

Mohr, Mark - GOV

From: Murray, Ryan M - GOV  
Sent: Saturday, June 04, 2011 11:16 AM  
To: Werwie, Cullen J - GOV  
Subject: Re: comment request for story on deadline

Nope

Sent from my iPad

On Jun 4, 2011, at 8:56 AM, "Werie, Cullen J - GOV" <Cullen.Werie@wisconsin.gov> wrote:

Do we want to comment on this?

From: Claudia Broman [mailto:claudia@ashlandcurrent.com]  
Sent: Saturday, June 04, 2011 05:45 AM  
To: Werwie, Cullen J - GOV  
Subject: Re: comment request for story on deadline

Hi Cullen,

I contacted you at 1:50 p.m. and asked for comment on deadline. The story was posted at 4 p.m. The story says I haven't yet heard comment from your office, and not that comment was denied. "The *Ashland Current* has yet to hear comment from Walker."

Is your email your comment?

Thanks,  
Claudia Broman

On 06/03/2011 11:58 PM, Werwie, Cullen J - GOV wrote:  
Did you post a story saying we denied comment without contacting out offices?

There was a story posted online late AM that said you contacted us. I double checked our records and couldn't find anything.

Am I missing something?

----- Original Message -----  
From: Claudia Broman [mailto:claudia@ashlandcurrent.com]  
Sent: Friday, June 03, 2011 01:50 PM  
To: Werwie, Cullen J - GOV  
Subject: comment request for story on deadline

Hello,

I am writing from the Ashland Current of Ashland, Wis. (ashlandcurrent.com) and am following up on the legislative process regarding the ongoing mining bill revision (<http://www.scribd.com/doc/55233328/11-20351>). It is my understanding from having spoken with the offices of Sen.

Zipperer and Rep. Honadel that the revised bill is to be expected from Gov. Walker's office, as that is where it is being prepared before being introduced in special session.

Could you please offer confirmation or dispute of this?

Also, it is my understanding that the revised bill is being drafted in cooperation with the offices of Gov. Walker, the DNR, and the private firm Gogebic Taconite.

Could you please offer confirmation or dispute of this?

As follow up, I am wondering why Gov. Walker's office is involved in drafting this potential legislation. Is this a normal occurrence?

And finally, will there be a public hearing on the revised document at some point and if so, where will this hearing be held and at what time?

Thank you,  
Claudia Broman  
Ashland Current

From: Jason Culotta <[REDACTED]>  
 Sent: Saturday, January 29, 2011 3:07 PM  
 To: Culotta, Jason - DOA  
 Subject: Fwd: Xcel Citing Issue  
 Attachments: Microsoft Word - Streamlining Transmission Siting Requirements (6 Dec 10 Draft).docx.pdf

-----Forwarded message-----  
 From: Kevin Moore <[REDACTED]>  
 Date: Mon, Dec 27, 2010 at 8:27 AM  
 Subject: Xcel Citing Issue  
 To: [REDACTED]  
 Cc: [REDACTED]

Here is a summary of what has happened to date with a request from Xcel to streamline the citing issue. It is related to the proposed Iron County mining operation. Let me know if you have any questions.  
 Kevin

**Xcel Memo on Streamlining Transmission Siting Requirements (6 Dec 10 Draft)**  
 From Evernote:

**Xcel Transmission Citing Issue**

Early in the transition, Rebecca Larson from Xcel contacted me on an issue they are worried about. The proposed mine in Iron County is in Xcel's service territory. In order to supply the new mining project with power, there will need to be new transmission infrastructure in place.

The concern by Xcel is that the current process of citing these projects takes too long and is costly to the power company. Xcel is worried that the current process would delay their ability to move the Iron County project forward in a timely fashion. This would place additional pressure on any mining operation as power (potentially) would not be online when the mining company wants it.

Xcel has forwarded a paper to the GE's office with a possible solution. (to be forwarded in a separate email)

An issue is the position of other power companies and ATC. KEM has talked with John Garvin from ATC, and they just received a copy of the proposal from Xcel. He is sharing it with other people in the industry and should have some feedback by the end of the first week of January. There might be some issue with the proposal because some utility companies, especially those in SE Wisconsin, prefer this model of citing than past models. Although it is cumbersome, they would rather deal with Madison bureaucrats instead of Milwaukee based government regulators.

Stakeholders have said that having this proposal in the first 100 day agenda would be the proper way of moving these reforms forward. It is hoped that all stakeholders can agree to one reform proposal before moving forward.

KEM has stated that ensuring that all bureaucratic obstacles are out of the way for the mining project is critical. GE has agreed with these statements.

## STREAMLINING TRANSMISSION SITING REQUIREMENTS

### Background

The policy goal of 2003 Act 89 was to streamline regulatory approval of transmission lines at the PSC and DNR. But that prospect has proven difficult given how the legislation was structured and implemented by DNR's Office of Energy. Prior to the creation of the Office of Energy, the DNR's regional offices reviewed the applications.<sup>1</sup> Permit approvals that previously took one to two months for review by the regional offices now take 8 to 12 months by the Office of Energy.

The requirement to file for DNR permits concurrent with the Certificate of Public Convenience and Necessity (CPCN) filing has created a lengthy pre-filing process for the utilities. Prior to Act 89, DNR review came after the CPCN was filed; now the DNR regulatory review has evolved into a more lengthy, frontloaded process. Staff desires detailed information prior to filing to ensure they have all the data needed to review the project since the review process is limited to 180 days (360 if an extension is allowed).

Mostly due to the DNR Office of Energy's requirement to assess permits for all routes at the time a CPCN or a Certificate of Approval (CA) is filed, the approval process is now more complex, time consuming and costly for the utilities. This, in turn, will unduly burden and delay much needed economic development projects. For example, application for a 69 kV rebuild in the past would have taken six months to prepare with the work conducted by in-house staff. Now, after Act 89, the work takes 12-18 months, with consultants required at a cost of at least \$75,000 for a CA. The cost for a CPCN required for large electric generation or transmission projects is substantially higher. Costs to develop the required maps for applications can be over \$250,000 alone.

