

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD RENUMBERING AND AMENDING, AMENDING, AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to **re number and amend** NR 130.03 (11) , 131.03 (9), and 132.03 (9); to **amend** NR 103.06 (3), 123.02, 130 (title), 130.01, 130.02, 130.03 (8), 130.06 (1) (intro.), 131 (title), 131.01, 131.02, 131.03 (8), (15), and (22), 132 (title), 132.01, 132.02 (1), 132.03 (8), (11), (14), (17) and (23), 132.085 (1), 135.02 (3) (h), 140.03, 182 (title), 182.01, 182.02 (1), (4), (5), and (9), 182.04 (28), (29), (30), (33), and (40), 182.075 (1) (b) 2. and 3., and (c), 182.18 (3) (a) Table 2, 213.02 (2) (b), 214.02 (3) (f), 350.02, 406.08 (1), 500.02 (1), 502.02 (1), 503.02 (1), 504.02 (1), 506.02 (1), 507.02 (1), 508.02 (1), 509.02 (2) (c), 510.02 (1), 512.02 (1), 514.02 (1), 516.02 (1), 518.02 (1), 520.02 (1), 524.02 (1), 526.02 (3), 538.02 (1), 700.03 (21) and (Note), 812.02 (2), 812.05 (5) (e), 815.03 (30) (Note), 815.06 (5) (e), and 815.11 (6); and to **create** NR 103.06 (4m), 182.04 (28m), (29m), and (30m) and (Note), 528.02 (3) (i) and (j), 812.02 (4), and 815.11 (7) relating to 2013 Wisconsin Act 1, the Ferrous Mining Law.

WA-14-13

Analysis Prepared by the Department of Natural Resources

1. Statutes interpreted: In promulgating these rules, section 103 of 2013 Wisconsin Act 1 has been interpreted as authorizing rule revisions. Section 103 is a non-statutory provision directing the Department to revise certain rules and to clarify the rules' applicability to ferrous mining activities that are regulated under the new provisions of subchapter III of chapter 295, Stats.

2. Statutory authority: Section 103 of 2013 Wisconsin Act 1.

3. Explanation of agency authority:

2013 Wisconsin Act 1 (hereafter the Act) modified existing laws relating to metallic mining and created subch. III of ch. 295, Stats., for the regulation of ferrous metallic mining. A "ferrous mineral" is an ore that exists primarily in the form of an iron oxide, including taconite and hematite. Section 103 of the Act direct the Department to propose revisions to certain rules so that the rules are consistent with subch. III of chapter 295, Stats., and with the other statutory revisions made by the Act. These included:

- Section 103(1)(a) of the Act directs the Department to revise the mining regulations in chs. NR 130, 131, 132, and 182, Wis. Adm. Code, to clarify that these rules do not apply to ferrous metallic mining regulated under subch. III of ch. 295, Stats.
- Section 103(1)(b) of the Act directs the Department to revise the solid waste rules in chs. NR 500 to 555, Wis. Adm. Code, and the hazardous waste rules in chs. NR 660 to 679, Wis. Adm. Code, so that the rules are consistent with the provisions of subch. III of ch. 295, Stats.
- Section 103(1)(c) of the Act directs the Department to revise any rules that provide exemptions for nonferrous mining or associated activities to provide the same exemptions for ferrous mining and associated activities in accordance with 2013 Wisconsin Act 1.

4. Related statutes or rules:

Exemptions for metallic mining appear in sections of the Wisconsin Administrative Code relating to water quality standards for wetlands (s. NR 103.06), the well compensation program (s. NR 123.02), nonmetallic mining (s. NR 135.02), groundwater quality (s. NR 140.03), industrial lagoons (s. NR 213.02), land treatment of industrial liquid wastes (s. NR 214.02), air program construction permits (s. NR 406.08), well construction and pump installation (s. NR 812.02), and injection wells (ss. NR 815.03 (30) (Note), 815.06 and 815.11).

5. Plain language analysis: The objective of the proposed rules is to satisfy the Department's obligation to promulgate rules as directed by section 103 of the Act, and as explained in item 3. above. The proposed rules clarify that ferrous mining activities are regulated under the new subch. III of chapter 295, Stats., created by the Act. The proposed rules 1) revise the mining regulations in chs. NR 130, 131, 132, and 182, Wis. Adm. Code, to clarify that these rules apply only to nonferrous mining; 2) revise the solid waste regulations in chs. NR 500 to 538, Wis. Adm. Code, to be consistent with the new ferrous mining law and to clarify that the rules apply only to solid waste facilities that are not regulated under the mining laws; and 3) revise sections of other regulations that currently provide an exemption for metallic mining activities so that the rules are consistent with the Act.

The Department has reviewed all chapters of the Wisconsin Administrative Code administered by the Department and has proposed amendments to those rules as required by section 103 of the Act. Generally, proposed language has been added to specific sections so that the rules are consistent with the new ferrous mining law, subch. III of ch. 295, and with other statutory amendments made by the Act.

The Department determined that some rules identified in section 103 do not require revision. The Department did not propose revisions to chs. NR 540 to 555 of the solid waste rules because these rules do not apply to metallic mining. The Department did not propose revisions to chs. NR 660 to 679, the hazardous waste rules, because the applicable rules are required by federal law and thus the existing rules are in accordance with s. 295.51(1e)(b), Stats. of the new ferrous mining law.

