

**Wisconsin Department of Natural Resources
Natural Resources Board Agenda Item**

CORRECTED
5/16/14

SUBJECT:

Request that the Board adopt Board Order WA-14-13, proposed rules affecting chs. NR 103, 123, 130, 131, 132, 135, 140, 182, 213, 214, 350, 406, 500, 502, 503, 504, 506, 507, 508, 509, 510, 512, 514, 516, 518, 520, 524, 526, 528, 538, 700, 812, and 815, Wis. Adm. Code, related to proposed changes as required by Section 103 of 2013 Wisconsin Act 1, the ferrous mining law.

FOR: May 2014 Board meeting

PRESENTER'S NAME AND TITLE: Ann Coakley, Director of the Bureau of Waste and Materials Management

SUMMARY:

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

These proposed rule changes were presented to the NRB at the August 2013 meeting along with a request to hold public hearings. Public hearings were held on November 11, 2013 in Ashland and November 15, 2013 in Madison. The public comment period ended on December 2, 2013. Comments received were considered in finalizing these rules.

The Department submitted a proposed Board Order for final adoption of the rules. Upon further review of the proposed Board Order, the Department determined that a number of formatting, typographical and punctuation corrections should be made. A corrected proposed Board Order is submitted that includes the corrections, highlighted in yellow. The corrected Board Order:

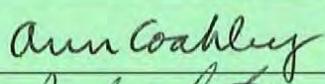
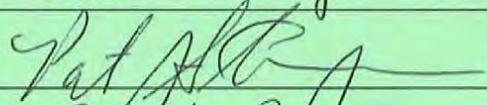
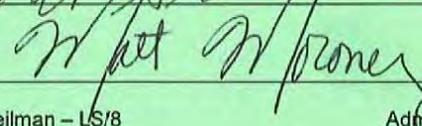
- Renumbers definitions to maintain proper alphabetical order and corrects punctuation in sections 7, 7m, 12, 12g, 12r, 16, 16g, and 16r
- Corrects punctuation and formatting in sections 10, 14, 19, 22, 23, 28, 30, 34-49, 51-53, and 56
- Removes an unnecessary word from sections 55 and 57

None of these proposed changes affect the substance of the proposed rules. A final proposed Board Order is attached that incorporates the corrections.

RECOMMENDATION: That the Board adopt Board Order WA-14-13.

LIST OF ATTACHED MATERIALS (check all that are applicable):

- | | |
|---|---|
| <input checked="" type="checkbox"/> background memo | <input type="checkbox"/> Attachments to background memo |
| <input checked="" type="checkbox"/> Fiscal estimate and economic impact analysis (EIA) form | <input type="checkbox"/> Environmental assessment or impact statement |
| <input checked="" type="checkbox"/> Response summary | <input checked="" type="checkbox"/> Board order/rule |

Approved by	Signature	Date
Ann M. Coakley, Bureau Director		05/14/14
Pat Stevens, Administrator		5/14/14
Cathy Stepp, Secretary		5/15/14

cc: Board Liaison - AD/8

Cheryl Heilman - LS/8

Administrative rule officer - LS/8

CORRESPONDENCE/MEMORANDUM

DATE: April 28, 2014

TO: All Members of the Natural Resources Board

FROM: Cathy Stepp, Secretary

SUBJECT: Background memo on Board Order WA-14-13, relating to rules affecting Wis. Adm. Code chapters pertaining to ferrous and nonferrous mining as required by section 103 of 2013 Wisconsin Act 1

1. Subject of Proposed Rule:

The proposed rules address the regulation of ferrous and nonferrous mining activities, as required by 2013 Wisconsin Act 1.

2. Background:

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

3. Why is the rule being proposed?

The objective of the proposed rules is to satisfy the department's obligation to promulgate rules as directed by section 103 of the Act.

4. Summary of the rule.

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 also: 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.

5. How does this proposal affect existing policy?

These proposed rule changes do not address specific policy issues, but rather align administrative rules with current law as required under section 103 of the Act.

6. Has Board dealt with these issues before?

The Board approved the statement of scope for the rules on May 22, 2013. The Board granted permission to hold public meetings on the proposed rules on August 14, 2013.

7. Who will be impacted by the proposed rule? How?

The department does not believe the proposed rule changes will have significant effects on people or businesses throughout the state. The proposed rule changes act to ensure the rules are consistent with current statutory provisions governing ferrous and nonferrous metallic mining. The proposed rules clarify the applicability of administrative rules to ferrous and nonferrous mining activities and will align administrative rules to current mining law.

8. Soliciting public input on economic impact synopsis

The department solicited comments on a draft 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.

9. Public hearing and comments synopsis

The department conducted two (2) hearings on the proposed rules in the fall of 2013 in Ashland (November 11, 2013) and Madison (November 15, 2013). A total of approximately thirty-eight (38) people attended the hearings. As part of the hearing public notification process, public review and participation was sought statewide in news releases and on the department website. In addition to comments at the hearings, the department received several written comments during the thirty (30) day comment period.

Most comments did not focus on the rule contents, but instead commenters voiced their concerns regarding a potential ferrous mine contemplated for Iron County, frustration with 2013 Wisconsin Act 1, and, mining activity in general. Two written sets of comments dealt with the content of the rules. The department made changes to the proposed rules in response to these written comments. A summary of the comments and the department's response is attached.

10. Environmental analysis

The rule making process for Board Order WA-14-13 began in 2013. On April 1, 2014; revisions to ch. NR 150 became effective. The department complied with both the prior ch. NR 150 and the current ch. NR 150 requirements for environmental review. Under the prior ch. NR 150, the department found that neither an environmental analysis nor an environmental impact statement were necessary because the proposed rule changes were a Type III action per s. NR 150.03(6)(b)3.b, Wis. Adm. Code. Under the current ch. NR 150, the department has determined that the actions taken during the promulgation of these proposed rules constitute an equivalent analysis under NR 150.20 (2)(b), Wis. Adm. Code. The department's determination of compliance in accordance with ss. NR 150.20(2)(b) and 150.35, Wis. Adm. Code, is attached.

11. Small Business Analysis

The department does not believe these proposed rule changes will affect small businesses. The department solicited comments and information on the economic impacts of the proposed rules and provided a 14 day response period. No comments or information was received indicating that small businesses would be impacted.

