



**NEW REQUIREMENTS FOR THE ISSUANCE OF PERMITS FOR MINING
(1997 WISCONSIN ACT 171)**

Information Memorandum 98-8

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INTRODUCTION

This Information Memorandum describes 1997 Wisconsin Act 171 (“the Act”), relating to the issuance of metallic mining permits for the mining of sulfide ore bodies. The Act is the so-called “Mining Moratorium Law.” The Information Memorandum first describes the Act and then describes other statutory requirements for the issuance of a metallic mining permit.

Copies of 1997 Wisconsin Act 171 may be obtained from the Documents Room, Lower Level, One East Main Street, Madison, Wisconsin 53702; telephone: (608) 266-2400.

A. REQUIREMENTS IMPOSED BY THE ACT FOR THE ISSUANCE OF OBTAINING A METALLIC MINING PERMIT

The Act provides that before the Department of Natural Resources (DNR) may issue a permit for the mining of a sulfide ore body, the DNR must determine, based on information provided by a mining permit applicant and verified by the DNR, that both of the following have occurred:

1. A mining operation has operated in a sulfide ore body which, together with the host rock, has a net acid generating potential in the United States or Canada for at least 10 years without the pollution of groundwater or surface water from acid drainage at the tailings site or at the mine site or from the release of heavy metals.
2. A mining operation that operated in a sulfide ore body which, together with the host rock, has a net acid generating potential in the United States or Canada has been closed for at least 10 years without the pollution of groundwater or surface water from acid drainage at the tailings site or at the mine site or from the release of heavy metals.

The Act defines “sulfide ore body” to mean “a mineral deposit in which metals are mixed with sulfide minerals.” Sulfide minerals, when exposed to oxygen and water, can progress through a series of chemical and biochemical reactions to produce acid. Acid drainage can

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pollute groundwater and surface water and can dissolve other minerals and cause the release of heavy metals.

Other minerals (principally carbonate minerals such as calcite) have the capacity to neutralize acid. If sufficient neutralizing minerals are present, the acid generating reactions will be counterbalanced by the neutralizing reactions with the net effect that the mine waste drainage will not become more acidic. Therefore, the effect of quoted language of the Act in the above paragraph is to require the applicant for a mining permit to show that *technology* has successfully been used to control acid drainage at a mine site where the absence of acid-neutralizing materials in the host rock in which the mineral body is located made acid drainage a potential danger to the environment. (The proposed mine site near Crandon for which an application to mine is being reviewed by the DNR as of the date of this Information Memorandum is not located in an area where there are sufficient neutralizing minerals to control acid generation.)

The Act defines “pollution” to mean “degradation that results in any violation of any environmental law as determined by an administrative proceeding, civil action, criminal action or other legal proceeding.” The Act also provides that issuance of an order by an administrative agency requiring corrective action or acceptance of an agreement by a mine operator requiring corrective action or a stipulated fine, forfeiture or other penalty is considered a determination of a violation regardless of whether there is a finding or admission of liability. The term “tailings site,” although not defined in the statutes, refers to the site at which mining wastes are deposited.

The Act provides that the DNR may not base its determination with respect to application of either of the two requirements to a mining operation unless the DNR also determines, based on relevant data from groundwater or surface water monitoring, that the mining operation has not caused significant environmental pollution as defined in s. 293.01 (4), Stats., from acid drainage at the tailings site or at the mine site or from the release of heavy metals. “Environmental pollution” is defined in s. 293.01 (4), Stats., to mean “the contaminating or rendering unclean or impure the air, land or waters of the state, or making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life.” The effect of this provision is that neither of the two requirements of the Act can be satisfied unless groundwater or surface water monitoring data exists to show that the mine did not cause significant environmental pollution from acid drainage or from the release of heavy metals. This is true even if there is no evidence that any environmental law was violated at the mine site or the tailings site.

The Act also provides that the DNR may not base its determination with respect to either of the two requirements on any mining operation that has been listed as a federal superfund site or any mining operation for which the operator is no longer in business and has no successor that may be liable for any contamination from the mining operation and for which there are no other persons that may be liable for any contamination from the mining operation.