The Department has also determined that certain rules identified in the scope statement do not require amendment. No changes to ch. NR 150, Wis. Adm. Code, are needed in this Board Order because a separate Board Order, OE-46-10, included a provision in ch. NR 150 that complies with the Act. Specifically, language in s. NR 150.30 (1) (j) applies equally to ferrous and nonferrous mining and provides that if there are conflicting procedures for environmental review in statutes, including ch. 295, Stats., those procedures govern. No changes are required to the fee exemption provision of ch. NR 216, Wis. Adm. Code, provided for nonferrous metallic mining storm water permits because no storm water permit fee will be required for a ferrous mining storm water permit application. While the Department believes no changes were required in ch. NR 350, Wis. Adm. Code, because the applicable provisions in ch. NR 350 are consistent with the statutory provisions for regulation of ferrous and nonferrous mining, the department did add a statement to s. NR 350.02, clarifying that ch. NR 350 does not apply to ferrous mining or bulk sampling activities conducted in accordance with s. 295.60, Stats.

6. Summary and comparison with existing and proposed federal regulations.

The changes in state law made by the Act and the changes in state rules proposed in this Board Order apply to the State of Wisconsin's regulation of mining activity. All applicable federal laws continue to apply to proposed ferrous and nonferrous mining activities. The proposed rule changes do not conflict with applicable federal laws and regulations.

Both ferrous and nonferrous metallic mining activities must meet the requirements of federal laws such as the Clean Water Act, 42 U.S.C. 1251 to 1387 and the Clean Air Act, 42 U.S.C. 7401 to 7671q. These federal laws are administered by EPA and the U.S. Army Corps of Engineers (ACOE). In addition, hazardous wastes are subject to federal hazardous waste laws under Subtitle C of the Resource Conservation and Recovery Act (RCRA), although mining wastes are generally exempt from federal hazardous waste laws under the Bevill Exclusion (42 U.S.C. 6921(b)(3)(A)).

The ferrous metallic mining statute, s. 295.51(1e)(b), specifies that mining wastes that are hazardous are subject to regulation under subch. III of ch. 295, and not under chs. NR 660 to 679, the state's hazardous waste rules, except as necessary to comply with applicable federal hazardous waste regulations adopted

under the RCRA, 42 U.S.C. 6901 to 6991m. The Department is authorized by the EPA to administer the federal hazardous waste program in Wisconsin. The state is required to have regulations that are at least as stringent as those required by federal law. State hazardous waste rules that identify when a waste is hazardous (e.g., if the waste has certain characteristics or meets specific listings) are parallel and equivalent to the federal hazardous waste regulations. State regulations that identify when a mining waste is exempt from regulation are also parallel to federal law. Because the applicable state regulations in chs. NR 660 to 679 are consistent with and necessary to comply with federal hazardous waste regulations, no changes are proposed in these chapters.

7. Comparison of similar rules in adjacent states:

The Department's proposed rules implement changes required by the Act. The Department has not prepared a detailed analysis of ferrous mining rules in adjacent states. In a memorandum dated October 26, 2011, the Wisconsin Legislative Council prepared an analysis of the mine permitting process in adjacent States at the request of the Senate Select Committee On Mining Jobs. The analysis is titled, "Ferrous Mining Permit Application Process in Wisconsin, Minnesota, and Michigan". A copy of this analysis will be provided upon request. At present, both Minnesota and Michigan have active ferrous mining operations.

Neither Iowa or Illinois have active metallic mining programs. Iowa does not have metallic mining regulations. Illinois regulations for mining are focused on specific areas covering mine reclamation, mine safety, abandoned mines, and oil & gas.

8. Summary of factual data and analytical methodologies:

The Department reviewed current rules to determine if amendments were required by section 103 of the Act. The Department did not conduct any other analysis or use specific data to support the proposed changes to the rules. The Department made no changes other than those directed by section 103.

9. Analysis and supporting documents used to determine effect on small business or in preparation of an economic impact analysis:

The department has completed the Fiscal Estimate and Economic Impact Analysis form [DOA-2049 (RO3/2012)] as part of this rule analysis. The Department did solicit comments on a draft of this Fiscal Estimate / Economic Impact Analysis (FE/EIA) from parties that could be interested in the proposed rule changes. These interested parties included Native American Tribes, environmental groups, federal environmental agencies, mining companies, and business associations. All comments received were considered in finalizing the Economic Impact Analysis.

10. Effect on small business (initial regulatory flexibility analysis):

The Department does not believe these proposed rule changes will affect small businesses.

11. A copy of any comments and opinion prepared by the Board of Veterans Affairs under s. 45.03 (2m), Stats., for rules proposed by the Department of Veterans Affairs:

Not applicable.

12. Agency contact person:

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SECTION 1. NR 103.06 (3) is amended to read:

NR 103.06 (3) Wetland alterations which are directly caused by operations on a nonferrous metallic mineral prospecting site or mining site shall be regulated pursuant to specific wetland standards under chs. NR 131 and 132, respectively.

SECTION 2. NR 103.06 (4m) is created to read:

NR 103.06 (4m) Wetland alterations which are directly caused by a ferrous metallic mining operation or bulk sampling shall be regulated pursuant to specific wetland standards under s. 295.60, Stats.

SECTION 3. NR 123.02 is amended to read:

NR 123.02 **Applicability.** This chapter applies to contaminated private water supplies compensable under s. 281.75, Stats. Well compensation grants awarded prior to August 9, 1989 are governed by s. 281.75, Stats., and this chapter as they existed on August 8, 1989. This chapter does not apply to contamination which is compensable under subch. II of ch. 107, Stats., ~~or~~ s. 293.65 (4), Stats., or s. 295.61 (8), Stats.

SECTION 4. NR 130 (title) is amended to read:

NR 130 (title) NONFERROUS METALLIC MINERAL EXPLORATION

SECTION 5. NR 130.01 is amended to read:

NR 130.01 **Purpose.** The purpose of this chapter is to establish a licensing procedure and minimum standards for nonferrous metallic mineral exploration in this state.

SECTION 6. NR 130.02 is amended to read:

NR 130.02 **Applicability.** The provisions of this chapter are applicable to all nonferrous metallic mineral exploration as defined in s. NR 130.03. This chapter does not apply to operators engaged in exploration on lands included in a mining and reclamation plan, if the plan contains provisions relating to termination of the exploration activities. This chapter also does not apply to ferrous metallic mining regulated under subch. III of ch. 295, Stats.