It is often the practice that requirements not otherwise required by law are imposed by the Office of Energy through their leverage over permit approval; that is, to accelerate or merely obtain the permit, applicants may be asked to propose project elements and undertake studies that are beyond what is required by regulation. The Office of Energy also appears to be using their permitting viability assessment in an attempt to prematurely preempt routes and route segments they do not favor. DNR's Office of Energy has also declared that they have jurisdiction over all electric facilities - even distribution lines that were never within the scope of Act 89. Act 89 was originally created to streamline the CPCN process only.

Specific regulatory approval problems relate to:

- **NR 216 (Storm Water):** DNR staff continually changes its interpretation of these rules, imposing erosion control plans for transmission lines that were not previously required. Other "new" requirements include erosion control permits for activities that do not normally disturb soil, such as removing trees and transporting equipment along the transmission line right-of-way. A general plan to prevent erosion on a pole-by-pole basis regardless of site conditions. Given that the intent of stormwater regulation was to reduce runoff from large grading and construction sites, this requirement poses an undue burden on electric utility projects that have many small construction sites spread over a large area.

<sup>1</sup> Contrary to DNR's web site, the Legislature did not establish the Office of Energy within DNR. Nor did Act 89 specify that approvals would be dictated by DNR's Madison office, without any meaningful regional role. The seven staff positions that make up the Office of Energy at DNR's Madison headquarters were initially established pursuant to a Dec. 3, 2003 (date of Act 89 enactment), DOA request on behalf of DNR. That memo notes that PSC would fund those positions through ratepayer fees. Ratepayers appear to be the continued source of funding for the Office of Energy, which is somewhat inconsistent with the expectation that Act 89 would save utility customers money. That is, in addition to adding costs and delays to transmission projects, the Office of Energy staff appears to have directly cost ratepayers over \$4 million to date.



- **NR 103 (Wetlands):** Another new mandate is imposing water quality certification, with compliance addendums, for all projects requiring DNR permits. NR 103 is used to inappropriately and prematurely veto routes they deem not warranting a permit. Determination of practicable alternative routes should be left to PSC.

- **Chapter 30 Permits and 30.025 (2s) (Consideration of Alternatives):** The types of permits required in relation to Chapter 30 are unclear and prone to interpretation. Prior to Act 89, few Chapter 30 permits were required. A more aggressive stance by staff now requires a significant number of permits. Other jurisdictions, such as Minnesota, exempt transmission poles and foundations from permit requirements as long as the fill to drill holes is removed. The Corps of Engineers has similar jurisdiction and has general use permits that they typically issue for utility projects. Their review and approval typically takes one month.

- For 30.025 (2s) - these provisions purport to give deference to PSC's decision relating to no practicable alternative. But the exemption relating to DNR's finding on permit issues provides DNR veto authority over routes, which they often exercise. This process circumvents the goal of this provision by allowing DNR staff to find a permit unobtainable for any portion for the route, killing the entire route.

- **Threatened and Endangered Species:** Prior to the creation of the Office of Energy, utilities were rarely asked to survey for threatened and endangered (T/E) species. Now every project requires extensive review, often leading to an incidental taking permit even if no recent documentation of the species is found in the vicinity of the construction. For example, fencing is required in areas where T/E turtles *may* be found. In addition, DNR pushes for surveys and management of special concern species, including situations where the likelihood of the species being present is low. If a utility refuses to survey for these species, DNR will refuse to issue other permits. This includes surveys for plant species which are supposed to be exempt for utilities. This is driving additional pre-filing time that can add one to two years of preparation work. Utilities recognize the importance of protecting rare species and have a proven track record of implementing practical mitigation measures that result in avoiding impacts to endangered species.

- **Mats (Wetlands):** Mats in construction have been used since the mid-1990s to minimize damage in wetlands and avoid equipment being stuck in the wetlands. Periodically, DNR tries to manage use of mats, including how and when they should be installed. This type of activity should be managed by the construction crew based on site conditions with guidance from the environmental inspector.
- **NR 40 (Invasive Species):** This rule applies to management of invasive species that the utilities and others need to follow. The rules are supposed to be voluntary, but the Office of Energy will require wash stations throughout the project, which create their own issues.

- **Route Selection:** The Office of Energy's role in route selection has been more recalcitrant than proactive. Rather than offer viable alternatives, staff tends to criticize routes and put up road blocks. They consider their views to be the final word on every permit issue. DNR staff also demand to be present at meetings that do not pertain to areas within their jurisdiction. They have used their positions to veto routes that in effect preempt the PSCW process; despite the fact their concerns should be part of the Commission review.

**Statutory Language Objectives**

- Allow permit application submittal to DNR after the PSC process has begun to narrow the scope and allow for timelier DNR review and approvals.
- Establish deadlines and specificity for DNR requests for additional information from applicants, and set forth a deadline for permit approval.

- Clarify DNR's role to assure compliance with laws under their jurisdiction, and that DNR has an obligation to the applicant to advise with specificity the laws it is relying upon to impose requirements on the project.

**Statutory Language**

**30.025(1s) of the statutes is amended to read:**

**(1s) Application for permits.** (a) Any person proposing to construct a utility facility to which this section applies shall, in lieu of separate application for permits, submit one application for permits together with any additional information required by the department. The application shall be filed with the department, on a form provided by the department, at the same time that an application for a certificate is filed with the commission under s. 196.49 or in a manner consistent with s. 196.491 (3) and shall include the detailed information that the department requires to determine whether an application is complete and to carry out its obligations under sub. (4). The department may require supplemental information to be furnished thereafter.

(b) The application is deemed complete unless, within 20 days after receipt of the application under par. (a), the department provides written notice to the applicant describing specifically any required information not contained on the submitted permit form, with clear indication of the purpose and statutory authority relating to the requested information. The department shall notify the applicant within 15 days after receiving the additional specified information from the applicant whether that additional information satisfies the department's request, and if not, advise the applicant with specificity any deficiencies in the submittal. The application is deemed complete if the department does not submit its list of deficiencies within 15 days or upon receipt by the department that information that reasonably addresses these deficiencies.