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
DETERMINATION OF WEPA COMPLIANCE
FOR BOARD ORDER WA-14-13**

FINDINGS OF FACT

1. 2013 Wisconsin Act 1 (Act), became effective on March 26, 2013.
2. Section 103 of the Act directs the Department of Natural Resources (Department) to promulgate certain administrative rules related to mining activities.
3. On May 22, 2013, the Department received authorization to proceed with the rulemaking required under section 103 of the Act from the Natural Resources Board (Board).
4. The Department prepared proposed rules as Board Order WA-14-13 to satisfy section 103 of the Act.
5. The Department made a preliminary determination that promulgation of the proposed rules constituted a Type III action under s. NR 150.03(6)(b)3.b., Wis. Adm. Code.
6. In a Background Memorandum dated July 19, 2013, and prepared for the Board on Order WA-14-13, the Department stated its preliminary determination on the classification of the proposed rules as a Type III action.
7. On August 14, 2013, the Board approved the Department's request to publish a public hearing notice and hold public hearings on proposed rules in Board Order WA-14-13. Materials provided to the Board for consideration included the July 19, 2013, Background Memorandum.
8. In the Notice of Public Hearing dated October 15, 2013 for the proposed rules, the Department included its preliminary determination that adoption of the proposed rules would not involve significant adverse environmental effects and would not need an environmental analysis under ch. NR 150, Wis. Adm. Code. The Notice included a statement that, based on comments received, an environmental analysis may be prepared before proceeding with the adoption of the proposed rules.
9. Public hearings were held on November 11, 2013, in Ashland and November 15, 2013, in Madison. The public comment period closed on December 2, 2013.
10. No comments were received on the Department's preliminary determination that an environmental analysis under ch. NR 150, Wis. Adm. Code, would not be needed.
11. Effective April 1, 2014, ch. NR 150, Wis. Adm. Code, was repealed and recreated.
12. Under current s. NR 150.10(1m)(a), the Department must conduct a strategic analysis for all new or revised administrative rules if the rule involves unresolved conflicts concerning alternative uses of available resources and the Department has substantial discretion in formulating important provisions of the rule.
13. The Department has been directed by the Legislature in section 103 of 2013 Act 1 to amend the rules as proposed in Board Order WA-14-13. The Department does not have substantial discretion in formulating important provisions of the rules proposed in Board Order WA-14-13.
14. The current s. NR 150.20(4)(a) establishes that an environmental analysis is required for the proposed rules in Board Order WA-14-13.
15. The current s. NR 150.20(2)(b) provides the Department may determine under the current s. NR 150.35 that there is an equivalent analysis for a specific action.
16. The rulemaking process for Board Order WA-14-13 was and is governed by statutes, executive order, and Department and Board manual codes.
17. The rulemaking process contained procedures for evaluating the environmental impacts of the proposed rules and provided for public disclosure and multiple opportunities for public input.

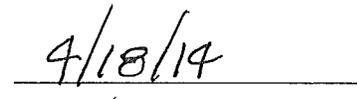
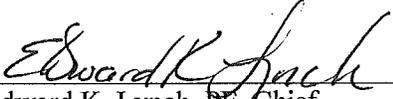
CONCLUSIONS OF LAW

1. A strategic analysis under the current s. NR 150.10 (1m), Wis. Adm. Code, is not required for Board Order WA-14-13 because the Department does not have substantial discretion in formulating important provisions of the proposed rules.

2. The rulemaking process for Board Order WA-14-13 constitutes an equivalent analysis action, under current s. NR 150.20(2)(b), Wis. Adm. Code.
3. The Department has complied with WEPA, pursuant to both the former ch. 150 and the current s. NR 150.35(1) and (1m), Wis. Adm. Code, for Board Order WA-14-13.

Approved:

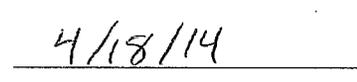
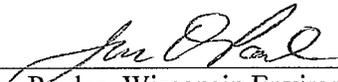
Date:



Edward K. Lynch, PE, Chief
Hazardous Waste and Mining Section
Bureau of Waste and Materials Management

Approved:

Date:



James Pardee, Wisconsin Environmental Policy Act Coordinator
Office of Business Support, Sustainability and Science
Bureau of Energy, Transportation and Environmental Analysis

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original Updated Corrected

2. Administrative Rule Chapter, Title and Number

Several Administrative codes:

Chapters NR 130, 131, 132, and 182, Wis. Adm. Code relating to metallic mining,
Chapters NR 500 to 518, 524, 528 and 538, Wis. Adm. Code relating to solid waste management, and,
Chapters NR 103, 123, 135, 140, 213, 214, 406, 812, and 815, Wis. Adm. Code to provide the same exemptions for
ferrous mining and associated activities that exist for nonferrous mining activities.

3. Subject

Implementation of Section 103 of Wisconsin Act 1. The proposed rules will revise the following:

- Chapters NR 130, 131, 132, and 182, Wis. Adm. Code and other rules promulgated under section 293.13 (1) (a) of the statutes to clarify these chapters do not apply to ferrous metallic mining,
- Chapters NR 500 to 518, 524, 528, and 538, Wis. Adm. Code and any other rules promulgated under sections 289.05 and 289.06 (1) of the statutes so these rules are consistent with ferrous mining law, subch. III of chapter 295 of the statutes, and,
- Other 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. Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

5. Chapter 20, Stats. Appropriations Affected

No

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect Increase Existing Revenues Increase Costs
 Indeterminate Decrease Existing Revenues Could Absorb Within Agency's Budget
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy Specific Businesses/Sectors
 Local Government Units Public Utility Rate Payers
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

9. Policy Problem Addressed by the Rule

These proposed rule changes do not address a specific policy problem, but rather align administrative rules with current law as directed by section 103 of 2013 Wisconsin Act 1. The changes will clarify the applicability of existing metallic mining administrative rules and 2013 Wisconsin Act 1.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The Department does not believe the proposed rule changes will have any economic impacts. However, 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, business associations, etc. The Department received one response letter from the Red Cliff Band of Lake Superior Chippewa. The letter states that the Fiscal Estimate/Economic Impact Analysis is inherently flawed. However, the Band's comments appear directed primarily to 2013 Wisconsin Act 1 and potential future mining activity. The Department believes that the proposed rules will not have an economic impact on Native American Tribes or tribal members.

11. Identify the local governmental units that participated in the development of this EIA.

The Department shared the draft of this FE/EIA with local government representatives. The Department did not receive

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

comments from local governments or from associations representing local governments. The Department does not believe the proposed changes will have economic impacts to local governments.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The Department believes the proposed rule changes will have no economic effects as the proposed rule changes simply act to ensure the rules are consistent with current statutory provisions governing ferrous and nonferrous metallic mining. Spending will not be affected as the changes should not influence commercial activities related to mining. The proposed rules clarify the applicability of administrative rules to ferrous and nonferrous mining activities and will align administrative codes to the current mining law. The changes do not affect the location or quantity of ferrous or nonferrous metallic material that may be mined as the amount and location of mining activities is driven by location of the mineral deposit. Spending will not be affected as the changes should not influence commercial activities related to mining.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The proposed rules will provide for a more clear understanding, and consistent implementation, of administrative rules as they apply to mining activities. Other alternatives were not considered because this approach is directed in the non-statutory provisions of section 103 of 2013 Wisconsin Act 1.

14. Long Range Implications of Implementing the Rule

The proposed rules clarify the applicability of the Department's administrative rules to both ferrous and nonferrous mining activities.

15. Compare With Approaches Being Used by Federal Government

The changes in state law made by the 2013 Wisconsin Act 1 and the proposed changes in state administrative rules constitute 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 any 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 and the Clean Air Act administered by the U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (ACOE).

16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

The Department's proposed rules implement changes required by the 2013 Wisconsin Act 1. 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.