SECTION 7. NR 130.03 (8) is amended to read:

NR 130.03 (8) "Exploration" means the onsite geologic examination from the surface of an area by core, rotary, percussion, or other drilling, where the diameter of the hole does not exceed 18 inches, for

the purpose of searching for nonferrous metallic minerals or establishing the nature of a known nonferrous metallic mineral deposit and includes associated activities such as clearing and preparing sites or constructing roads for drilling. For the purposes of the definition of exploration, geologic examination does not include drillholes constructed for the purpose of collecting soil samples or for determining radioactivity by means of placement of radiation-sensitive devices.

SECTION 7m. NR 130.03 (11) is renumbered NR 130.03 (12m) and amended to read:

NR 130.03 (12m) ~~“Metallic Nonferrous metallic mineral” means a naturally occurring, inorganic, metal-containing substance which is mined or proposed to be mined for the purpose of extracting a metal or metals which form all or a part of the chemical composition of the mineral. Such metals include but are not limited to iron,~~ has the meaning given in s. 293.01 (12m), Stats.

Note: This definition does not apply to substances mined primarily for their iron oxide content. This definition includes substances mined for the purpose of extracting a metal or metals such as copper, zinc, lead, gold, silver, titanium, vanadium, nickel, cadmium, molybdenum, chromium, manganese, cobalt, zirconium, beryllium, thorium, and uranium.

SECTION 8. NR 130.06 (1) (intro.) is amended to read:

NR 130.06 (1) (intro.) ~~Metallic~~ Nonferrous metallic mineral exploration drillholes shall be abandoned as follows:

SECTION 9. NR 131 (title) is amended to read:

NR 131 (title) NONFERROUS METALLIC MINERAL PROSPECTING

SECTION 10. NR 131.01 is amended to read:

NR 131.01 **Purpose.** The purpose of this chapter is to establish procedures and standards for the comprehensive regulation of nonferrous metallic mineral prospecting in this state and to coordinate and reconcile applicable state and federal statutes and regulations so as to facilitate the procedures by which department permits, licenses, and approvals may be applied for, hearings may be held, and determinations may be made by the department in a coordinated and integrated manner.

SECTION 11. NR 131.02 is amended to read:

NR 131.02 **Applicability.** The provisions of this chapter are applicable to all nonferrous metallic mineral prospecting as defined in s. 293.01 (18), Stats., including the storage, handling, processing, transportation, and disposal of all materials resulting from a prospecting operation except to the extent

that prospecting wastes are regulated by ch. NR 182. The provisions of this chapter are not applicable to those activities which are intended for and capable of commercial exploitation of the underlying ore body. However, the fact that prospecting activities and construction may have use ultimately in mining, if approved, ~~shall~~ does not mean that prospecting activities and construction constitute mining pursuant to the definition of mining contained in s. 293.01 (9), Stats., provided such activities and construction are reasonably related to prospecting requirements. This chapter also does not apply to ferrous metallic mining regulated under subch. III of ch. 295, Stats.

SECTION 12. NR 131.03 (8) is amended to read:

NR 131.03 (8) “Merchantable by-product” means all waste soil, rock, mineral, liquid, vegetation and other material directly resulting from or displaced by the prospecting, cleaning or preparation of nonferrous metallic minerals during prospecting operations which are determined by the department to be marketable upon a showing of marketability made by the operator, accompanied by a verified statement by the operator of his or her intent to sell such material within 3 years from the time it results from or is displaced by prospecting. If after 3 years from the time merchantable by-product results from or is displaced by prospecting such material has not been transported off the prospecting site, it shall be considered and regulated as refuse unless removal is continuing at a rate of more than 12,000 cubic yards per year. Regardless of whether the material constitutes merchantable by-product, it shall be subject to the requirements of this chapter.

SECTION 12g. NR 131.03 (9) is renumbered NR 131.03 (10m) and amended to read:

NR 131.03 **(10m)** “Metallic Nonferrous metallic mineral” ~~means a naturally occurring, inorganic, metal-containing substance which is mined or proposed to be mined for the purpose of extracting a metal or metals which form all or a part of the chemical composition of the mineral. Such metals include but are not limited to iron,~~ has the meaning given in s. 293.01 (12m), Stats.

Note: This definition does not apply to substances mined primarily for their iron oxide content. This definition includes substances mined for the purpose of extracting a metal or metals such as copper, zinc, lead, gold, silver, titanium, vanadium, nickel, cadmium, molybdenum, chromium, manganese, cobalt, zirconium, beryllium, thorium, and uranium.

SECTION 12r. NR 131.03 (15) and (22) are amended to read:

NR 131.03 (15) “Prospecting” means engaging in the examination of an area for the purpose of determining the quality and quantity of nonferrous metallic minerals, other than for exploration but including the obtaining of ~~an~~ a nonferrous metallic mineral ore sample, by such physical means as excavating, trenching, construction of shafts, ramps, tunnels, pits and the production of refuse and other associated activities.

(22) “Refuse” means all waste soil, rock, mineral, liquid, vegetation, and other material, except merchantable by-products, directly resulting from or displaced by the prospecting, and from the cleaning or preparation of nonferrous metallic minerals during prospecting operations, and shall include all waste materials deposited on or in the prospecting site from other sources and solid waste as defined in s. NR 182.04.

SECTION 13. NR 132 (title) is amended to read:

NR 132 (title) NONFERROUS METALLIC MINERAL MINING

SECTION 14. NR 132.01 is amended to read:

NR 132.01 **Purpose.** The purpose of this chapter is to establish procedures and standards for the comprehensive regulation of nonferrous metallic mineral mining in this state and to coordinate and reconcile applicable state and federal statutes and regulations so as to facilitate the procedures by which department permits, licenses, and approvals may be applied for, hearings may be held, and determinations may be made by the department in a coordinated and integrated manner.

