

**BEFORE THE
DEPARTMENT OF NATURAL RESOURCES**

NOTICE OF PUBLIC HEARING
Natural Resources Board Order WA -14 -13

NOTICE IS HEREBY GIVEN THAT pursuant to ss. 227.16 and 227.17, Wis. Stats, the Department of Natural Resources, hereinafter the Department, will hold two public hearings on proposed rule revisions required by Section 103 of 2013 Wisconsin Act 1, the Ferrous Mining Law. The proposed rules revise sections of chs. NR 130, 131, 132, 182, 500 – 538, and other chapters of the Wisconsin Administrative Code that contain exemptions (NR 103, 123, 135, 140, 213, 214, 406, 812, and 815, Wis. Adm. Code) for nonferrous mining as required by Section 103 of 2013 Wisconsin Act 1. The public hearing will be held on the dates, times and locations listed below.

The Department has proposed these modifications to certain existing rules in order to conform with the statutory changes contained in 2013 Wisconsin Act 1, as required by section 103 of the Act. No changes other than those mandated by section 103 are proposed. The proposed rules apply statewide and are not specific to any one project. The proposed rules clarify that ferrous mining activities are regulated by subchapter III of chapter 295 and nonferrous mining activities are regulated under chapter 293 and the nonferrous mining regulations.

Hearing Information

Date and Time

Locations

November 11, 2013 4:00 – 7:00 p.m.

**Wisconsin Indianhead Technical College
Room 305
2100 Beaser Avenue
Ashland, Wisconsin**

November 15, 2013 1:00 – 4:00 p.m.

**Wisconsin Department of Natural
Resources (GEF 2) – Room G09
101 South Webster Street
Madison, Wisconsin**

Reasonable accommodations, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request. Contact Jane Washburn, Bureau of Waste and Materials Management, 101 S. Webster St, Madison, WI, 53707; by E-mail to Jane.Washburn@wisconsin.gov or by calling (608) 266-2111. A request must include specific information and be received at least 10 days before the date of the scheduled hearing.

Availability of the Proposed Rules and Fiscal Estimate

The proposed rule and supporting documents, including the fiscal estimate, may be viewed and downloaded from the Administrative Rules System Web site which can be accessed through the link <https://health.wisconsin.gov/admrules/public/Home>. If you do not have Internet access, a printed copy of the proposed rule and supporting documents, including the fiscal estimate, may be obtained free of charge by contacting Jane Washburn, Wisconsin Department of Natural Resources, Bureau of Waste and Materials Management, 101 S. Webster St, Madison, WI, 53707, or by calling (608) 266-2111.

Submitting Comments

Comments on the proposed rule must be received on or before Monday, December 2, 2013. Written comments may be submitted by U.S. mail, fax, E-mail, or through the Internet and will have the same weight and effect as oral statements presented at the public hearing. Written comments and any questions on the proposed rules should be submitted to:

Mail: Mining Rule Comments – WA/5
Bureau of Waste and Materials Management
101 South Webster Street,
Madison, WI 53707 - 7921

Email: DNR WA Mining Rules - DNRWAMININGRULES@wisconsin.gov

Fax: (608) 267-2768

Written comments may also be submitted to the Department using the Wisconsin Administrative Rules Internet Web site at <http://adminrules.wisconsin.gov>

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, Wis. Stat.

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

3. Explanation of agency authority:

2013 Wisconsin Act 1 modified existing laws relating to metallic mining and created a new subchapter, subchapter III of chapter 295, 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 2013 Wisconsin Act 1 directs the Department to propose revisions to certain rules so that the rules are consistent with subchapter III of chapter 295 and with the other statutory revisions made by 2013 Wisconsin Act 1.

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

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 implement 2013 Wisconsin Act 1. The proposed rules clarify that ferrous mining activities are regulated under the new subchapter III of chapter 295, Wis. Statutes created by 2013 Wisconsin Act 1. The proposed rules 1) revise the mining regulations in chapters 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 chapters NR 500 through 538 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 2013 Wisconsin Act 1.