17. Contact Name

Edward Lynch

18. Contact Phone Number

608/267-0545

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:
-

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-

Comments and Response Summary
Natural Resources Board Order WA-14-13

A. Legislative Council Rules Clearinghouse comments

The department sent Board Order Number WA-14-13, the Report to the Legislative Council Rules Clearinghouse (LCRC), and the Fiscal Estimate / Economic Impact Analysis to the LCRC on July 24, 2013. Comments were received from the LCRC on August 13, 2014. The LCRC comments and the department's responses are below:

2. Form, Style and Placement in Administrative Code

a. In several sections of the proposed rule, the department defines "nonferrous metallic mineral" to include "iron (excluding iron oxide)". Since this portion of the definition departs significantly from the plain language definition of "nonferrous", the department may wish to add a note or more clearly explain the extent to which iron compounds are included in the definition of "nonferrous metallic mineral". Additionally, the present reference to the exclusion of iron oxide should be revised to eliminate the parenthesis. [s. 1.01 (6), Manual]

In response to this comment, as well as written comments received during the public comment period, the department has revised the proposed definitions at ss. NR 130.03(11), 131.03(9), 132.03(9), and 182.04(30m) so the proposed language reads as follows and includes a note as mentioned by the LCRC:

"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 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.

b. In Section 26, "NR 182.04 (30m)" should not be underscored. [s. 1.06(1)(b), Manual.]

The underscore has been removed.

5. Clarity, Grammar, Punctuation and use of Plain Language

a. In Section 49, a space should appear between "NR" and "182" in the underscored material.

A space was added. Section 49 in the proposed rule reviewed by LCRC appears in section 51 of Board Order WA-14-13.

b. In Section 52, does the underscore mark between "131" and "or" indicate a new space to be inserted in the administrative code? If not, the existing space in the rule text should be indicated without an underscore.

The underscore was unintended and has been removed. Section 52 in the proposed rule reviewed by LCRC appears in section 56 of Board Order WA-14-13.

B. Public meeting and written comment summary

The department published notice of public hearings on the proposed rule revisions in the Wisconsin Administrative Register. The department published the notice of rule hearings in the Wisconsin State Journal on November 1, 2013, the Ashland Daily Press on November 2, 2013, and Iron County Miner on November 7, 2013. Public meetings were held in Ashland, Wisconsin on November 11, 2013 and in Madison, Wisconsin on November 15, 2013. The public comment period ended on December 2, 2013.

A total of approximately thirty-eight (38) people attended the hearings in Ashland (November 11, 2013) and Madison (November 15, 2013). Oral comments at the hearings did not focus on the contents of the proposed rules. Commenters voiced their concerns regarding the proposed Gogebic Taconite project contemplated for Iron County, frustration with 2013 Wisconsin Act 1, and mining activity in general.

PERSONS APPEARING OR REGISTERING AT THE PUBLIC HEARINGS

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

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

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

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

PERSONS SUBMITTING WRITTEN PUBLIC COMMENTS

As part of the hearing public notification process, public review and participation was sought statewide in news releases and on the Department website. The Department received seven written comments by email or letter prior to the end of the December 2, 2013 public comment period. The following is a list of people who provided written comments.

Name and Organization	Comment
S. Pitta, Conservation Congress member	The proposed changes are quite alarming and I am against them. If the landowner wants to make land in the MFL program closed to the public, the entire parcel should be taken out of the MFL program. Creating special laws to bend the rules of the MFL program smacks of favoritism. That is disgusting. Private property and MLF ??? These are contrary concepts. Have it one way or another. If the mine company wants to protect itself from nonemployee spectators, they should consult the OSHA code of federal regulations. I am sure there are regulations on the book to protect a worksite in a public setting. Crafting a bill with no map displaying the areas affected is lazy bill writing. But what does one expect when the bill is written by the mine and sent to the rubber stamp legislature in Madison for passage by elected officials who are too lazy to write bills worthy of our state. The DNT knows exactly how much land is expected to be closed under bill 278. DNR staffers told the senate that 897.64 acres would be closed to the public. Since the DNT knows the exact amount, they can produce a map to show where the 879.4 acres was determined. This bill is bad government at its worst
S. Pitta	I am totally against the rules changes They are confusing. They grant special favor to one company. They are vague. The Penokee hills are the wrong place for a iron mine. Please deny the mine the permit to open and run the mine. We should be conserving our water, not letting it be polluted by mine runoff.
R. Peterson	If the mining company can present evidence that it can safely coexist with the environment, then let's put some jobs in this economically depressed area!

<p>A. Walhovd, Red Cliff Band, Lake Superior Chippewa</p>	<p>The definition of nonferrous metallic mineral is linguistically misleading. Iron is considered a nonferrous metallic mineral in the proposed changes despite the common English language definition of nonferrous to be "1. Denoting any metal other than iron; or 2. Not containing iron."¹ This definition should include a clause to clarify the purpose and intention of this unusual definition.</p> <p>Furthermore, the definition that a nonferrous metallic mineral would theoretically include ores that do include iron oxide (the sole ore that appears to fit the description of a ferrous metallic mineral), but as long as they are not extracted for their iron oxide properties, they are not considered ferrous. The intention behind this wording is not transparent, leading me to suggest that the definition be written as follows:</p> <p>"Nonferrous metallic mineral" means an ore or other earthen material to be excavated from the natural deposits on or in the earth for its metallic content that does not contain the ferrous material iron oxide.</p> <p>To consider the change proposed by the Wisconsin Department of Natural Resources would allow for mines whose targets are copper, zinc, lead, or other nonferrous metallic minerals to extract ores that contain ferrous metallic minerals without consideration of the ferrous qualities that they are inevitably extracting. That proposed change would defeat the purpose of having separate distinctions for ferrous and nonferrous metallic mining."</p> <p>¹ Collins English Dictionary – Complete & Unabridged 10th Edition. Harper Collins Publishers. 2009.</p>
<p>D. Blouin, Sierra Club - John Muir Chapter</p>	<p>Please send me an electronic copy of the 10/26/11 Legislative Council report entitled "Ferrous Mining Permit Application Process in Wisconsin, Minnesota, and Michigan."</p>
<p>A. Gedicks, WI Resources Protection Council</p>	<p>In the analysis under 3. "Explanation of agency authority" the DNR repeats the unscientific definition of "ferrous mineral" as "an ore that exists primarily in the form of an iron oxide, including taconite and hematite." The DNR cannot reasonably claim to regulate ferrous mining based upon this scientifically fraudulent definition of "ferrous mineral." As geoscientist Jason Huberty pointed out during the Senate hearing on the Iron Mine bill, this ignores the fact that there are sulfide minerals in the ore itself, specifically in the Yale member of the Ironwood formation itself. Based upon the one core from the Penokees that is publicly accessible, the Yale member is rich in sulfides, with pyrite concentrations of more than 15% in places. The law and the administrative rules continue the scientific fiction that the waste rock from this mine does not contain sulfide minerals. Where is the outcry from DNR professionals over this scientific travesty?</p>
<p>T. Myers, Gogebic Taconite (GTAC)</p>	<p>Comments were submitted on 23 proposed rule provisions. The comments are addressed more fully below.</p>