SECTION 15. NR 132.02 (1) is amended to read:

NR 132.02 (1) The provisions of this chapter are applicable to all nonferrous metallic mineral mining as defined by s. 293.01 (9), Stats., including the storage, handling, processing, transportation, and disposal of all materials resulting from a mining operation except to the extent that mining wastes are regulated by ch. NR 182. This chapter does not apply to ferrous metallic mining regulated under subch. III of ch. 295, Stats.

SECTION 16. NR 132.03 (8) is amended to read:

NR 132.03 (8) “Merchantable by-product” means all waste soil, rock, mineral, liquid, vegetation, and other material directly resulting from or displaced by the mining, cleaning, or preparation of nonferrous metallic minerals during mining operations which are determined by the department to be marketable upon a showing of marketability made by the operator, accompanied by a verified statement by the operator of his or her intent to sell such material within 3 years from the time it results from or is

displaced by mining. If after 3 years from the time merchantable by-product results from or is displaced by mining such material has not been transported off the mining site, it shall be considered and regulated as refuse unless removal is continuing at a rate of more than 12,000 cubic yards per year. Regardless of whether the material constitutes merchantable by-product, it shall be subject to the requirements of this chapter.

SECTION 16g. NR 132.03 (9) is renumbered NR 132.03 (15m) and amended to read:

NR 132.03 (15m) ~~“Metallic Nonferrous metallic mineral” means a naturally occurring, inorganic, metal-containing substance which is mined or proposed to be mined for the purpose of extracting a metal or metals which form all or a part of the chemical composition of the mineral. Such metals include but are not limited to iron,~~ has the meaning given in s. 293.01 (12m), Stats.

Note: This definition does not apply to substances mined primarily for their iron oxide content. This definition includes substances mined for the purpose of extracting a metal or metals such as copper, zinc, lead, gold, silver, titanium, vanadium, nickel, cadmium, molybdenum, chromium, manganese, cobalt, zirconium, beryllium, thorium, and uranium.

SECTION 16r. NR 132.03 (11), (14), (17), and (23) are amended to read:

NR 132.03 (11) “Mining” or “mining operation” means all or part of the process in the mining of nonferrous metallic minerals other than for exploration or prospecting, including commercial extraction, agglomeration, beneficiation, construction of roads, removal of overburden, and the production of refuse.

(14) “Mining site” means the surface area disturbed by a mining operation, including the surface area from which the nonferrous metallic minerals or refuse or both have been removed, the surface area covered by refuse, all lands disturbed by the construction or improvement of haulageways, pipelines and pipeline corridors, and any surface areas in which structures, equipment, materials, and any other things used in the mining operation are situated.

(17) “Ore” means a naturally occurring material from which nonferrous metallic minerals may be recovered at a profit.

(23) “Refuse” means all waste soil, rock, mineral, liquid, vegetation, and other material, except merchantable by-products, directly resulting from or displaced by the mining, and from the cleaning or preparation of nonferrous metallic minerals during mining operations, and shall include all waste materials deposited on or in the mining site from other sources and mining waste as defined in s. NR 182.04.

SECTION 17. NR 132.085 (1) is amended to read:

NR 132.085 (1) This section applies to a nonferrous metallic mining permit application for which the permit has not been issued on February 1, 2000. Notwithstanding s. NR 132.19, no exemption may be granted to the provisions of this section.

SECTION 18. NR 135.02 (3) (h) is amended to read:

NR 135.02 (3) (h) Any mining operation, the reclamation of which is required in a permit obtained under ch. 293, Stats., or under subch. III of ch. 295, Stats.

SECTION 19. NR 140.03 is amended to read:

NR 140.03 **Applicability.** This subchapter and subch. II apply to all facilities, practices, and activities which may affect groundwater quality and which are regulated under chs. 85, 93, 94, 101, 145, 281, 283, 287, 289, 291, and 292, Stats., by the department of agriculture, trade and consumer protection, the department of safety and professional services, the department of transportation, or the department of natural resources, as well as to facilities, practices, and activities which may affect groundwater quality which are regulated by other regulatory agencies. Health-related enforcement standards adopted in s. NR 140.10 also apply to bottled drinking water manufactured, bottled, sold, or distributed in this state as required by s. 97.34 (2) (b), Stats., and to determining eligibility for the well compensation program under s. 281.75, Stats. Subchapter III applies to all facilities, practices, and activities which may affect groundwater quality and which are regulated by the department under ch. 281, 283, 287, 289, 291, 292, 295, or 299, Stats. This chapter applies to ferrous metallic mining operations and mining sites, including mining waste sites, as defined in s. 295.41 (31), Stats., but only to the extent that it does not conflict with subch. III of ch. 295, Stats. Groundwater quality standards, consisting of enforcement standards and preventive action limits contained in ss. NR 140.10 and 140.12, and preventive action limits for indicator parameters identified under s. NR 140.20 (2), apply to ferrous metallic mining operations and mining sites, as defined in s. 295.41 (31), Stats., including mining waste sites, regulated under subch. III of ch. 295, Stats. This chapter does not apply to any facilities, practices, or activities on a nonferrous metallic mining prospecting site or a mining site regulated under ch. 293, Stats., because those facilities, practices, and activities are subject to the groundwater quality requirements of chs. NR 131, 132, and 182. The department may promulgate new rules or amend rules governing facilities, practices or activities regulated under ch. 293, Stats., if the department determines that the amendment or promulgation of rules is necessary to protect public health, safety, or welfare. The requirements of this chapter are in addition to the requirements of any other statutes and rules, except as provided in s. 295.645 (9), Stats.