The Act took effect on May 7, 1998 and applies without regard to the date of submission of the permit application.

B. OTHER STATUTORY REQUIREMENTS FOR THE ISSUANCE OF A METALLIC MINING PERMIT

Under s. 293.49 (1), Stats., the DNR is directed to issue a metallic mining permit if it finds:

1. The mining plan and reclamation plan are reasonably certain to result in reclamation of the mining site and the DNR has approved the mining plan.

“Reclamation” is defined in s. 293.01 (23), Stats., to mean the process by which an area physically or environmentally affected by mining is rehabilitated to either its original state or, if this is shown to be physically or economically impracticable or environmentally or socially undesirable, to a state that provides long-term environmental stability. The mining plan, which is required to be included with the application for a mining permit, must include a detailed map of the proposed mining site, details of the nature, extent and final configuration of the proposed excavation and mining site, details of the proposed operating procedures for the mine, plans for collection, treatment and discharge of any water resulting from the operation and a number of other items specified in s. NR 132.07, Wis. Adm. Code. Items which must be included in the reclamation plan, which are specified in s. NR 132.08, Wis. Adm. Code, include detailed information and maps on reclamation procedures to be used including the manner, sequence and anticipated duration of reclamation, proposed interim and final topography and slope stabilization, proposed final land use and relationship to the surrounding land and land use, and plans for long-term maintenance of the mining site including monitoring of wastes and groundwater and surface water quality.

2. The proposed operation will comply with all applicable air, groundwater, surface water and solid and hazardous waste management laws and rules of the DNR.

3. In the case of a surface mine, the site is not unsuitable for mining.

“Unsuitability” is defined in s. 293.01 (28), Stats., to mean that the land proposed for surface mining is not suitable for such activity because the surface mining activity itself may reasonably be expected to destroy or irreparably damage either:

- a. Habitat required for survival of species of vegetation or wildlife designated as endangered in rules adopted by the DNR, if such endangered species cannot be firmly reestablished elsewhere; or
- b. Unique features of the land, as determined by state or federal designation and incorporated in rules adopted by the DNR, as wilderness areas, wild and scenic rivers, national or state parks, wildlife refuges and areas, archeological areas, property registered in the national or state register of historic places and other lands of a type designated as unique or unsuitable for surface mining.

4. The proposed mine will not endanger public health, safety or welfare.

5. The proposed mine will result in a net positive economic impact in the area reasonably expected to be most impacted by the activity.

6. The proposed mining operation conforms with all applicable zoning ordinances.

The DNR is required to *deny* a mining permit if any of the following situations may reasonably be expected to occur during or subsequent to mining [s. 293.13 (2) (d), Stats.]:

1. Landslides or substantial deposition from the proposed operation in stream or lake beds which cannot be feasibly prevented.

2. Significant surface subsidence which cannot be reclaimed because of the geologic characteristics present at the proposed site.

3. Hazards resulting in irreparable damage to various types of buildings or facilities which cannot be avoided by removal from the area of hazard or mitigated by purchase or by obtaining the consent of the owner.

4. Irreparable environmental damage to lake or stream bodies despite adherence to the requirements of ch. 293, Stats.

The DNR is also required to deny issuance of a mining permit if the person applying for the permit or certain related persons have engaged in activities specified in s. 293.49, Stats., which indicate that the person may be unsuitable to operate a mine. [s. 293.49 (2), Stats.]

The DNR is authorized to promulgate rules by which it may grant an exemption, modification or variance, either making a requirement more or less restrictive, from any rule promulgated under a variety of statutes authorizing environmental rule-making, if the exemption, modification or variance does not result in the violation of any federal or state environmental law or endanger public health, safety or welfare or the environment. [s. 293.15 (9), Stats.]

After a mining permit has been issued, but before mining can actually commence, the mine operator is required to file with the DNR a bond equal to the estimated cost to the state of fulfilling the reclamation plan. In lieu of a bond, the operator may deposit cash, certificates of deposit or government securities with the DNR. The amount of the bond or other security required shall be equal to the estimated cost to the state of fulfilling the reclamation plan. [s. 293.51, Stats.]

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