(b) A person who applies to the commission for a certificate under s. 196.49 or 196.491 (3) is eligible to apply under par. (a) for any permit that the utility facility may require and to receive such permit.

**30.025(2g) of the statutes is amended to read:**

**(2g) Participation in commission proceedings.** (a) For projects subject to s. 196.49 and 196.491 (3) where the department has been notified by the applicant, the department shall review the proposal and provide input every proposed utility facility subject to this section, including each location, site, or route proposed for the utility facility, to assess whether each any proposed location, site, or route can meet the criteria for proceeding under the authority would, with a high degree of certainty, not be able to obtain or obtaining the required permits. [T]he department, after consultation with and written concurrence from the department's secretary, shall provide written certification that information to the commission as to what aspects of the proposed utility facility cannot be permitted.

(b) The department shall participate in commission investigations or proceedings under s. 196.49 or 196.491 (3) with regard to any proposed utility facility that is subject to this section in order for the sole purpose of ensuring that the commission's decision is consistent with environmental laws administered by the department's responsibilities. The department shall provide the commission with information that is relevant to only reasonably certain violations of these statutory requirements, the following:

1. Environmental issues that concern the proposed utility facility.
2. Public rights in navigable waters that may be affected by the proposed utility facility.
3. Location, site, or route issues concerning the proposed utility facility, including alternative locations, sites, or routes.

**(2s) Consideration of alternatives.**

(a) If the department has participated in the commission's investigations or proceedings under sub. (2g), the department shall treat the commission's decision under s. 196.49 or 196.491 (3) as concluding that there is no practicable alternative for the utility facility if all of the following apply:

1. The department has participated in the commission's investigations or proceedings under sub. (2g);

2. The commission's decision under s. 196.49 or 196.491 (3) is consistent with the department's assessment and information under sub. (2g) considering those factors required to be considered by the commission under s. 196.49 or 196.491 (3).

(b) If par. (a) applies, the department may not require the applicant for the proposed utility facility to undertake further analysis of any utility facility alternatives, including an analysis of alternative methods of meeting the need for the project or alternative locations, sites, or routes in order to satisfy the criteria under sub. (3). The department may identify adjustments that may be required to address permitting issues within the location, site, or route approved by the commission under s. 196.49 or 196.491 (3).

(3) Permit Issuance. Within 90 days of the application being deemed complete under sub. (1s), the department shall issue, or authorize proceeding under, the necessary permits if it finds that the applicant has shown that the proposal:

(a) Complies with environmental statutes administered by the department and rules promulgated thereunder, and federal environmental standards which the department has authority to enforce.

(b) Does not unduly affect:

1. Public rights and interests in navigable waterways;

2. The effective flood flow capacity of a stream;

3. The rights of other riparian owners; or

4. Water quality.

**Mohr, Mark - GOV**

**From:** Kitzman, Nick - GOV  
**Sent:** Wednesday, May 11, 2011 9:09 AM  
**To:** Murray, Ryan M - GOV  
**Cc:** Eberle, Kyle J.  
**Subject:** List of attendees for tonight's meeting

Keith Gilkes  
Mike Rogowski  
Eric Peterson  
Mike Huebsch  
Rob Richard (for Scott Fitzgerald)  
Andrew Gustafson  
Jeff Fitzgerald (or Jason Bauknecht)  
Eric Schutt  
Chris Schrimpf  
James Buchen  
David Storey  
Matt Moroney  
John Gard (will try to attend)  
Scott Jensen (will try to call in)  
Scott Manley (will call in)

Let me know if you have any questions.

Nick

Nick Kitzman  
Legislative Affairs Assistant  
Office of Governor Scott Walker  
608-264-8203

**Mohr, Mark - GOV**

**From:** Moroney, Matt S - DNR  
**Sent:** Tuesday, May 24, 2011 7:01 PM  
**To:** Culotta, Jason - GOV  
**Subject:** FW: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - RE: Mining

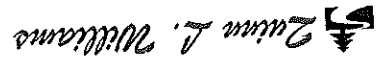
Hey,

Note below. Did Gundy discuss our recommendations on how to approach the tribe with you? If not, call me tomorrow to discuss.

Matt

**From:** Williams, Quinn L - DNR  
**Sent:** Tuesday, May 24, 2011 12:37 PM  
**To:** Gunderson, Scott L - DNR; Moroney, Matt S - DNR  
**Cc:** Gozdzialski, John F - DNR; Lutz, Michael - DNR; Andryk, Tim A - DNR; Williams, Quinn L - DNR  
**Subject:** RE: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - RE: Mining

FYI, the Voigt Task Force Committee meets next Thursday, June 2, in Odana WI, so that might not be a good time for the public hearing on the bill.

  
*Quinn L. Williams*

Staff Attorney

Bureau of Legal Services

Wisconsin Department of Natural Resources

(☎) phone: (608) 266-1318

(☎) fax: (608) 266-6983

(✉) e-mail: [quinn.williams@wisconsin.gov](mailto:quinn.williams@wisconsin.gov)

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**From:** Gunderson, Scott L - DNR  
**Sent:** Monday, May 23, 2011 05:32 PM  
**To:** Moroney, Matt S - DNR; Williams, Quinn L - DNR  
**Cc:** Gozdzialski, John F - DNR; Lutz, Michael - DNR; Andryk, Tim A - DNR  
**Subject:** RE: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - RE: Mining

10-4

**From:** Moroney, Matt S - DNR  
**Sent:** Monday, May 23, 2011 05:15 PM  
**To:** Gunderson, Scott L - DNR; Williams, Quinn L - DNR  
**Cc:** Gozdzialski, John F - DNR; Lutz, Michael - DNR; Andryk, Tim A - DNR  
**Subject:** RE: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - RE: Mining

Yes. I left a message with zips staff. Gundy can you make sure they get this and let them know the plan.