SECTION 20. NR 182 (title) is amended to read:

NR 182 (title) NONFERROUS METALLIC MINERAL MINING WASTES

SECTION 21. NR 182.01 is amended to read:

NR 182.01 **Purpose.** The purpose of this chapter is to identify nonferrous metallic mineral mining and prospecting wastes and to regulate the location, design, construction, operation, maintenance, closure, and long-term care of the site and facilities for the storage and disposal of nonferrous metallic mineral mining and prospecting wastes. The rules consider the special requirements of nonferrous metallic mineral mining operations in the location, design, construction, operation, and maintenance of sites and facilities for the disposal of nonferrous metallic mineral mining wastes as well as any special environmental concerns that will arise as the result of the storage and disposal of nonferrous metallic mineral mining wastes.

SECTION 22. NR 182.02 (1), (4), (5), and (9) are amended to read:

NR 182.02 (1) These rules govern all solid waste disposal sites and facilities for nonferrous metallic mineral mining and prospecting operations as defined in s. 293.01 (9) and (18), Stats. This chapter does not apply to ferrous metallic mining regulated under subch. III of ch. 295, Stats.

(4) Sites and facilities utilized for the storage, transportation, treatment, and disposal of nonmining solid wastes, not covered by the definition of ~~metallic mineral mining and prospecting wastes~~ waste, shall comply with the provisions of chs. NR 500 to 555 and 660 to 670.

(5) The provisions of this chapter are not applicable to the design, construction, or operation of industrial wastewater facilities, sewerage systems, and waterworks treating liquid waste approved under s. 281.41, Stats., ~~and/or~~ or permitted under ch. 283, Stats., nor to sites used solely for the disposal of liquid industrial wastes which have been approved under s. 281.41, Stats., ~~and/or~~ or permitted under ch. 283, Stats., except for sites and facilities used for the ultimate disposal of ~~metallic mining and prospecting~~ waste.

(9) Pursuant to s. 293.13 (2) (a), Stats., the department may classify prospecting and mining activities according to the type of minerals involved. The department recognizes that the minimum standards contained in this chapter may be insufficient in regulating uranium prospecting and mining operations and the disposal of radioactive waste resulting from these and other ~~metallic~~ mining operations. Accordingly, the department shall cooperate with the department of health services and the radiation protection council, pursuant to s. 254.34 (1) (a) and (am), Stats., to assist in defining the term “radioactive mining waste”. The department shall continue its evaluation of disposal practices for such wastes and shall, if necessary, request that rules be adopted to regulate uranium prospecting and mining and radioactive wastes resulting from any ~~metallic~~ prospecting or mining operation.

SECTION 23. NR 182.04 (28) and (29) are amended to read:

NR 182.04 **(28)** “Merchantable by-product” means all waste soil, rock, mineral, liquid, vegetation, and other material directly resulting from or displaced by the mining, cleaning, or preparation of nonferrous metallic minerals during mining operations which are determined by the department to be marketable upon a showing of marketability made by the operator, accompanied by a verified statement by the operator of his or her intent to sell such material within 3 years from the time it results from or is displaced by mining. If after 3 years from the time merchantable by-product results from or is displaced by mining such material has not been transported off the mining site, it shall be considered and regulated as refuse as defined in s. 293.01 (25), Stats., unless removal is continuing at a rate of more than 12,000 cubic yards per year.

(29) “Mining” or “mining operation” means all or part of the process involved in the mining of nonferrous metallic minerals other than for exploration or prospecting, including commercial extraction, agglomeration, beneficiation, construction of roads, removal of overburden, and the production of refuse.

SECTION 24. NR 182.04 (28m) and (29m) are created to read:

NR 182.04 **(28m)** “Mine” means an excavation in or at the earth’s surface made to extract nonferrous metallic minerals.

(29m) “Mining site” has the meaning specified in s. 293.01(12), Stats.

SECTION 25. NR 182.04 (30) is amended to read:

NR 182.04 **(30)** “Mining waste” means any refuse, sludge, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material, resulting from nonferrous metallic mineral prospecting or mining, or from the cleaning or preparation of nonferrous metallic minerals during prospecting or mining operations. Typical mining wastes include, ~~but are not limited to,~~ tailings, waste rock, mine overburden, and waste treatment sludges. Mining waste does not include topsoil and mine overburden not disposed of in a waste site, but placed in a facility permitted under ch. NR 131 or 132, to be returned to the mine site or used in the reclamation process, and does not include merchantable by-products.

SECTION 26. NR 182.04 (30m) and (Note) are created to read:

NR 182.04 **(30m)** “Nonferrous metallic mineral” has the meaning given in s. 293.01 (12m), Stats.

Note: This definition does not apply to substances mined primarily for their iron oxide content. This definition does apply to other substances mined for the purpose of extracting a metal or metals

including copper, zinc, lead, gold, silver, titanium, vanadium, nickel, cadmium, molybdenum, chromium, manganese, cobalt, zirconium, beryllium, thorium, and uranium.

SECTION 27. NR 182.04 (33) and (40) are amended to read:

NR 182.04 **(33)** “Ore” means a naturally occurring material from which nonferrous metallic minerals can be recovered at a profit.

(40) “Prospecting” means engaging in the examination of an area for the purpose of determining the quality and quantity of nonferrous metallic minerals, other than for exploration, but including the obtaining of an ore sample, by such physical means as excavating, trenching, construction of shafts, ramps, tunnels, pits and the production of refuse and other associated activities. “Prospecting” shall not include such activities when the activities are, by themselves, intended for and capable of commercial exploitation of the underlying ore body. However, the fact that prospecting activities and construction may have use ultimately in mining, if approved, shall not mean that prospecting activities and construction constitute mining within the meaning of sub. (29), provided such activities and construction are reasonably related to prospecting requirements.