As with the oral comments given at the hearings, some written comments did not focus on the contents of the proposed rules. Written comments dealing specifically with the proposed rule language were submitted by Ms. Anastasia Walhovd of the Red Cliff Band of the Lake Superior Chippewa (November 18, 2013) and by Mr. Tim Myers of Gogebic Taconite (December 2, 2013). Those comments and the Department's responses are below.

a. Definition of “Nonferrous Metallic Mineral”

Both Ms. Walhovd and Mr. Myers commented on the definition proposed by the department for “nonferrous metallic mineral.” Their comments are repeated below:

From Ms. Walhovd’s letter of November 18, 2013:

“... *In regard to Section 7, NR 130.03 (11); Section 9, NR 131.03 (9); and Section 16, NR 132.03 (9).*

The definition of nonferrous metallic mineral is linguistically misleading. Iron is considered a nonferrous metallic mineral in the proposed changes despite the common English language definition of nonferrous to be “1. Denoting any metal other than iron; or 2. Not containing iron.”¹ This definition should include a clause to clarify the purpose and intention of this unusual definition.

Furthermore, the definition that a nonferrous metallic mineral would theoretically include ores that do include iron oxide (the sole ore that appears to fit the description of a ferrous metallic mineral), but as long as they are not extracted for their iron oxide properties, they are not considered ferrous. The intention behind this wording is not transparent, leading me to suggest that the definition be written as follows:

“Nonferrous metallic mineral” means an ore or other earthen material to be excavated from the natural deposits on or in the earth for its metallic content that does not contain the ferrous material iron oxide.

To consider the change proposed by the Wisconsin Department of Natural Resources would allow for mines whose targets are copper, zinc, lead, or other nonferrous metallic minerals to extract ores that contain ferrous metallic minerals without consideration of the ferrous qualities that they are inevitably extracting. That proposed change would defeat the purpose of having separate distinctions for ferrous and nonferrous metallic mining.”

¹ *Collins English Dictionary – Complete & Unabridged 10th Edition.* Harper Collins Publishers. 2009.

From Mr. Myers’ letter of December 2, 2013:

GTAC Comment 3, - *It is suggested that NR 130.03(11) be amended for consistency with the revisions to Wis. Stat. § 293.01(12m) and for consistency with edits DNR is making to NR 182.04(30m) within this rulemaking to clarify that NR 130 does not apply to ferrous metallic mining. GTAC suggests amending the definition as follows:*

(11) “Nonferrous metallic mineral” has the meaning specified in s. 293.01(12m), Stats.

Mr. Myers made a similar suggestion on the definition of “Nonferrous metallic mineral” in s. NR 131.03(9) (GTAC Comment 5) and s. NR 132.03(9) (GTAC Comment 9).

DNR RESPONSE. The statutory definition of “nonferrous metallic mineral” is found at s. 293.01(12m), Stats. In the proposed rules, the department provided additional wording to clarify what is and what is not covered because the department was concerned the use of the statutory definition alone in chs. NR 130 – 132, Wis. Admin. Code would be confusing. We are now proposing to use the statutory definition with a note to provide additional information on what minerals are covered by the nonferrous metallic mineral definition. This note will read: “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.”

To address the consistency concern with s. NR 182.04(30m), the department proposes using the same definition in ss. NR 130.03(11), 131.03(9), 132.03(9), and 182.04(30m), Wis. Adm. Code. Please see Sections 7, 12, 16 and 26 in the Natural Resources Board Order for the exact wording.

b. Comments related to Water Quality Standards and Wetlands. Chs. NR 103 & NR 350.

GTAC Comment 1. - DNR indicates in the Order that “[n]o changes are 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.” See Order at page 2. An initial matter, it does not appear that ch. NR 350 should apply to Wis. Stat. § 295.60 because ch. NR 350 is promulgated pursuant to Wis. Stat. § 281.36. Wis. Admin. Code § NR 350.01(2). Pursuant to Wis. Stat. § 295.60(11)(b), any rule promulgated under Wis. Stat. § 281.36 does not apply to mining or bulk sampling, except as specifically noted within Wis. Stat. § 295.60. Furthermore, the definition of “mitigation bank” in Wis. Admin. Code § NR 350.03(17) (providing for restoration, enhancement or creation) appears to be inconsistent with the definition of “mitigation bank” within Wis. Stat. § 295.60(1)(f) (providing for restoration, enhancement, creation or preservation). GTAC suggests that “preservation” be added to Wis. Admin. Code § NR 350.03(17) if DNR believes ch. NR 350 is applicable to Wis. Stat. § 295.60. It is also suggested that Wis. Admin. Code ch. NR 350 be evaluated both for consistency with Wis. Stat. § 295.60 and to ensure that appropriate edits are made in light of Wis. Stat. § 295.60(11)(c) (any rule DNR promulgates that relates to wetlands that conflicts with Wis. Stat. § 295.60 does not apply) if DNR believes there is a basis for ch. NR 350 to be applicable to subch. III of ch. 295, Stats. As an initial matter, GTAC suggests that Wis. Admin. Code § NR 350.02 be amended as follows:

*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 mining or bulk sampling subject to subch. III of ch. 295, Stats. 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.*

GTAC Comment 2. - Pursuant to Wis. Stat. § 295.60(3)(a), Wis. Stat. § 295.60 applies to “wetland individual permits and any other approvals for which wetland impact evaluations are required” in connection with mining or bulk sampling under subch. III of ch. 295, Stats. Accordingly, GTAC suggests that NR 103.06(4m) be edited as follows:

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

NR 103.06 (4m) This chapter does not apply to activities associated with Wetland alterations which are directly caused by a ferrous metallie mining operation or bulk sampling regulated or approved under subch. III of ch. 295, Stats., which shall be regulated pursuant to specific wetland standards under s. 295.60, Stats.

DNR RESPONSE to Comments 1 and 2. GTAC suggests that the department add language to the proposed rules to clarify that NR 103 and NR 350 do not apply to bulk sampling or ferrous mining subject to subchapter III of ch. 295, Stats.

The department declines to add the language proposed by comment 1 to the applicability section of ch. NR 350. The department believes the Applicability section of NR 350 is consistent with the ferrous mining law. However, to clarify that ch. NR 350 would not apply to wetland mitigation that is subject to an approval issued under the standards in section 295.60 of the ferrous mining law, the department proposes to add the following to s. 350.02: “This chapter does not apply to compensatory mitigation for ferrous mining or bulk sampling activities conducted in accordance with s. 295.60(8), Stats.” Please see Section 32 in the Natural Resources Board Order for the exact wording.