Sent from my U.S. Cellular@Windows@ phone.

---

**From:** Gundersen, Scott L - DNR <Scott.L.Gundersen@wisconsin.gov>  
**Sent:** Monday, May 23, 2011 5:04 PM  
**To:** Williams, Quinn L - DNR <Quinn.Williams@wisconsin.gov>; Moroney, Matt S - DNR <Matt.Moroney@wisconsin.gov>  
<John.Gozdzialski@wisconsin.gov>; Lutz, Michael - DNR <Michael.Lutz@wisconsin.gov>; Andryk, Tim A - DNR <Tim.Andryk@wisconsin.gov>  
**Cc:** Gozdzialski, John F - DNR <John.Gozdzialski@wisconsin.gov>; Lutz, Michael - DNR <Michael.Lutz@wisconsin.gov>  
**Subject:** RE: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - RE: Mining

I think this would be fine. Matt?

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**From:** Williams, Quinn L - DNR  
**Sent:** Monday, May 23, 2011 10:14 AM  
**To:** Moroney, Matt S - DNR; Gundersen, Scott L - DNR  
**Cc:** Williams, Quinn L - DNR; Gozdzialski, John F - DNR; Lutz, Michael - DNR; Andryk, Tim A - DNR  
**Subject:** FW: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - RE: Mining  
**Importance:** High

CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE

Per this morning's discussion. Also attached is the FULL Voigt Task Force mailing/email list (should be

both, I think).

<< File: VTF list & emails.May2011.pdf >>

How's this look to insert into the legislative letterhead?

"Dear <Voigt Task Force member>

The < INSERT COMMITTEE/CHAIR HERE > would like to extend a special invitation to you and other members of the Voigt Task Force to attend the upcoming public hearing on LRB 2035/1). We heard and appreciated Chairman Wiggin's speech during the "State of the Tribes" presentation before the legislature on the possibility of the proposed mine. I know that this bill and what it represents in terms of our statewide economy, social impacts, and environmental considerations are of high interest to the tribes, particularly the Chippewa, as they are for all of the citizens of this state. We want to make sure that we reach out to you to give you an opportunity to provide meaningful comment. We will make sure, based on your special status as sovereign nations, that we provide you the opportunity to speak early in the hearing to ensure that you can plan on when to attend during the day.

Sincerely,

<INSERT CHAIR'S NAME>"

Mohr, Mark - GOV

From: Keith Gilkes - The Champion Group <[REDACTED]>  
Sent: Sunday, January 30, 2011 2:23 PM  
To: Gilkes, Keith - GOV  
Subject: Follow up information on Marc Holtzman

From: Rogowski, Michael MSR (6053) [mailto:MRGOWSKI@whdlaw.com]  
Sent: Wednesday, May 19, 2010 3:59 PM  
Subject: FW: Follow up information on Marc Holtzman

Hi Scott and Keith,

Per Larry Wolk (below), and as a follow up from our meeting on Friday, here is contact info for Marc Holtzman. Here is a link regarding Marc's impressive background: [http://en.wikipedia.org/wiki/Marc\\_Holtzman](http://en.wikipedia.org/wiki/Marc_Holtzman) Larry very much enjoyed his meeting with Scott and believes that Marc may be able to assist Scott, and that a reach out to him may be worthwhile.

I see that you will have a venue change for the convention based on attendance. That is great news.

Mike

Michael S. Rogowski  
Shareholder  
Whyte Hirschboeck Dudek S.C.  
33 East Main Street, Suite 300  
Madison, WI 53703-4655

: (608) 234-6053  
: [REDACTED]  
: (608) 258-7138  
: mrogowski@whdlaw.com

From: Larry Wolk [mailto:lwoik@correctioncare.com]  
Sent: Monday, May 17, 2010 6:28 PM  
To: Rogowski, Michael MSR (6053)  
Subject: Follow up information on Marc Holtzman

Mike, thanks again for all your work last week...as promised, here is the contact information I have for Marc Holtzman: marc@marchoholtzman.com. Scott or Keith should feel free to use my name as a reference. Hopefully he will be

Interested in helping and/or contributing to Scott's campaign....let me know if you hear anything more from Milwaukee County and anything else we can do to help...

Larry

**Larry Wolk, MD MSPH**

President and Chief Operations Officer

**CHC | Correctional Healthcare Companies**

6200 S. Syracuse Way #440

Greenwood Village, CO 80111

Toll Free: 866 246 5245

Phone: 720-622-8025

Fax: 303-706-9068

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--  
Keith Gillkes, President  
The Champion Group, LLC  
E-mail: [kgillkes@ChampLLC.com](mailto:kgillkes@ChampLLC.com)

Mohr, Mark - GOV

**From:** Cuiotta, Jason - GOV  
**Sent:** Wednesday, May 25, 2011 4:57 PM  
**To:** Pypier, Thomas TMP (7122)  
**Subject:** FW: "additional measures" vs "conservation measures" in mining bill

Tom,  
This is a question Mary will call you about in the morning.  
--Jason

---

**From:** Gibson-Glass, Mary [mailto:Mary.Gibson-Glass@legis.wisconsin.gov]  
**Sent:** Wednesday, May 25, 2011 4:07 PM  
**To:** Cuiotta, Jason - GOV  
**Subject:** "additional measures" vs "conservation measures" in mining bill

Jason,  
I do not understand in the suggested language that under s. 295.605 the redrafting instructions want "additional measures". In addition to what? And then in s. 295.61, the drafting instructions want to continue to use "conservation measures". When we use different terms in the statutes, even though undefined, it raises an inference of statutory interpretation that these two types of measures are different. However, in the bill, lots of these measures are similar or overlap  
Can someone explain this to me?