SECTION 28. NR 182.075 (1) (b) 2. and 3. and (c) are amended to read:

NR 182.075 **(1)** (b) 2. The horizontal distance to the boundary of the design management zone for a ~~metallic mineral~~ surface mine or surface prospecting excavation shall be 1,200 feet from the edge of the mine or prospecting excavation, unless reduced pursuant to s. NR 140.22 (3), or at the boundary of property owned or leased by the applicant, whichever distance is less.

3. The horizontal distance to the boundary of the design management zone for an underground ~~metallic mineral~~ mine or prospecting excavation shall be 1,200 feet from the maximum outer edge of the underground prospecting or mine workings adjacent to the ore body as projected to the land surface, unless reduced pursuant to s. NR 140.22 (3), or at the boundary of property owned or leased by the applicant, whichever distance is less.

(c) *Mandatory intervention boundary.* The horizontal distance to the mandatory intervention boundary for a ~~metallic~~ mining waste facility or a surface or underground ~~metallic mineral~~ mine or prospecting excavation shall be 150 feet from the outer waste boundary, the outer edge of the mine or prospecting excavation, or the outer edge of the underground workings as projected to the land surface, unless the boundary of the design management zone is within 300 feet of the outer waste boundary, mine, prospecting excavation, or underground prospecting, or mine workings. In no case may the mandatory intervention boundary extend more than one half the distance from the outer waste boundary, mine, prospecting excavation, or underground prospecting or mine workings to the boundary of the design

management zone. The mandatory intervention boundary shall apply as specified in ~~s. NR 182.075~~ subs. (1s) and (1u).

SECTION 29. NR 182.18 (3) (a) Table 2 is amended to read:

NR 182.18 (3) (a) Table 2

Table 2
Waste Management Fund Tonnage Fees

Waste Type	Fee
1. Hazardous tailing solids	1.5¢/ton
2. Nonhazardous tailings solids or nonacid producing taconite tailings solids	0.2¢/ton
3. Hazardous sludge	1.0¢/ton
4. Nonhazardous sludge	0.5¢/ton
5. Hazardous waste rock	0.3¢/ton
6. Nonhazardous waste rock or non acid producing taconite waste rock	0.1¢/ton
7. Any prospecting or mining waste not specified in categories 1 to 6 above	0.5¢/ton

SECTION 30. NR 213.02 (2) (b) is amended to read:

NR 213.02 (2) (b) Lagoons licensed under ch. NR 132, 182, 500, 502, 504, or 660, or approved under subch. III of ch. 295, Stats.

SECTION 31. NR 214.02 (3) (f) is amended to read:

NR 214.02 (3) (f) Mining wastes backfilled or otherwise disposed of in a prospecting excavation or a mine in accordance with a ~~prospecting permit or a mining permit~~ issued under ch. NR 131 or 132, or under subch. III of ch. 295, Stats., except runoff, leachate, decantate, or other wastewater collected for disposal on land outside of the permitted prospecting or mining site.

SECTION 32. NR 350.02 is amended to read:

NR 350.02 **Applicability.** This chapter applies to all compensatory mitigation projects that are considered by the department as part of a review process conducted in accordance with chs. NR 103, 131, and 132. This chapter does not apply to compensatory mitigation conducted by the department of transportation as part of the liaison process pursuant to s. 30.2022, Stats. This chapter does not apply to compensatory mitigation conducted as a requirement of a federal permit issued prior to February 1, 2002. This chapter does not apply to compensatory mitigation for ferrous mining or bulk sampling activities conducted in accordance with s. 295.60 (8), Stats.

SECTION 33. NR 406.08 (1) is amended to read:

NR 406.08 (1) This section applies to actions on permits for which applications are received on or after ~~September 1, 2000~~ the effective date of this subsection ... [LRB insert date]. This section does not apply to actions on applications for permits where the source commences construction prior to issuance of a construction permit. This section does not apply to construction permits which are subject to the notice, comment and hearing provisions of s. 293.43, 295.45, or 295.57, Stats.

SECTION 34. NR 500.02 (1) is amended to read:

NR 500.02 (1) Except as otherwise provided, this chapter governs all solid waste facilities as defined in s. 289.01 (35), Stats., except hazardous waste facilities as defined in s. 291.01 (8), Stats., and regulated under chs. NR 660 to 679, ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (~~59~~), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats., including mining wastes and mining waste sites as defined in s. 295.41(30) and (31) Stats., and regulated under subch. III of ch. 295, Stats.

SECTION 35. NR 502.02 (1) is amended to read:

NR 502.02 (1) Except as otherwise provided, this chapter governs all solid waste storage, transportation, transfer, incinerators, air curtain destructors, processing, woodburning, composting, and municipal solid waste combustors as defined in s. 289.01 (35), Stats., except hazardous waste facilities as defined in s. 291.01 (8), Stats., and regulated under chs. NR 660 to 679, ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (~~59~~), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats., including mining wastes and mining waste sites as defined in s. 295.41(30) and (31) Stats., and regulated under subch. III of ch. 295, Stats.

SECTION 36. NR 503.02 (1) is amended to read:

NR 503.02 (1) Except as otherwise provided, this chapter applies to all one time disposal landfills, small size construction and demolition waste landfills, and intermediate size construction and demolition waste landfills. This chapter does not apply to hazardous waste facilities as defined in s. 291.01 (8), Stats., and regulated under chs. NR 660 to 679, ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (~~59~~), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats., including mining wastes and mining waste sites as defined in s. 295.41(30) and (31) Stats., and regulated under subch. III of ch. 295, Stats.

Construction and demolition landfills which have a design capacity greater than 250,000 cubic yards are regulated under chs. NR 500 and 504 to 538.