The Department has reviewed all NR chapters and has proposed amendments to those rules where amendments are required by section 103 of 2013 Wisconsin Act 1. The proposed rules generally add

language to specific sections so that the rules are consistent with the new ferrous mining law, subch. III of ch. 295, Wis. Statutes, and with other statutory amendments made by 2013 Wisconsin Act 1.

The Department has determined that some rules identified in section 103 do not require revision. The Department has not proposed revisions to ss. NR 540-555 of the solid waste rules because these rules do not apply to metallic mining. The Department has not proposed revisions to NR ss. 660-679, the hazardous waste rules, because the applicable rules are required by federal law and thus the existing rules are in accordance with 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 chapter NR 150, Wis. Adm. Code, are needed in this Board Order because a separate Board Order, OE-46-10, proposes to amend NR 150 in a way that complies with 2013 Wisconsin Act 1. The proposed revision to NR 150 (which was approved for public hearing by the Natural Resources Board in February 2013) includes a section NR 150.30(j) that applies equally to ferrous and nonferrous mining and that provides generally that if there are conflicting procedures for environmental review in other statutes, those procedures govern. No changes are required to the fee exemption provision of ch. NR 216 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. No changes are required in NR 350 because the applicable provisions in NR 350 are consistent with the statutory provisions for regulation of ferrous and nonferrous mining.

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

The changes in state law made by 2013 Wisconsin Act 1 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 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, 42 U.S.C. ss. 1342, and the Clean Air Act, 42 U.S.C. ss. 4209. 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 RCRA, Subtitle C, although mining wastes are generally exempt from federal hazardous waste laws under the Bevill Exclusion (42 U.S.C. s. 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 subchapter III of chapter 295, and not under chapters NR 660 to 679, the state's hazardous waste rules, except as necessary to comply with applicable federal hazardous waste regulations adopted under the federal Resource Conservation and Recovery Act, 42 U.S.C. ss. 6901 to 6991m (RCRA). 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) parallel and are equivalent to the federal hazardous waste regulations. State regulations that identify when a mining waste is exempt from regulation also exactly parallel to federal law under the Bevill Exclusion. Because the applicable state regulations in chapters NR 660 to 679 are 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 2013 Wisconsin Act 1. 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*". At present, both Minnesota and Michigan have active ferrous mining operations.

8. Summary of factual data and analytical methodologies:

The Department reviewed current rules to determine if amendments were required by section 103 of 2013 Wisconsin Act 1. 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 did complete the Fiscal Estimate and Economic Impact Analysis form [DOA-2049 (RO3/2012)] as part of this rule analysis.

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

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

The Small Business Regulatory Coordinator may be contacted at SmallBusiness@dnr.state.wi.us , or by calling (608) 266-1959.

Environmental Analysis

The Department has made a 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. However, based on comments received, an environmental analysis may be prepared before proceeding. This analysis would summarize the Department's consideration of the impacts of the proposal and any reasonable alternatives.

Fiscal Estimate Summary

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. Consequently, the Department believes the promulgation of these proposed rule changes will have no economic effect on small or large businesses or on state or local governments. This rule drafting effort followed the direction set forth in section 103 of 2013 Wisconsin Act 1 to clarify the applicability of existing metallic mining administrative rules to nonferrous mining activities regulated under subchapter III of chapter 295, as described in Wisconsin Act 1. 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. To the extent that there are economic impacts due to changes in the law, those impacts will come from the changes made by the Legislature, not these proposed rule changes.

The Department believes these proposed rule changes, in and of themselves, will not have an economic impact on any private sector businesses and consequently the significance level of these rules will be minimal.

Dated at Madison, Wisconsin October 15, 2013

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By Cathy Stepp
Cathy Stepp, Secretary *lh*