Thanks,

Mary

Mary Gibson-Glass

Senior Legislative Attorney

Legislative Reference Bureau

608 267 3215

**From:** Williams, Quinn L - DNR

**Sent:** Tuesday, June 07, 2011 4:08 PM

**To:** Cullotta, Jason - GOV

**Cc:** Stepp, Cathy L - DNR; Moroney, Matt S - DNR; Gunderson, Scott L - DNR; Andryk, Tim A - DNR; Gozdzielski, John F - DNR; Coakley, Ann M - DNR; Hofer, Margaret I - DNR; Williams, Quinn L - DNR

**Subject:** CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - RE: Mining bill

**Importance:** High

CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE

Hi Jason,

Very nice to meet you this morning at Rep. Honadel's office regarding the Voigt Task Force issue. Attached below is a confidential summary of the requested information:

**1) Consultation argument:**

Per this morning's discussion. Also attached is the FULL Voigt Task Force mailing/email list (we recommend using both). Again, we do not believe that this would be a strong argument



VTF list  
emails, May 2011....

Below is the suggested verbiage for the email/letter. This should probably come from the designated committee chair when the bill is introduced, and it should be sent out with enough time for them to reasonably appear (i.e., one week notice is probably sufficient).

"Dear <Voigt Task Force member>

The < INSERT COMMITTEE/CHAIR HERE > would like to extend a special invitation to you and other members of the Voigt Task Force to attend the upcoming public hearing on LRB 2035/1. We heard and appreciated Chairman Wiggin's speech during the "State of the Tribes" presentation before the legislature on the possibility of the proposed mine. I know that this bill and what it represents in terms of our statewide economy, social impacts, and environmental considerations are of high interest to the tribes, particularly the Chippewa, as they are for all of the citizens of this state. We want to make sure that we reach out to you to give you an opportunity to provide meaningful comment. We will make sure, based on our government to government relationship, that we provide you the opportunity to speak early in the hearing to ensure that you can plan on when to attend during the day.

Sincerely,

<INSERT CHAIR'S NAME>

**2) Treatment as a State**

Additionally, the potential "Treatment As a State" (TAS) determination by EPA regarding the Bad River tribe for their on-reservation water quality standards based on water volume is an issue that the Governor's office should be made aware of, since it may arguably give Bad River a "veto" over any mine in their watershed that involves large-scale dewatering or additional water into the Bad River watershed. We recommend that any questions related to the legal TAS issue be directed to DNR Attorney Marney Hofer, who is ccd on this email. I've included a recent email on the status of their EPA application and a thumbnail evaluation.



VOIGT INTERTRIBAL TASK FORCE - March 2011

Michael Isham, Voigt Task Force Vice-Chairman

[Redacted]

email: [michisham@yahoo.com](mailto:michisham@yahoo.com)  
office phone: 715-634-8934  
cell phone: [Redacted]  
fax: 715-634-4797

email: [Redacted]  
office phone: 715-634-8934  
cell phone: [Redacted]  
fax: 715-634-0302

Paul Shagen, Attorney  
Lac Courte Oreilles Tribe  
13394 W. Trepania Road  
Hayward, Wisconsin 54843

Joseph M. Rose  
[Redacted]

email: [Redacted]  
office phone: 715-682-1204  
cell phone: [Redacted]  
fax: [Redacted]

Ervin Soulier  
Bad River Tribe  
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From: Murray, Ryan M - GOV

Sent: Tuesday, February 08, 2011 6:36 PM

To: Gilkes, Keith - GOV; Huebsch, Mike - DOA; Schutt, Eric - GOV; Jensen, Jodi - DOA; Archer, Cynthia - DOA

Cc: Matejov, Scott - GOV; Polzin, Cindy M - GOV; Liedl, Kimberly - GOV; Hurlburt, Waylon - GOV; Cuiotta, Jason - DOA; Hagedorn, Brian K - GOV; Schrimpf, Chris - GOV; Werwie,

Subject: Daily Policy and Legislative Briefing

Policy and Legislative Daily Briefing for Tuesday, February 08, 2011

Legislative Liaison Update

Legislative Meetings

- Met with Representative Kapenga who asked if certain issues are already being addressed in the budget or other legislation. If not, he would like to start moving on these: repeal of BadgerCare Plus, repeal of domestic partnerships, expansion of Choice Program, cut funding for Planned Parenthood, privatization of consumer driven state functions, ethanol mandate, combined reporting, pay for performance, sabbatical pay review, and right-to-work.
- Met with Representative Rivard who discussed his interest in reforming the DNR permitting processes and had questions regarding the necessity of building a new DNR Service Center in Spooner.
- Met with Senator Olsen to discuss avoiding his amendment carving out DPI/DDOJ/GAB in the Rules bill. Discussion on-going.
- Met with Leg. Leadership regarding concurrence on Rules bill as amended. After it passes Senate on Thursday, has to go back to Assembly for concurrence – likely 2/22
- Talked with Kedzie and Mursau office regarding DNR Reform package and the hopeful timing on introduction

Senate Session

- Secretary Hamblin and Secretary Nickel were both confirmed unanimously.
- SB 7- Auto Insurance Minimums Repeal passed (25-7). 6 Dems supported: Erpenbach, Holperin, Lassa, Taylor, Vinehout, Wirch
- SS SB/AB 5- supermajority bill was given final concurrence (20-12). Dem support: Lassa

Committee Actions

- Secretary Bildsten was confirmed by Senate Committee on Financial Institutions and Rural Issues (5-0)

Committee Hearings Tomorrow

- A public hearing will be held tomorrow in the JCRAR regarding the wind siting rules that will be enacted on March 1 without action.

Economic Development and Regulatory Reform Team

DAICP

Dairy Business Assn.