The department also declines to adopt the language proposed by comment 2. The department’s proposed revision to NR 103.06 adds a new section (4m) which states “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.” This proposed language complies with section 103 of 2013 Wisconsin Act 1 by using similar language to exempt both ferrous mining and nonferrous mining from ch. 103, Water Quality Standards for Wetlands. The language used for ferrous mining is consistent with section 295.60 of the ferrous mining statute, which states that no person may discharge dredged or fill material associated with a mining operation or with bulk sampling unless the discharge is authorized by an approval under section 295.60 or under a wetland general permit issued under s. 281.36(3g). If a wetland general permit is issued

under s. 281.36(3g), NR 103 water quality standards would apply. For this reason, the Department declines to adopt the more general language proposed in comment 2. for NR 103.

c. Comments related to Metallic Mining program – Chs. NR 130, 131, 132 and 182.

GTAC Comment 4. - *It is suggested that NR 131.02 be amended as follows to clarify that NR 131 does not apply to ferrous metallic mining:*

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 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.*

DNR RESPONSE to Comment 4. *GTAC maintains that additional language is required to clarify that ch. NR 131 does not apply to ferrous metallic mining. The department agrees to add the sentence “This chapter also does not apply to ferrous metallic mining regulated under subch. III of ch. 295, Stats.” to s. NR 131.02 Wis. Adm. Code. Please see Section 11 in the Natural Resources Board Order for the exact wording.*

GTAC Comment 6. - *Because there are references to “mining” in ch. NR 131 and “mining” is not defined, it is suggested that a definition of “mining” or “mining operation” be created in NR 131.03 to clarify that mining under NR 131 does not apply to ferrous mining as follows:*

“Mining” or “mining operation” has the meaning in s. 293.01(9), Stats.

DNR RESPONSE to Comment 6. – *The department declines to add a definition of “mining” or “mining operation” to ch. NR 131, Wis. Adm. Code. The definition at s. 293.01(9) Stats. states that, “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* (emphasis added). The department has added a sentence in s. 131.02 that ch. 131 does not apply to ferrous mining. The department does not believe that a reference to the statutory definition of “mining” and “mining operation” is needed in chapter 131.*

GTAC Comment 7. - *We suggest for consistency with changes to NR 182.04(33) and our suggested edit to NR 132.03(17) below, that DNR create a definition of “ore” in NR 131 as follows:*

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

DNR RESPONSE to Comment 7. – *The department declines to add a definition of “ore” to ch. NR 131. The department is accepting the proposed comments related to NR 182.04(33) and NR 132.03(17) (see response to comment 10 below). However, the word “ore” is only used once in s. NR 131.05(2)(e)(2) in conjunction with the term “ore body”. To obtain a nonferrous metallic mineral prospecting permit, s. NR 131.05(2)(e)(2) requires an applicant to file a notice containing a description of the “ore body.” The department has added a sentence in s. NR 131.02 stating that ch. 131 does not apply to ferrous mining. Adding the definition suggested by GTAC to ch. 131 may lead to confusion regarding the nature of prospecting. The proposed language defines an “ore” as a naturally occurring material where minerals may be recovered at a profit. A primary reason to conduct prospecting is to sample the mineral deposit to determine if materials may be recovered at a profit. Prior to prospecting, profitability may not be known. The department does not believe that the suggested definition of “ore” is needed in ch. 131 to clarify that the “ore body” to be described in the notice required under s. 131.05(2)(e)(2) is the body of material from which nonferrous minerals may be recovered.*

GTAC Comment 8. - It is suggested that NR 132.02(1) be amended as follows to clarify that NR 132 does not apply to ferrous metallic mining.

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.

DNR RESPONSE to Comment 8. The department agrees with adding the sentence. Please see Section 15 in the Natural Resources Board Order for the exact wording.

GTAC Comment 10. - It is unclear whether the references to "ore" in NR 132.03(26), NR 132.05(2)(e)1. and 2., and NR 132.07(3)(d) should refer to DNR's revised definition of "ore" in NR 182. Thus, it is suggested that the definition of "ore" be amended in NR 132 as follows:

NR 132.03(17) is amended to read:

NR 132.03(17) "Ore" means a naturally occurring material from which nonferrous metallic minerals may be recovered at a profit.

DNR RESPONSE to Comment 10. GTAC suggests the definition of "ore" under s. NR 132.03(17) be amended. The proposed definition is consistent with the revised definition of "ore" under s. NR 182.04(33) (see Section 27 in the Natural Resources Board Order). The department agrees with adding the word "nonferrous" to the definition of "ore" in s. NR 132.03(17). Please see Section 16 in the Natural Resources Board Order for the exact wording.

GTAC Comment 12. - To clarify that NR 182 does not apply to ferrous mining, it is suggested that s. NR 182.02(1) be amended as follows:

Amend NR 182.02(1) to read:

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

DNR RESPONSE to Comment 12. Ch. NR 182 applies to nonferrous metallic mineral mining wastes. It does not apply to ferrous mining wastes. To clarify this, the department agrees with the addition of the sentence proposed for the applicability section in s. NR 182.02(1). Please see Section 22 in the Natural Resources Board Order for the exact wording.

GTAC Comment 13. - Because NR 182.075 contains references to "mine," but NR 182 does not contain a definition of "mine," it is suggested that DNR create a definition of "mine" that is specific to nonferrous metallic mining to clarify that NR 182.075 does not apply to ferrous mining.

DNR RESPONSE to Comment 13. - The department agrees with this suggestion. Section NR 182.075 groundwater standards do not apply to ferrous mining waste facilities. Several references in ch. NR 182.075 to "mine" are as a descriptor to an "excavation". There is a definition of "mine" at s. 70.375(1)(as), Stats. that was revised in section 28 of 2013 Wisconsin Act 1, that includes the term excavation. The department will add a definition of "mine" in s. NR 182.04 that is patterned after the definition in s. 70.375(1)(as), Stats., and that defines a "mine" as an excavation in or at the earth's surface made to extract nonferrous metallic minerals. Please see Section 24 in the Natural Resources Board Order for the exact wording.

GTAC Comment 14. - Wis. Stat. § 295.73(4) indicates that the tonnage fees within Wis. Stat. § 289.62(2)(g) are not applicable to subch. III of ch. 295, Stats. Wis. Admin. Code § NR 182.18(3), however, contains fees for prospecting or mining wastes not specified and fees associated with nonacid producing taconite tailings, solids and waste rock. It is

suggested that DNR confirm that all necessary edits have been made to Wis. Admin. Code § NR 182.18 to clarify that these provisions do not apply to subch. III of ch. 295, Stats.

DNR RESPONSE to Comment 14. GTAC indicates a general concern that it might not be clear that the requirements of s. NR 182.18 will not apply to ferrous mining operations. Specifically, Table 2 of s. NR 182.18(3) contains tonnage fees established in s. 289.62(2), Stats, including references to fees for “nonacid producing taconite” tailings solids and waste rock. Section 70 of 2013 Act 1 amended s. 289.62(2)(g) to eliminate references to “nonacid producing taconite” tailing solids and waste rock. We agree that these references are no longer appropriate in Table 2, and the department proposes removing the references. Please see Section 29 in the Natural Resources Board Order for the exact wording.

d. Comments related to Industrial Wastewater Program – Ch NR 213.