SECTION 37. NR 504.02 (1) is amended to read:

NR 504.02 (1) Except as otherwise provided, this chapter governs all landfills as defined in s. 289.01 (20), Stats., except landspreading facilities regulated under ch. NR 518, small demolition waste landfills regulated under ch. NR 503, hazardous waste facilities as defined in s. 291.01 (8), Stats., and regulated under chs. NR 660 to 679 ~~and~~; metallic mining waste facilities operations for nonferrous minerals as defined in s. 293.01 (9), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats., including mining wastes and mining waste sites as defined in s. 295.41(30) and (31) Stats., and regulated under subch. III of ch. 295, Stats.

SECTION 38. NR 506.02 (1) is amended to read:

NR 506.02 (1) Except as otherwise provided, this chapter governs all solid waste disposal facilities as defined in s. 289.01 (35), Stats., except hazardous waste facilities as defined in s. 291.01 (8), Stats., and regulated under chs. NR 660 to 679 ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (59), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats., including mining wastes and mining waste sites as defined in s. 295.41 (30) and (31) Stats., and regulated under subch. III of ch. 295, Stats.

SECTION 39. NR 507.02 (1) is amended to read:

NR 507.02 (1) Except as otherwise provided, this chapter governs all environmental monitoring for solid waste disposal facilities as defined by s. 289.01 (35), Stats., except hazardous waste facilities as defined in s. 291.01 (8), Stats., and regulated under chs. NR 660 to 679, ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (9), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats., including mining wastes and mining waste sites as defined in s. 295.41 (30) and (31), Stats., and regulated under subch. III of ch. 295, Stats.

SECTION 40. NR 508.02 (1) is amended to read:

NR 508.02 (1) Except as otherwise provided, this chapter governs all solid waste facilities as defined by s. 289.01 (35), Stats., except hazardous waste facilities as defined in s. 291.01 (8), Stats., and regulated under chs. NR 660 to 679, ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (9), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals

as defined in s. 295.41 (26), Stats., including mining wastes and mining waste sites as defined in s. 295.41 (30) and (31) Stats., and regulated under subch. III of ch. 295, Stats.

SECTION 41. NR 509.02 (2) (c) is amended to read:

NR 509.02 (2) (c) Hazardous waste facilities as defined in s. 291.01 (8), Stats., and regulated under chs. NR 660 to 679; ~~and~~ metallic mining operations for nonferrous minerals as defined in s. 293.01 (9), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats., including mining wastes and mining waste sites as defined in s. 295.41 (30) and (31) Stats., and regulated under subch. III of ch. 295, Stats.

SECTION 42. NR 510.02 (1) is amended to read:

NR 510.02 (1) Except as otherwise provided, this chapter governs all landfills as defined in s. 289.01 (20), Stats., except landfills regulated under ch. NR 503, hazardous waste facilities as defined in s. 291.01 (8), Stats., and regulated under chs. NR 660 to 679 ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (9), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats., including mining wastes and mining waste sites as defined in s. 295.41 (30) and (31) Stats., and regulated under subch. III of ch. 295, Stats.

SECTION 43. NR 512.02 (1) is amended to read:

NR 512.02 (1) Except as otherwise provided, this chapter governs all landfills as defined in s. 289.01 (20), Stats., except landfills regulated under ch. NR 503, hazardous waste facilities as defined in s. 291.01 (8), Stats., and regulated under chs. NR 660 to 679, ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (9), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats., including mining wastes and mining waste sites as defined in s. 295.41 (30) and (31) Stats., and regulated under subch. III of ch. 295, Stats.

SECTION 44. NR 514.02 (1) is amended to read:

NR 514.02 (1) Except as otherwise provided, this chapter governs all landfills as defined in s. 289.01 (20), Stats., except small construction and demolition waste landfills regulated under ch. NR 503, hazardous waste facilities as defined in s. 291.01 (8), Stats., and regulated under chs. NR 660 to 679, ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (9), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats.,

including mining wastes and mining waste sites as defined in s. 295.41 (30) and (31) Stats., and regulated under subch. III of ch. 295, Stats.

SECTION 45. NR 516.02 (1) is amended to read:

NR 516.02 (1) Except as otherwise provided, this chapter governs all landfills as defined in s. 289.01 (20), Stats., except small demolition waste landfills regulated under ch. NR 503, hazardous waste facilities as defined in s. 291.01 (8), Stats., and regulated under chs. NR 660 to 679 ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (9), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats., including mining wastes and mining waste sites as defined in s. 295.41 (30) and (31) Stats., and regulated under subch. III of ch. 295, Stats.

SECTION 46. NR 518.02 (1) is amended to read:

NR 518.02 (1) Except as otherwise provided, this chapter governs all solid waste landspreading facilities, except hazardous waste facilities as defined in s. 291.01 (8), Stats., and regulated under chs. NR 660 to 679, ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (9), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats., including mining wastes and mining waste sites as defined in s. 295.41 (30) and (31) Stats., and regulated under subch. III of ch. 295, Stats.

SECTION 47. NR 520.02 (1) is amended to read:

NR 520.02 (1) Except as otherwise provided, this chapter governs all solid waste facilities as defined by s. 289.01 (35), Stats., except hazardous waste facilities as defined by s. 291.01 (8), Stats., and regulated under chs. NR 660 to 679 ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (9), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats., including mining wastes and mining waste sites as defined in s. 295.41 (30) and (31) Stats., and regulated under subch. III of ch. 295, Stats.

SECTION 48. NR 524.02 (1) is amended to read:

NR 524.02 (1) Except as otherwise provided, this chapter governs all solid waste disposal facilities, except hazardous waste facilities as defined in s. 291.01 (8), Stats., and regulated under chs. NR 660 to 679, ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (9), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats., including mining wastes and mining waste sites as defined in s. 295.41 (30) and (31) Stats., and regulated under subch. III of ch. 295, Stats.

SECTION 49. NR 526.02 (3) is amended to read:

NR 526.02 (3) Except as otherwise provided, this chapter governs all solid waste facilities as defined in s. 289.01 (35), Stats., except hazardous waste facilities as defined in s. 291.01 (8), Stats., and regulated under chs. NR 660 to 679~~0~~, ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (9), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats., including mining wastes and mining waste sites as defined in s. 295.41 (30) and (31) Stats., and regulated under subch. III of ch. 295, Stats.