- Main issue is regulations from DNR
- Digester Electricity
- Livestock Siting
- Raw Milk
- They are looking to work on changing weight limits on roads to aid their industry
- They love Cathy Stepp as the new DNR Secretary
- They have a lot of interest in putting an Ag person on the Natural Resource Board
- A key point they made is that WI already has the infrastructure and industry ready to support growth



**Tribal Gaming**

- Talked with Joe Strohl and Ron Corn from Menominee Co. about Tribal Gaming Revenue Appropriations

**DOT**

- Discussed DOT's non-budget proposals with Rep. Petrowski and Reggie Newson of DOT
  - Reggie to follow-up with Rep. Petrowski regarding some questions on specifics in some proposals
  - Rep. Petrowski asked Reggie about the Zoo Interchange Project as well

**PSC**

- Discussion with Tom Fontara and Dan Leary of T-Mobile (trying to get support from new Republican governors)
  - Issue of auctioning the 700 MHz D Block to make it available for commercial entities to provide broadband services
  - Would like a letter from the governor in support of the auction of the D Block to private entities
  - Two options: Reallocate to public safety (President Obama supports this, NGA supports this) or commercial allocation through auction (T-Mobile supports this, FCC came out with recommendations aligning with this, however the President soon after came out against)

**JOBs Hotline**

First Name	Last Name	Description of Call	Comments
Ken	Pierson	wants to know about support available for starting recycling business	Contacted by GOV; waiting for return ce
Phil		wants assistance in starting his business	left Msg; waiting for return ce
Tim	Rendell	wants assistance in starting restaurant	
Richard	Duckhold	owns Cranberry company; has issues with DNR	

**Human Services and Education Team**

**NGA Update**

1. Participated in an Executive Committee conference call this afternoon (per discussion of Medicaid Reform policy change)
  - a. Policy HHS-27: Medicaid Reform Principles and EC-16: Medicaid Reform are very similar policies. The Executive Committee voted on whether HHS-27 should be sunset or not.
    - i. Becky suggested that HHS-27 and EC-16 be revised into one policy. Executive Committee unanimously approved the decision and gave a deadline of the Annual Meeting.
      - b. Long-term Care Policy: Executive Committee gave the HHS committee an extension of 6 months (Annual Meeting) for the Long-term Care and Medicaid policy revisions
2. Discussion of Governor-Only Sessions
  - a. 1<sup>st</sup> Session: There are 29 new Governors and NGA staff is asking governors to introduce themselves with a short bio. Afterwards, there will be discussion on state budgets and the challenges ahead.
  - b. 2<sup>nd</sup> Session: Topic will be Containment of Healthcare Costs where governors can share ideas where states can reduce health care costs. (\*\*Possible attendee: Secretary Kathleen Sebelius\*\*)
    - c. 3<sup>rd</sup> Session: Primary discussion on economy. There will be discussion on national and international outlook, then governors will be discussing job policies they are introducing in their states to create jobs.
    - d. 4<sup>th</sup> Session: Governors will speak collectively on policy incentives supported by all to pass along to members on the Hill.
3. There will be a series of 4 NGA workshops this spring on health care reform
  - a. WI is strongly urged to attend April 7-8<sup>th</sup> meeting in Salt Lake City, UT

**Education Meeting**

Lena Taylor and Jason Fields will be holding a press conference next week to announce legislation expanding the MPCP. Their proposal will not go as far as changes that will be in the budget. Taylor and Fields would like to be part of the broader conversation on choice. Kimber and Michael will be meeting with Lena tomorrow.

**Teacher union backs breaking up Milwaukee district (AP)**  
 Wisconsin's largest teachers union called on Tuesday for the Milwaukee school district to be broken up into smaller districts as part of an aggressive reform agenda that also includes tying teacher pay to performance and instituting a statewide evaluation system that would force poor performers from their jobs."

**Justice and Local Governments Team**

**Courts:**

- Sen. Lazich, Calls for audit of Office of Lawyer Regulations. Letter.

**Corrections:**

- Met with PHS Correctional Health Services and Secretary Hamblin about contracting out with PHS for health services in corrections. We are skeptical of savings but DOC will work with PHS to provide system information in order for PHS to give us an estimate of savings they could provide (if there are any).

**Automobile Insurance Repeal:**

- Automobile repeal was passed in the Senate on a 25-7 bipartisan vote.
- Sen. Carpenter, Fights repeal of mandatory auto insurance

**Local Government:**

- The Daily Reporter, Walker extends hand to local officials
- Wisconsin Counties Association, County officials to gather in Madison today and Wednesday

**Brenton, Andrew - GOV**

**From:** Schrimpf, Chris - GOV  
**Sent:** Friday, December 02, 2011 5:29 PM  
**To:** [REDACTED]  
**Cc:** Werwie, Cullen J - GOV; Davis, Andrew - GOV; Matejov, Scott - GOV  
**Subject:** Re: WMC Column

OK

**From:** [REDACTED]  
**Sent:** Friday, December 02, 2011 05:28 PM  
**To:** Schrimpf, Chris - GOV  
**Cc:** Werwie, Cullen J - GOV; Davis, Andrew - GOV; Matejov, Scott - GOV  
**Subject:** Re: WMC Column

Reference to WMC in column is good but we might want to change it to saw your survey.

Also, we made a change on the local chamber survey language.

**From:** Schrimpf, Chris - GOV  
**Sent:** Friday, December 02, 2011 10:52 AM  
**To:** [REDACTED]  
**Cc:** Werwie, Cullen J - GOV; Davis, Andrew - GOV; Matejov, Scott - GOV  
**Subject:** WMC Column

Governor – Below is a column that we're sending in for WMC's newsletter. It's similar to yesterday's column with additions about mining and DNR. - Chris

As my administration's first year in office draws to a close, I believe we have accomplished a lot for which we should be proud. Starting on our first day in office, when I called a special session, we went immediately to work focusing on a jobs agenda. We passed major legislation, often with bipartisan support, to open Wisconsin for business and encourage job creation.

We reformed Wisconsin's regulatory climate and created the Wisconsin Economic Development Corporation, an agency that focuses solely on creating jobs. We also made changes to tax laws to encourage businesses to grow and expand in our state. We eliminated the state tax on health savings accounts and improved our state's legal environment.

This summer we passed a balanced budget that closed a \$3.6 billion deficit without raising taxes. We even eliminated the structural deficit for the first time in recent history. And we did away with the accounting gimmicks and fund raids that previous administrations used to balance the budget. Our budget was balanced honestly.