GTAC Comment 15. - Subch. III of ch. 295, Stats. does not use the term “license.” Activities are “approved” pursuant to the mining permit and other approvals issued as part of a project under subch. III of ch. 295, Stats. Accordingly, it is suggested that s. NR 213.02(2)(b) be amended as follows:

SECTION 29. NR 213.02 (2) (b) is amended to read:

NR 213.02 (2) (b) Lagoons licensed under ch. NR 132, 182, 500, 502, 504, 550 or 660, or approved under subch. III of ch. 295, Stats.

DNR RESPONSE to Comment 15. The department agrees with this proposed change. Please see Section 30 in the Natural Resources Board Order for the exact wording.

e. Comments related to Drinking and Groundwater Program – Chs NR 140, 812 and 815.

GTAC Comment 11. – It is suggested that additional edits be made to NR 140 to clarify how NR 140 applies to ferrous mining. It also appears necessary to clarify in the last sentence of s. NR 140.03 that NR 140 only applies to ferrous mining to the extent it does not conflict with subch. III of ch. 295, Stats. Suggested edits to resolve these issues are as follows:

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, including mining waste sites, as defined in s. 295.41(31), Stats., 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 within this section.

DNR RESPONSE to Comment 11. The department proposes to accept the suggested edits of adding “as defined in s. 295.41(31), Stats.” to follow the phrase “mining waste sites.” However, instead of the addition proposed for the last sentence, in order to better clarify the application of ch. NR 140 under subch. III of ch. 295, Stats., the department proposes to add a direct reference to the applicable subch. III, ch. 295, Stats. Section 295.645, Stats. contains provisions for groundwater quality, monitoring, and response for ferrous mining sites, including mining waste sites. Section 295.645(9), Stats., states “Chapter 140, Wis. Adm. Code, applies to mining operations and mining sites, including mining waste sites, only to the extent it does not conflict with this section.” The department will revise the last sentence of s. NR 140.03 to read as follows, “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.*” Please see Section 19 in the Natural Resources Board Order for the exact wording.

GTAC Comment 18. – *We agree with the creation of NR 812.02(4); however, the suggested edits imply that bulk sampling has to occur at a “ferrous metallic mining site” in order to fall within the exemption. However, bulk sampling is done before the mining site has been determined. Accordingly, it is suggested that NR 812.02(4) be amended as follows:*

SECTION 51. 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. that is associated with mining operations, or bulk sampling, ~~at a ferrous mining site~~ regulated under subch. III of ch. 295, Stats.

DNR RESPONSE to Comment 18.

The department proposes to accept the suggested amendment to delete the “at a ferrous metallic mining site” language. The suggested amendment includes the addition of a comma after “bulk sampling”. The department believes that removal of both commas around the “or bulk sampling” language would best convey the intended meaning of this section. Please see Section 54 in the Natural Resources Board Order for the exact wording.

GTAC Comment 19. – *DNR appears to have omitted revisions to an existing exemption under ch. NR 132 that should extend to subch. III of ch. 295, Stats. It is suggested that the following revision be made:*

NR 812.05(5)(e) is amended to read as follows:

NR 812.05(5)(e) Injection activities conducted in connection with a nonferrous metallic mining operation approved under ch. NR 132 or in connection with mining approved under subch. III of ch. 295, Stats.

DNR RESPONSE to Comment 19: Section NR 812.05 prohibits the use of any well, drillhole, or water system for the placement of any waste, surface or subsurface water, or any substance as defined in s. 160.01(8), Stats., underground unless certain requirements are met. Section NR 812.05(5) indicates activities that are not prohibited by this section, including injection activities conducted in connection with a mining operation approved under ch. NR 132. The only injection activities that are allowed under ch. NR 132 are those specified under ss. NR 132.07(4)(e) and NR 815.11(6). These sections of the code allow the placement of backfill in an underground mine. The activities allowed by the exemption in s. NR 812.05(5) are limited to the backfilling of an underground mine because an underground mine shaft could meet the definition of a class V injection well and, without the exception, backfilling of the mine shaft would be prohibited under s. NR 812.05. The department agrees that s. NR 812.05(5)(e) should be amended to provide the same exemption for ferrous mining activities as is provided for nonferrous mining activities. The department proposes to amend s. NR 812.05(5)(e) to provide that the following activities are not prohibited: “Injection activities conducted in connection with placement of backfill into an underground nonferrous metallic 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.” Please see Section 55 in the Natural Resources Board Order for the exact wording

GTAC Comment 20. – *It is suggested that s. NR 815.06(5)(e) be amended as follows to incorporate defined terms for purposes of avoiding ambiguity and to ensure that the same exemption under ch. NR 132 extends to subch. III of ch. 295, Stats.*

SECTION 53. NR 815.06 (5) (e) is amended to read:

NR 815.06 (5) (e) Injection activities conducted in conjunction with a nonferrous metallic mineral mining operation approved under ch. NR 132 or in connection with mining as approved under subch. III of ch. 295, Stats.

DNR RESPONSE to Comment 20. Section NR 815.06 prohibits the construction of a class V well or use of a well as a class V injection well without the approval of the department unless the construction is specifically allowed by administrative rule. As noted in the response to comment 19 above, the exemption for injection wells relating to nonferrous mining extends only to construction or use of a well to place backfill in an underground mine. Without the exemption in s. NR 815.06(5)(e), the construction or use of a class V well without the approval of the department, to place backfill in an underground mine, would be prohibited. For this reason, the department proposes to revise s. NR 815.06(5)(e) to provide that the following activities are allowed: “Injection activities conducted in conjunction with placement of backfill into an underground nonferrous metallic 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. Please see Section 57 in the Natural Resources Board Order for the exact wording.

GTAC Comment 21. – *Because subch. III of ch. 295, Stats., may not outline precise provisions for the construction or use of a well to place backfill into ferrous metallic mines it is suggested that s. NR 815.11(7) be created as follows:*

SECTION 55. *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 in accordance with the provisions of subch. III of ch. 295, Stats., and shall comply with the requirements of s. 295.49 (2) (g), Stats.

DNR RESPONSE to Comment 21. The department accepts the edits suggested to s. NR 815.11(7). Please see Section 59 in the Natural Resources Board Order for the exact wording.

f. Comments related to Solid Waste Management Program – Chs NR 500 - 538.

GTAC Comment 16. - *Act 1 directed DNR to review its solid waste rules in NR chs. 500-555 for consistency with subch. III of ch. 295, Stats. and to provide the same exemptions for ferrous mineral mining as are provided with respect to nonferrous metallic mining. 2013 Wis. Act 1, § 103(1)(b) and (c). While DNR appears to have reviewed its solid waste rules to extend nonferrous metallic mining exemptions to ferrous mineral mining, additional edits are suggested below to ensure consistency with subch. III of ch. 295, Stats.*

DNR has made edits to Wis. Admin. Code §§ NR 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) and 538.02(1) to extend exemptions for nonferrous metallic mineral mining to ferrous mineral mining. In general, DNR amended the term “metallic mining operations” within each section to read “metallic mining operations for nonferrous minerals as defined in s. 293.01(9), Stats. and regulated under ch. NR 182” and added to the exemption “and metallic mining operations for ferrous minerals as defined in s. 295.41(26), Stats., and regulated under subch. III of ch. 295, Stats.”

