

Clearinghouse Rule 97-136

State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES



Tommy G. Thompson, Governor
George E. Meyer, Secretary

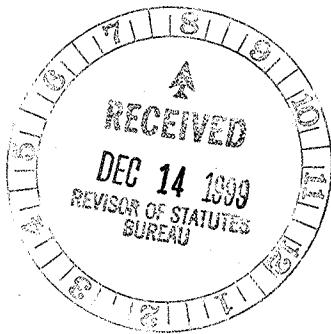
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STATE OF WISCONSIN)
) ss
DEPARTMENT OF NATURAL RESOURCES)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, George E. Meyer, Secretary of the Department of Natural Resources and custodian of the official records of said Department, do hereby certify that the annexed copy of Natural Resources Board Order No. SW-21-97(A) was duly approved and adopted by this Department on September 14, 1997 and June 30, 1999. I further certify that said copy has been compared by me with the original on file in this Department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Department at the Natural Resources Building in the City of Madison, this 10th day of December, 1999



George E. Meyer
George E. Meyer, Secretary

(SEAL)

97-136



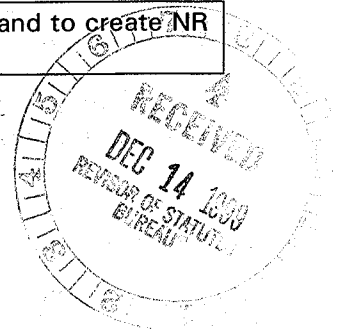
ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 132.09(3) and to create NR 132.085 relating to regulation of metallic mineral mining

SW-21-97(A)

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 293.13, 293.51 and 227.11(2), Stats.
Statutes interpreted: ss. 293.13 and 293.51, Stats.



The proposed changes in ch. NR 132 would require a mining permit holder to establish an irrevocable trust agreement prior to commencing mining and maintain the trust agreement for an indefinite time after operations cease. The trust fund is intended to assure the availability of funds to cover costs associated with certain reasonably anticipated preventive measures, as well as remedial actions related to unanticipated spills, releases from mining and mining waste facilities and replacement of damaged water supplies. The fund will be structured such that, after the period of scheduled deposits by the permittee, it will be self-sustaining and adequate to finance necessary preventive and remedial actions well into the future. The proposed rule also includes mechanisms by which the adequacy of the fund is reviewed and adjusted, if necessary.

SECTION 1. NR 132.085 is created to read:

NR 132.085 Irrevocable trust agreement. (1) This section applies to a mining permit application for which the permit has not been issued on the effective date of this subsection ... [revisor insert date]. Notwithstanding s. NR 132.19, no exemption may be granted to the provisions of this section.

(2) An applicant for a mining permit, as part of the permit application, shall propose an irrevocable trust agreement or arrangement which shall include a description of the investment strategy and detailed information concerning the level of funding and proposed payment schedule necessary to comply with this section.

(3)(a) The purpose of the trust fund shall be to assure adequate funds to undertake the preventive and remedial activities listed in sub. (4). The trust documentation shall designate the department as sole beneficiary. The trustee shall be a public entity, bank or other financial institution located within the state of Wisconsin which has the authority to act as a trustee, or in the case of a public entity has equivalent powers. The trust documentation shall specify the manner of payment into the fund and the trustee's powers to invest the trust corpus and income. The trustee shall exercise prudent investment strategies consistent with the purpose of the trust fund. All income shall accumulate in the account and be reinvested. No withdrawal may be made from the trust fund except as authorized in writing by the department.

(b) Following issuance of a certificate of completion of reclamation for the entire mining site or upon permit revocation, the trust corpus shall consist of cash, certificates of deposit, or U.S. government securities. A total of no more than \$100,000 in cash and certificates of deposit may be placed in the trust account; U.S. government securities shall be used for amounts in excess of \$100,000.

(4) The trust fund shall be created and maintained in perpetuity with funds adequate for the following activities:

(a) Remedial action required as the result of spills of hazardous substances, as defined in s. 292.01(5), Stats., at the mining site.

(b) Remedial action to mitigate any hazardous substances that escape from the mine workings into the surrounding environment after the mining operation has ceased:

(c) Remedial action required as the result of failure of a mining waste facility to contain the waste.

(d) Provision of a replacement water supply as required under s. 293.65(4)(d), Stats.

(e) Preventive measures taken to avoid adverse environmental consequences, including measures such as replacement of components of waste disposal facilities. However, if the measures relate to closure or long-term care, financial responsibility for the associated costs shall be covered in accordance with ss. NR 182.16 and 182.17, respectively.

(5) Funding of the trust fund shall be determined at the hearing conducted under s. 293.43, Stats., and shall be incorporated into the mining permit issued under s. 293.49, Stats., as follows:

(a) A schedule of payment into the trust fund, during mining operations, shall be established which takes into account a reasonable projection of exposure. Preventive or remedial measures which could be needed early in the mining operation shall be fully funded prior to the commencement of mining. Those preventive or remedial measures which could be needed only later in the operation, or after mining has ceased, may rely on income from the trust and periodic payments into the principal by the permittee.

(b) In establishing the level of funding, the department shall evaluate the likelihood of the need for preventive or remedial measures based on reasonable and conservative risk considerations. In addition to the risk considerations, the department shall evaluate the range of costs of the preventive and remedial measures that might be necessary in response to the risks. The level of funding shall be sufficient to cover the costs of all preventive and remedial measures ~~that have a reasonable possibility of being necessary~~ needed to correct all reasonably possible occurrences. Costs for worst case preventive or remedial measures shall be used when the measures are shown to have a reasonable possibility of being necessary. Opportunity shall be provided at the hearing conducted under s. 293.43, Stats., for testimony that the worst case preventative or remedial measures have a reasonable possibility of being necessary.