An honestly balanced budget is important because it gives families and businesses certainty for the future. They know that tax increases won't occur and that unnecessary cuts because of fund raids or other budget gimmicks won't happen either. By balancing the budget honestly we've built a better platform for future budgets.

Our budget and other reforms have also allowed the average K-12 property tax bill to decrease for the first time in six years. This will save the typical homeowner hundreds of dollars, while our reforms have allowed our schools to remain strong.

More recently, we've taken steps to lower transportation and shipping costs for Wisconsin businesses. We've also passed legislation to make it easier for small businesses to access capital so they can grow. And we've reformed the Department of Revenue to make it be more taxpayer friendly. All of these reforms and more are laying the foundation for economic growth in Wisconsin.

The good news is that job creators in Wisconsin and across the nation are taking notice. In one national magazine, our ranking went up 17 places in one year. It was the biggest jump in the nation and in the history of the magazine. Here, in Wisconsin, 88 percent of job creators say we are heading in the right direction. A recent survey by WMC of local chambers of commerce found that 74 percent thought the state was on the right track. A year ago, before we took office, only 18 percent thought the state was on track.

Throughout the fall my administration joined me in touring the state to listen to job creators. Key cabinet secretaries and I traveled to nearly every part of the state to listen to people like you talk about what else we can do to encourage job creation in Wisconsin. In addition, we also held the first ever Small Business Summit giving these key job creators direct access to decision makers in state government.

As we move forward into the New Year I believe we have the opportunity to continue to pass legislation and take action to create jobs. With the help of job creators we can pass legislation to improve the Department of Natural Resources. As I've toured the state, I've heard many times about how the DNR has too often stood in the way of job creation and business expansion. I believe we can make changes with DNR that encourage job growth while still maintaining strong environmental protections.

On a related note I believe we can also improve wetlands and mining laws in our state to grow jobs while safeguarding the environment. With improved legislation the state could see a mine come to Northern Wisconsin that will create over 3,000 jobs over two years.

The potential mine itself could employ 700 people for generations with \$60,000 jobs plus benefits. The benefits of the mine would reach nearly the entire state. Nearly 2,800 jobs would be created in other parts of the state in industries that support mining.

Taken as a whole, the potential mine would be one of our state's biggest economic development projects in years. That's why I'm hopeful that the legislature will take action soon to help bring thousands of jobs to our state. In the coming months we're going to continue to focus on jobs. I want everyone Wisconsin family to have access to a good-paying job and I want our children to grow up in a state full of opportunity.

From: Dipko, John A - DWD  
 Sent: Monday, August 01, 2011 1:56 PM  
 To: Werwie, Cullen J - GOV; Schrimpf, Chris - GOV  
 Cc: Baumbach, Scott C - DWD; Maxwell, Georgia E - DWD  
 Subject: FW: Hi it's Lee bergquist of the Milwaukee Journal Sentinel

Please see below press inquiry by MJS and Dennis Winters' draft response and advise - do we need to coordinate with other agencies on this or can we send?

DRAFT RESPONSE  
 Lee: The jobs you cite are grouped into the mining industry. Please see the below data for Wisconsin, which is the most detailed mining data we have:

Key:  
 # Avg Ann Estab - number of business establishments  
 Avg Emp - number of employees  
 Avg Ann Wage \$ - annual wage

Area	Year/Period	Industry	# Avg Ann Estab	Avg Emp	Avg Ann Wage \$
Wisconsin	2005Annual	Nonmetallic Mineral Mining & Quarrying	160	2937	46190
Wisconsin	2006Annual	Nonmetallic Mineral Mining & Quarrying	160	3004	46864
Wisconsin	2007Annual	Nonmetallic Mineral Mining & Quarrying	160	2814	48694
Wisconsin	2008Annual	Nonmetallic Mineral Mining & Quarrying	163	2591	50746
Wisconsin	2009Annual	Nonmetallic Mineral Mining & Quarrying	158	2280	52152
Wisconsin	2010Annual	Nonmetallic Mineral Mining & Quarrying	158	2212	55586

Wisconsin Department of Workforce Development  
 Bureau of Workforce Training - Labor Market Information  
 Query Results - Created on August 01, 2011  
<http://WORknet.Wisconsin.gov>

From: Lee Bergquist [mailto:LBERGQUIST@journalssentinel.com]  
 Sent: Friday, July 29, 2011 4:03 PM  
 To: Winters, Dennis K - DWD  
 Subject: Hi it's Lee bergquist of the Milwaukee Journal Sentinel

Dear Mr. Winters

I am writing a story about the boom in sand mining in western Wisconsin, and I am wondering if this is evident in any data yet. This is the kind of sand used for "tracking" oil and gas wells. The counties of Chippewa, Dunn, Barron, Trempealeau, Jackson and Monroe seem to be particularly active.

Thanks,

Lee

Lee Bergquist

Reporter

Milwaukee Journal Sentinel

414-224-2169

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**From:** Moroney, Matt S - DNR  
**Sent:** Thursday, May 26, 2011 2:02 PM  
**To:** Schutt, Eric - GOV; Murray, Ryan M - GOV; Culotta, Jason - GOV; Roetker, Patrick - DOA  
**Subject:** FW: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - Final draft VTF Tribal Chair Mining Letter.

**Importance:** High

Attachments

 **Matt Moroney**

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**From:** Williams, Quinn L - DNR  
**Sent:** Wednesday, May 25, 2011 03:34 PM  
**To:** Moroney, Matt S - DNR; Gunderson, Scott L - DNR  
**Cc:** Williams, Quinn L - DNR; Lutz, Michael - DNR; Gozdzielski, John F - DNR; Coakley, Ann M - DNR; Daniel A - DNR  
**Subject:** CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - Final draft VTF Tribal Chair Mining Letter.  
**Importance:** High

Hi folks,

Attached is a "clean" draft of a letter to go out from the Governor and Sec. Stepp regarding the proposed taconite mine and consultation under the Voigt decision, along with the appropriate mailing/email list for your consideration.