For several reasons, we believe that the phrase DNR has added should read: metallic mining operations for ferrous minerals as defined in s. 295.41(26), including mining wastes and mining waste sites as defined in ss. 295.41(30) and (31), Stats., as regulated under subch. III of ch. 295, Stats.

It appears necessary to add the concept of mining wastes and mining waste sites within the language of the exemption. The original exemptions provided within these ch. NR 500 code sections appear to have been intended to exempt mining operations and mining waste sites regulated under ch. NR 182 (i.e., mining wastes and mining waste sites) associated with nonferrous metallic mineral mining from the specific provisions of the ch. NR 500. Since NR 182 does not apply to waste sites under subch. III of ch. 295, Stats., the reference only to mining operations for ferrous mining creates an ambiguity as to whether mining wastes sites are also exempted. The inclusion of a reference to “mining wastes” and

“mining waste sites” in the context of ferrous mineral mining ensures that the full exemption for nonferrous metallic mineral mining also applies to ferrous mineral mining.

Thus, it is suggested that Wis. Admin. Code §§ NR 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) and 538.02(1) be amended pursuant to the following example of suggested edits within s. NR 500.02(1):

SECTION 32. 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 (~~§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 ss. 295.41(30) and (31) Stats. as ~~and~~ regulated under subch. III of ch. 295, Stats.

DNR RESPONSE to Comment 16. The department accepts the suggestion to edit the applicability sections of chs. NR 500 – 538 to specifically refer to mining waste and mining waste sites as defined in ss. 295.41(30) and (31), Stats. Please see Sections 34 to 49 and 51 in the Natural Resources Board Order for the exact wording.

GTAC Comment 17. - DNR also created Wis. Admin. Code §§ NR 528.02(3)(i) and (j). While these exemptions appear to apply to the operations associated with mining, it appears that based upon the language of the exemption, the exemption needs to reference the specific material (i.e., waste) that should be exempt from regulation. Accordingly, we recommend that NR 528.02(3)(j) be created as follows:

NR 528.02 (3) (j) be created to read:

(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 ~~and~~ regulated under subch. III of ch. 295, Stats.

DNR RESPONSE to Comment 17. The department accepts the edits suggested to s. NR 528 (3)(j). Please see Section 50 in the Natural Resources Board Order for the exact wording.

g. Comment related to Hazardous Waste Management Program – Chs. NR 660 to 679 Series.

GTAC Comment 22. – 2013 Wisconsin Act 1 (“Act 1”) directed DNR to review its hazardous waste rules for consistency with subch. III of ch. 295, Stats. 2013 Wis. Act 1, § 103(1)(b) (requiring DNR to promulgate rules revising chapters NR 660 to 679 so that the rules are consistent with subch. III of ch. 295, Stats.). The DNR indicates that it did not propose revisions to its 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.” See Order of the State of Wisconsin Natural Resources Board Amending and Creating Rules, WA-14-13 at 2. DNR appears to be stating that because the state’s rules identifying when a waste is hazardous and when a mining waste is exempt from regulation are parallel to federal law, and because the regulations in NR 660-679 are necessary to comply with federal law, no changes to its hazardous waste rules are necessary. See *id.* at 3.

The DNR’s evaluation, however, does not appear to address whether the state’s hazardous waste regulations applicable to mining wastes need to be amended for consistency with subch. III of ch. 295, Stats. in the event that the mining wastes at issue are associated with ferrous mineral mining, which is what Act 1 directed. See also Wis. Stat. § 295.75 (1) (Subch. III of ch. 295, Stats. governs with respect to a conflict between Wis. Stat. chs. 291 or 289 or any rule promulgated pursuant to those chapters).

The DNR is correct that under subch. III of ch. 295, Stats., the disposal of mining wastes identified by the department as hazardous under § 291.05(1) in a mining waste site is subject to subch. III of ch. 295, Stats. and not to ch.

NR 660-679, except as necessary to comply with federal law. Wis. Stat. § 295.51(1e)(b). The state's hazardous waste rules, however, appear to have been developed contemplating that Wis. Stat. ch. 289 would be applicable to mining wastes. See Wis. Stat. § 291.35 (the requirements of ch. 291 are subject to Wis. Stat. §289.05(2) (rules for the identification and regulation of metallic mining wastes)). Most of Wis. Stat. ch. 289, however, does not apply to ferrous mineral mining. See Wis. Stat. § 295.51(9) (Subchapters I-V and VIII of ch. 289 and rules promulgated under those subchapters do not apply to a mining waste site, to the disposal of mining waste in a mining waste site, or to mining wastes used in the reclamation or construction of facilities or structures on the mining site).

Accordingly, it appears that DNR should review its hazardous waste rules to determine whether amendments are necessary to provide for the regulation of ferrous mineral mining wastes determined to be hazardous using the procedures and standards within subch. III of ch. 295, Stats., instead of pursuant to the procedures or standards within Wis. Stat. ch. 289, Wis. Admin. Code ch. NR 182 or any other provisions of the state's hazardous waste rules that are not necessary to comply with federal regulations adopted under the federal Resource Conservation and Recovery Act. DNR should also confirm that there are no other places in the hazardous waste regulations in which exemptions are provided for nonferrous metallic mining and associated activities that need to be provided for ferrous mineral mining and associated activities. 2013 Wis. Act 1, §103(1)(c).

DNR RESPONSE to Comment 22. The department has considered comment 22 and examined the hazardous waste rules, which are contained in chs. NR 660-679. The department also reviewed chs. 289 and 291, Stats., along with pertinent federal guidance. The department has found no conflict between the provisions of ch. 295 and the hazardous waste regulations and no exemption for nonferrous metallic mining that requires the rules to be amended to provide a similar exemption for ferrous mining. The exemption provided in s. NR 661.04 for mining extraction, beneficiation and processing, and specific wastes associated with these activities, applies to both ferrous and nonferrous mining wastes.

Section 295.51(1e), Stats., regulates hazardous mining waste for ferrous mining operations. Section 295.51(1e)(a) requires the department to designate any mining wastes identified by the department as hazardous under s. 291.05(1), Stats., prior to an informational hearing the department conducts before approving or denying an application for a mining permit. At the point in the permit application process when the public hearing is conducted, the permit applicant will have characterized and analyzed any mining wastes to assess the potential impact of handling, storage and disposal, as required under s. 295.51(3), Stats. The applicant will also have determined whether a waste is hazardous as part of the waste characterization. Section 295.51(1e)(b) specifies:

(b) The disposal of any mining wastes that are identified by the department as hazardous under s. 291.05 (1) in a mining waste site is subject to this subchapter, and not to chs. NR 660 to 679, Wis. Adm. Code, except as necessary to comply with applicable federal regulations adopted under the federal Resource Conservation and Recovery Act, 42 USC 6901 to 6991m.