SECTION 50. NR 528.02 (3) (i) and (j) are created to read:

NR 528.02 (3) (i) Metallic mining operations for nonferrous minerals as defined in s. 293.01 (9), Stats., and regulated under ch. NR 182.

(j) Materials associated with metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats., including mining wastes as defined in s. 295.41 (30) and sediment from stormwater management structures, as regulated under subch. III of ch. 295, Stats.

SECTION 51. NR 538.02 (1) is amended to read:

NR 538.02 (1) Except as otherwise provided, this chapter governs the beneficial use of industrial byproducts, except hazardous waste ~~and~~ as defined in s. 291.01 (7), Stats., and regulated under chs. NR 660 to 679; metallic mining waste operations for nonferrous minerals as defined in s. 293.01 (9), Stats., and regulated under ch. NR 182; and metallic mining operations for ferrous minerals as defined in s. 295.41 (26), Stats., including mining wastes and mining waste sites as defined in s. 295.41 (30) and (31) Stats., and regulated under subch. III of ch. 295, Stats.

SECTION 52. NR 700.03 (21) and (Note) are amended to read:

NR 700.03 (21) "Facility" means "approved facility" as defined in s. 289.01 (3), Stats., "approved mining facility" as defined in s. ~~289.01(4)~~ 292.01(1m), Stats., and "nonapproved facility" as defined in s. 289.01 (24), Stats.

Note: Under s. 289.01 (3), Stats., "approved facility" means "a solid or hazardous waste disposal facility with an approved plan of operation under s. 289.30 or a solid waste disposal facility initially licensed within 3 years prior to May 21, 1978, whose owner successfully applies, within 2 years after May 21, 1978, for a determination by the department that the facility's design and plan of operation

comply substantially with the requirements necessary for plan approval under s. 289.30." Under s. 292.01 (1m), Stats., "Approved approved mining facility" is defined by reference to the definition of approved mining facility in s. 289.01 (4), Stats., and also includes a mining waste site as defined in s. 295.41 (31), Stats. "Approved mining facility" as defined in s. 289.01 (4) means "an approved facility which is part of a mining site, as defined under s. 293.01 (12), used for the disposal of solid waste resulting from mining, as defined under s. 293.01 (9), or prospecting, as defined under s. 293.01 (18)." Chapter 293, Stats., applies to nonferrous metallic mining. "Mining waste site" as defined under s. 295.41 (31), Stats., means any land or appurtenances thereto used for the storage or disposal of ferrous mining waste. Subch. III of ch. 295, Stats., applies to ferrous metallic mining. "Nonapproved facility" as defined in s. 289.01 (24), Stats., means "a licensed solid or hazardous waste disposal facility which is not an approved facility."

SECTION 53. NR 812.02 (2) is amended to read:

NR 812.02 (2) For the purposes of abandonment, the provisions of this chapter apply to all drillholes and wells including, ~~but not limited to,~~ mining exploration drillholes not regulated by ch. NR 132, or subch. III of ch. 295, Stats., wells and drillholes not regulated by s. NR 141.25, and elevator shaft drillholes.

SECTION 54. NR 812.02 (4) is created to read:

NR 812.02 (4) The requirements of s. NR 812.08 do not apply to water withdrawal or use that is associated with mining operations or bulk sampling regulated under subch. III of ch. 295, Stats.

SECTION 55. NR 812.05 (5) (e) is amended to read:

NR 812.05 (5) (e) Injection activities conducted in conjunction with a placement of backfill into an underground nonferrous metallic ~~mineral mining operation~~ mine approved under ch. NR 132 or in connection with placement of backfill into an underground ferrous mine approved under subch. III of ch. 295, Stats.

SECTION 56. NR 815.03 (30) (Note) is amended to read:

NR 815.03 (30) (Note) As used in this chapter, "liquid waste" does not include the following: alcohol fuel production wastes from systems defined as private alcohol fuel production systems under s. 289.44 (1) (c), Stats., that are operated in accordance with s. 283.61 (2), Stats., animal waste regulated under ch. NR 243 or liquid manure applied in accordance with sound agricultural practices, domestic sewage from systems defined as private sewage systems in s. 145.01 (12), Stats., effluent from publicly owned or privately owned wastewater treatment works regulated under ch. NR 206, or mining wastes

backfilled or otherwise disposed of in a prospecting excavation or a mine in accordance with a ~~prospecting permit or a mining~~ permit issued under ch. NR 131 or 132 or subch. III of ch. 295, Stats., except runoff, leachate, decantate, or other wastewater collected for disposal on land outside of the permitted prospecting or mining site.

SECTION 57. NR 815.06 (5) (e) is amended to read:

NR 815.06 (5) (e) Injection activities conducted in conjunction with ~~a~~ placement of backfill into an underground nonferrous metallic ~~mineral mining operation~~ mine approved under ch. NR 132 or in connection with placement of backfill into an underground ferrous mine approved under subch. III of ch. 295, Stats.

SECTION 58. NR 815.11 (6) is amended to read:

NR 815.11 (6) Construction or use of a well to place backfill into an underground nonferrous metallic mine shall be done in accordance with the provisions of ch. NR 132 and shall comply with the requirements of s. NR 132.07 (4) (e).

SECTION 59. NR 815.11 (7) is created to read:

NR 815.11 (7) Construction or use of a well to place backfill into an underground ferrous metallic mine shall be done as approved under subch. III of ch. 295, Stats., and shall comply with the requirements of s. 295.49 (2) (g), Stats.

SECTION 60. EFFECTIVE DATE. This rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22 (2) (intro.), Stats.

SECTION 61. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on May 28, 2014.