(c) In determining costs associated with the preventive or remedial measures identified in sub. (4); consideration shall be given to the risk assessment submitted pursuant to s. NR 132.07 (3)(l), the contingency plan submitted pursuant to ch. NR 182, risks and impacts identified in the environmental impact statement and the measures reasonably anticipated necessary to address those risks and impacts.

(d) To the extent the trust fund relies on accrued income to pay for future preventive or remedial measures, the conservative projection of earnings above inflation shall be used.

(e) The funding of the trust fund for activities identified in sub. (4) shall consider the existence of other binding, guaranteed sources of funds from the permittee which address the same preventive and remedial measures and the financial ability of the permittee to comply with legal

obligations for necessary remedial activities during the operation. It is the intent of this section that the trust fund not duplicate similar financial obligations under other applicable provisions of law or administrative codes.

(6) Principal and income accrued from the trust fund may be used to pay for activities identified in sub. (4), only if:

(a) The mine permittee is not obligated by law or conditions of other obligations, such as the provision of a bond under s. 293.51, Stats., to pay for the activities, or

(b) The mine permittee is financially incapable of paying for the costs of the activities regardless of legal obligations to do so.

(7) Notwithstanding sub. (6), principal and income from the trust fund may be used to pay for activities identified in sub. (4), which require immediate attention while issues of financial responsibility are resolved. Should the permittee, a successor in interest to the permittee or another party be determined to be financially responsible for the costs of the activities, the reimbursement monies obtained from those entities shall be deposited in the trust account.

(8) Activities identified under sub. (4) shall be undertaken by private entities under contract with the department and the trustee. The department shall determine when preventive or remedial activities to be funded by the trust fund need to be undertaken. It shall identify the scope of work, choose the entity to perform the work, and monitor compliance with the contract. The contract shall state that, upon satisfactory performance of work as determined by the department, the trustee shall pay to the contracting entity the amounts provided for by the contract. The contract may allow for interim payments.

(9) Periodic reevaluation of the funding the trust account shall be undertaken as follows:

(a) The department shall review the funding of the trust account, once every 5 years after issuance of the mining permit, or when the department determines there has been a significant event or changed circumstances. The review shall include the propriety of the assumptions made in the initial determination of funding, findings from previous reviews, as well as the adequacy of the funding in the trust account. The determination may include a requirement for additional payment of principal by the permittee, or, in the case of a determination of over-funding, reimbursement to the permittee of a portion of the funds in the trust account.

(b) The permittee, any municipality within whose boundaries the mining site is located, any Native American community that has tribal lands within such municipality, or 5 or more interested parties may request a review independent from the review provided for in par. (a). The department shall grant the request upon a showing by the proponent for the review that there has been a significant event or changed circumstances since the last review, and that these changed circumstances warrant reevaluation prior to the next 5-year review.

(c) The department shall provide a notice of its determination under pars. (a) and (b) in the same manner as specified under s. 293.43(3)(b)1. and 2., Stats. If the determination involves any modifications to the funding of the trust fund, the notice shall include a detailed summary of the proposed changes and provide for provision of the complete proposed set of changes upon written request.

(d) If the department determines a modification to the funding of the trust is warranted, and if the permittee, any municipality within whose boundaries the mining site is located, any Native

American community that has tribal lands within such municipality, or 5 or more interested parties requests a hearing with 30 days of notice, a contested case hearing shall be conducted under ch. 227, Stats.

(10)(a) During the period of scheduled payments into the trust fund, the permittee shall establish and maintain a separate performance bond or satisfactory insurance coverage in an amount adequate to cover all risks and associated remedial and preventive measures identified under par. (5)(b).

(b) The performance bond or insurance shall remain in effect until issuance of a certificate of completion of reclamation for the entire mining site.

(c) The performance bond or insurance shall be issued by a company licensed to do business in the state of Wisconsin and shall be subject to the termination and replacement requirements specified in s. NR 132.09(2)(a)2. and 3.

(d) If implementation of remedial or preventive measures under sub. (4) is needed prior to issuance of a certificate of completion of reclamation for the entire mining site, the performance bond or insurance shall only be used to fund the necessary actions in the event the trust fund is not sufficient to cover the entire costs of remediation or prevention.

SECTION 2. NR 132.09(3) is amended to read:

NR 132.09(3) Upon receipt of a satisfactory reclamation bond, ~~and~~ the certificate of insurance and evidence of the establishment of the necessary trust fund and associated performance bond or insurance in accordance with s. NR 132.085, the department shall give written authorization to the operator to commence mining in accordance with the mining and reclamation plans.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on September 14, 1997 and June 30, 1999.

The 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.

Dated at Madison, Wisconsin

12/10/99

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By


George E. Meyer, Secretary

(SEAL)



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor
George E. Meyer, Secretary

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December 9, 1999

Mr. Gary L. Poulson
Assistant Revisor of Statutes
131 West Wilson Street - Suite 800
Madison, WI

Dear Mr. Poulson:

Enclosed are two copies, including one certified copy, of State of Wisconsin Natural Resources Board Order No. SW-21-97(A). These rules were reviewed by the Assembly Committee on Environment and the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform pursuant to s. 227.19, Stats. Summaries of the final regulatory flexibility analysis and comments of the legislative review committees are also enclosed.

You will note that this order takes effect following publication. Kindly publish it in the Administrative Code accordingly.

Sincerely,

George
George E. Meyer
Secretary

Enc.

