

Report to
Legislative Council Rules Clearinghouse
NR 130, NR 131, NR 132 and NR 182, Wis. Adm. Code
Natural Resources Board Order No. EA-14-18.

Wisconsin Statutory Authority
Chapters 227, 289 and 293, Stats.

Federal Authority

There is no comparable federal regulatory program applicable to nonferrous metallic mining.

Comparison of Adjacent States

Of the states bordering Wisconsin, Michigan and Minnesota are those that have comparable geology and potential for development of nonferrous metallic mineral mining of a type similar to that which has and could take place in Wisconsin. Michigan and Minnesota have each developed or revised their metallic mining regulations in the past 10-15 years in response to new mining development activity. The laws and rules in each of those states are comparable to the regulatory framework in place in Wisconsin and would be consistent with the proposed rule changes. While each state follows procedures that are unique to their state, the overall approaches are similar in that each requires extensive pre-permitting environmental analyses, thorough engineering and technical evaluations of the proposed project and demonstrated compliance with all applicable permitting criteria as part of the review and approval process for nonferrous metallic mineral mining projects.

Neither Illinois nor Iowa contain metallic mineral deposits similar to those identified in northern Wisconsin and therefore have not developed specific regulatory frameworks comparable to those in Wisconsin, Minnesota and Michigan. While both states, along with Wisconsin, experienced historic metallic mining activity as part of the Tri-state Upper Mississippi Valley lead/zinc mining district, there has been no metallic mining activity in either state for over forty years.

Court Decisions Directly Relevant

There are no court cases that are directly relevant to the proposed rule revisions. Rusk County Citizen Action Group, Inc. v. DNR, 203 Wis. 2d 1, 552 N.W.2d 110 (Ct. App. 1996), 95-3125, established that the DNR does not have the authority to impose a ban on certain types of mining.

Analysis of the Rule - Rule Effect - Reason for the Rule

The rule changes are necessary to implement recent statutory changes enacted in 2017 Wisconsin Act 134, correct inconsistencies between the administrative rules and the statutes, to implement current technology and regulatory approaches and to provide greater clarity to provisions that have historically been challenging to interpret and administer.

The current set of mining administrative rules were adopted in 1982 and have not been comprehensively reviewed and revised since that time. 2017 Wisconsin Act 134 included specific changes to the mining administrative rules and also specified extensive revisions to various aspects of the regulatory framework applicable to nonferrous metallic mineral mining-related activities. Act 134 included major changes to the permit review process, additional decision-making criteria, modifications to the manner in which groundwater standards are applied and creation of new financial assurance mechanisms. In addition to Act 134, various other statutory changes to the mining law have been made since the rules were first adopted, but the rules have not been revised to reflect those changes. As a result of these statutory changes, the rules contain numerous provisions which are inconsistent with the current statutes.

Since 1982, the department has implemented the rules to regulate metallic mineral exploration

activity and to conduct the review of several prospective mining projects. The department has also implemented the rules in the regulation of active mining operations. In the course of applying the rules, the department has identified a number of rule provisions that have been problematic to interpret and administer. A subset of the anticipated rule changes is focused on clarifying those provisions and providing additional certainty to the review and regulatory processes. Lastly, various changes to the rules are proposed in an effort to make the rules more current in terms of technology and regulatory approaches.

Agency Procedures for Promulgation

A public hearing is required and will be conducted as a virtual hearing on October 22, 2020. A public comment period will also be available from the date of publication of the hearing notice until October 26, 2020.

Description of any Forms (attach copies if available)

There are no requisite forms.

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