Pursuant to this section, any mining wastes the department identifies as characteristically hazardous waste are not subject to the NR 600 rules unless compliance with the state hazardous waste rules is necessary to comply with the federal hazardous waste regulations. The state hazardous waste rules that identify when a waste is hazardous (e.g., if they have certain characteristics or meet specific listings) parallel and are equivalent to the federal hazardous waste regulations. In 2005, the department undertook a significant rule writing effort to standardize the content and format of Wisconsin's rule with the federal Resource Conservation and Recovery Act (RCRA) regulations.¹ The department is authorized by the U.S. Environmental Protection Agency to administer the federal hazardous waste program in Wisconsin. As part of the program authorization, the department is required to adopt rules that are at least as stringent as regulations promulgated under the federal hazardous waste statutes. The state's hazardous waste rules in chs. NR 600 to 679 do not contain any requirements applicable to ferrous mining wastes that are not mandated under the federal Resource Conservation and Recovery Act. Accordingly, ferrous metallic mining wastes, if hazardous, must be managed under the requirements of the state hazardous waste rules.

However, most of the wastes generated by the extraction, beneficiation, and processing of metallic ores are exempted from both the federal and state hazardous waste regulations. The exclusion in our rules is in s. NR 661.04(2)(g), which lists specific activities that constitute extraction, beneficiation and processing, and specific wastes associated with these

¹ https://docs.legis.wisconsin.gov/code/chr/related/2005/cr_05_032/cr_05_032_agency_report_to_legislature.pdf

activities, all of which are excluded from hazardous waste regulation. Section NR 661.04(2)(g) provides in relevant part as follows:

All of the following solid wastes are not hazardous wastes:

.....
(g) Solid waste from the extraction, beneficiation and processing of ores and minerals

1. For purposes of this paragraph beneficiation of ores and minerals is restricted to the following activities: crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water or carbon dioxide; roasting; autoclaving, or chlorination in preparation for leaching. . . ; gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; eletrowinning; precipitation; amalgamation; and heap, dump, vat, tank and in situ leaching.

Other wastes generated at a mining facility that are not uniquely related to the mineral extraction, beneficiation and processing are not exempt, and must be managed according to all applicable hazardous waste requirements.

In an EPA guidance document called Mining Industry Profile: Iron, EPA interprets the federal exclusion for metallic mining wastes (commonly called the Bevill exclusion) to encompass those wastes uniquely associated with extraction and beneficiation activities. EPA states that the exclusion does not apply to wastes generated at a mining facility that are not uniquely related to the mineral extraction or beneficiation. One example cited in the EPA guidance is waste solvents that meet the listing requirements and that are used to clean metal parts. These solvents are hazardous waste and must be managed according to applicable rules. As requested in comment 22, the department has again reviewed the rules for potential conflicts and exclusions, and does not believe any proposed rules or amendments to the hazardous waste rules are required to comply with 2013 Wisconsin Act 1.

h. Comment related to the Remediation and Redevelopment Program – NR 700 series.

GTAC Comment 23. *DNR's rules implementing Wis. Stat. ch. 292 are generally contained within its ch. NR 700 rules, which are intended to apply to sites subject to regulation under ch. 292. Wis. Admin. Code § NR 700.02(2). DNR's ch. NR 700-754 rules were adopted pursuant to Wis. Stat. §§ 289.05(1) and 289.06. Wis. Admin. Code § NR 700.01(2). Act 1 amended the Wis. Stat. § 292.01(1m) definition of "approved mining facility" to include "mining waste sites" regulated under subch. III of ch. 295, Stats. Thus, mining waste sites regulated under subch. III of ch. 295, Stats. are "sites" subject to Wis. Stat. ch. 292. See Wis. Stat. § 292.01(18) ("site or facility" includes an approved mining facility). Moreover, rules contained in NR 700 were promulgated pursuant to Wis. Stat. § 289.06(1), which requires the promulgation of rules relating to investigation and remedial action for sites or facilities and other properties affected by discharges.*

DNR's detailed review of the Wis. Admin. Code ch. NR 700 rules for consistency with Subch. III of ch. 295, Stats. was required by Act 1. 2013 Wis. Act 1, § 103(1)(b) (DNR to revise its rules promulgated under Wis. Stat. § 289.06(1) for consistency with subch. III of ch. 295, Stats.). The Wis. Admin. Code ch. NR 700 series was reviewed in detail for consistency with subch. III of ch. 295, Stats. in response to this GTAC comment and because the ch. NR 700 rules were adopted pursuant to statutory provisions that include Wis. Stat. §§ 292.31 and 289.06, such that the Act requires a consistency review. DNR should also review the ch. NR 700 series to provide for any exemptions associated with nonferrous metallic mining or associated activities to be provided for ferrous mineral mining and associated activities. 2013 Wis. Act 1, § 103(1)(c).

DNR RESPONSE to Comment 23. The department has reviewed comment 23. We believe this comment is addressed by proposing the following changes. To reflect the amended definition of "approved mining facility" in s. 292.01(1), Stats., the department proposes to amend section NR 700.03(21), Wis. Adm. Code as follows:

"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.

In addition, the department proposes to amend the note to section 700.03(21) as follows:

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 mining facility" is defined by reference to the definition of approved mining facility in s. 289.01(4) and also includes a mining waste site as defined in s. 295.41(31). "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) means any land or appurtenances thereto used for the storage or disposal of ferrous mining waste. Subchapter III of Chapter 295, Stats., applies to ferrous metallic mining. "Nonapproved facility" as defined in s. 289.01(24) means "a licensed solid or hazardous waste disposal facility which is not an approved facility."

Please see Section 52 in the Natural Resources Board Order for the exact wording.

**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 **renumber 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) and ~~(11)~~, 130.06 (1) (intro.), 131 (title), 131.01, 131.02, 131.03 (8), ~~(9)~~, (15), and (22), 132 (title), 132.01, 132.02 (1), 132.03 (8), ~~(9)~~, (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:

Edward K. Lynch, PE, Chief,
Hazardous Waste and Mining Section – WA/5
Edward.lynch@wisconsin.gov
608/267-0545

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) and (11) are 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) "Metallie 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.) Metallie 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), ~~(9)~~, ~~(15)~~, and ~~(22)~~ are 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), ~~(9), (11), (14), (17), and (23)~~ are 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 ~~metallie~~ 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.

~~NR 182.04~~ **(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 ss. 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 ss. 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 ss. 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 (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 ss. 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 ss. 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 (59 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 ss. 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 (59 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 ss. 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 (59 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 ss. 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 (59 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 ss. 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 (59 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 ss. 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 (59 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 ss. 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 (59 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 ss. 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 ~~685679~~, ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (59 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 ss. 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 ~~685679~~, ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (59 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 ss. 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 6790, ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (59 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 ss. 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 6790, ~~and~~; metallic mining operations for nonferrous minerals as defined in s. 293.01 (59 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 ss. 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 ss. 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)." Ch. 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 a 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 ~~a 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 _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)

**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 **renumber 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) "~~Metallie 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.) ~~Metallie 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) “Metallie 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~~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 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 _____.

Dated at Madison, Wisconsin _____.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Cathy Stepp, Secretary

(SEAL)