made public.~~

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4. Protecting the State from Long Term Liability

Goal: To ensure a mining company has long term responsibility at a mine site.

Already pointed out to the DNR with a request that the reference to the Spills Law be made.

A note regarding the Spills Law applicability was not included in the draft.

5. Timely Permit Issuance

Goal: To ensure all department permits are issued within the 360 day mine permit application review period.

These are ok.

Suggested revisions:

295.47 (2)(g) Evidence the applicant has applied or will apply for necessary permits or other permissions under all applicable zoning ordinances and that the applicant has applied or will apply *as part of the mine permit application process* to the department for any approval and has applied or will apply for any other license or permit required under state law.

295.605 (4)(b) and 295.61 (4)(b) *Plan; measures.* For the purpose of assisting the department in making a finding as to whether the requirements under par. (a) will be met, the person applying for the permit or contract shall submit a plan *as part of the mine permit application process* to the department containing proposed conservation measures to be taken for meeting those requirements and a proposed schedule for implementing the measures. The plan shall include one or more of the following measures:

295.60 (8)(a) *Contents. A compensation and mitigation plan shall be submitted to the department with the mine permit application* ~~A compensation and mitigation program~~ to offset significant adverse impacts to functional values and water quality of wetlands shall contain all of the following:

6. Compensatory Mitigation Ratios for Wetlands and Public Waters

Goal: To ensure degradation of wetlands and public trust waters are adequately mitigated and compensated.

The language "up to 1.5" already allows the DNR to set these ratios. Leaving as is gives the DNR the discretion to set a ratio anywhere between 1 and 1.5 depending on the particular wetland, stream and location. No change appears to be necessary.

Suggested Revisions:

Wetlands: 1:1 onsite and 1.5:1 offsite
Streams: 1.5:1
ASNRI Waters: 1.5:1

7. Treatment of Floodplain and Shoreland Zoning Ordinances

Goal: To ensure counties do not jeopardize their eligibility for the National Flood Insurance Program.

The problem is not that zoning ordinances and regulations "exceed state standards." Existing law requires that they incorporate state standards and the standards may prevent building in shoreland areas or flood plains. The bill provides that DNR can allow building in flood plains and shoreland areas, but that does not change the zoning ordinaces or regulations that are already in place. So, the bill simply says that all zoning

ordinances and regulations are in place, but they are not violated if building that DNR has permitted takes place where the ordinances would otherwise not allow due their incorporation of state standards. That is why this proposed change is not being accepted.

Suggested Revision to 295.607: While the department has statewide oversight of local floodplain and shoreland zoning, the department does not have the authority to issue floodplain and shoreland zoning permits established under local ordinance.

In order to maintain their eligibility for the National Flood Insurance Program, counties must implement these zoning ordinances. A potential solution is for the bill to prohibit counties from enacting floodplain or shoreland zoning ordinances that exceed state standards at mine sites.