052511-VTF11b...  
VTF list -  
emails,May2011....

 *Quinn L. Williams*

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Governor Scott Walker

Secretary Cathy Stepp

Sincerely,

The proposed taconite mining project in the Penokee-Gogebic Iron Range is a significant issue for the State. It represents an opportunity for economic prosperity unseen in the area for generations, yet requires careful attention to the protection of our precious environment. I recognize that there will be a robust discussion on all of the issues surrounding the proposed mine, which means that it will be critically important that we maintain a dialogue between the tribes and State. We welcome your thoughts on how we can best provide a means of communication prior to the receipt of a mining application. Furthermore, we assure you that upon the receipt of a formal mining application, we will continue to engage in consultation with the Voigt Intertribal Task Force.

State and Tribal governments play key roles in serving all of the citizens of the State of Wisconsin. Our partnership will ensure the preservation of our nature resources and the encouragement of sustainable economic development. We will strive to maintain our government-to-government relationship on this issue as well as those in the future.

The State of Wisconsin (State) respects the unique government-to-government relationship with the federally recognized Tribes of Wisconsin. Additionally, the Department of Natural Resources (DNR) understands, respects, and acknowledges tribal rights both within the reservation and in the Ceded Territory. We strive to foster a collaborative relationship with the Voigt Intertribal Task Force and each band of the Lake Superior Chippewa. I believe my administrator's actions to date regarding the updates to the Voigt Stipulation process, as well as Secretary Stepp's proactive approach to this year's spring spearfishing season speak to my intent to continue to develop and foster this relationship to the benefit of all of our respective constituents and our environment.


Dear \_\_\_\_\_:

All Tribal Chairs of the Lake Superior Chippewa  
 All VTF Members  
 Mr. James E. Zorn, Executive Director

May 25, 2011

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 Madison WI 53707-7921

Scott Walker, Governor  
 Cathy Stepp, Secretary  
 Telephone 608-266-2621  
 FAX 608-267-3579  
 WISCONSIN  
 DEPT. OF NATURAL RESOURCES



TTY Access via relay - 711



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office phone: 906-358-0137  
cell phone: [REDACTED]  
fax: 906-358-4850

Sam Klingman  
P.O. Box 462  
Watersmeet, MI 49969  
email: [REDACTED]  
office phone: [REDACTED]  
cell phone: [REDACTED]

Joyce Hazen  
Lac Vieux Desert Tribe  
P.O. Box 249  
Watersmeet, MI 49969  
email: joyce.hazen@lvdttribal.com  
office phone: 906-358-4577 ext [REDACTED]

Brad Kalk  
Mille Lacs Tribe  
43408 Oodena Drive  
Onamia, Minnesota 56359  
email: bradley.kalk@millelacsband.com  
office phone: 320-532-7452  
cell phone: [REDACTED]  
fax: 320-532-7514

Leo LaFerner  
Fire # 92060 Frog Bay Road  
Bayfield, Wisconsin 54814

email: julie.gordon@redcliff-nsn.com  
office phone: 715-779-3700 (Tribe)  
fax: 715-779-3704

Larry Deragon  
Red Cliff Tribe  
88385 Pike Road, Hwy. 13  
Bayfield, Wisconsin 54814

email: lderagon@redcliff-nsn.gov  
office phone: 715-779-3732  
cell phone: [redacted] or [redacted]  
fax: 715-779-3704

Pete McGeshick Jr.  
Sokaogon Chippewa Community  
3051 Sand Lake Road  
Crandon, Wisconsin 54520

email: [redacted]  
office phone: 715-478-7500  
cell phone: [redacted]  
fax: 715-478-5275

Lewis Taylor, Chairman  
St. Croix Chippewa Tribe  
24663 Angeline Avenue  
Webster, WI 54893

email: carment@stcroixtribalcenter.com  
office phone: 715-349-2195 ext [redacted]  
cell phone: [redacted]  
fax: 715-349-5768

Junior Mosay  
[redacted]

office phone: 715-349-2195 x [redacted]

Mark Duffy  
Red Cliff Tribe  
88385 Pike Road, Hwy. 13  
Bayfield, Wisconsin 54814

email: mjduffy@redcliff-nsn.gov  
office phone: 715-779-3732  
cell phone: [redacted]  
fax: 715-779-3704

Chris McGeshick  
3173 Indian Settlement Rd.  
Crandon, Wisconsin 54520

email: [redacted]  
office phone: [redacted]  
cell phone: [redacted]  
fax: [redacted]

Aaron Loomis, Tribal Attorney  
St. Croix Chippewa Indians of Wisconsin  
24663 Angeline Avenue  
Webster, WI 54893

email: aaronl@stcroixtribalcenter.com  
office phone: 715-349-2195 x [redacted]  
cell phone: [redacted]  
fax: 715-349-2975

Carmen Butler  
24099 Reservation Rd.  
Stien, WI 54872

email: [redacted]  
office phone: 715-349-2195  
cell phone: [redacted]

Conrad St. John  
24791 Cnt Off Rd.  
Webster, WI 54893

email: stjconr8626@lco.edu  
office phone: 715-349-2195 x [redacted]  
cell phone: [redacted]

From: Schrimpf, Chris - GOV  
Sent: Monday, December 05, 2011 4:35 PM  
To: [REDACTED]  
Cc: Werwie, Cullen J - GOV; Lund, Julie A - GOV; Schutt, Eric - GOV; Murray, Ryan M - GOV; Huebsch, Mike - DOA; Matejov, Scott - GOV; Davis, Andrew - GOV  
Subject: Draft Media Schedule This Week

Governor – We wanted to bring back this outline of the week ahead so you can see what we're working on prospectively. Moving forward we'll try and get it to you each Friday for you to review. We've also put it in your binder.

Draft Media Schedule This Week

Monday

• Advisory for EMMA and FRAN

• Advisory for Bill Signing of AB1

• Advisory for SB 28 Board of Regents in Wasau

• Draft Release for AB 1

• Draft Release SB 28

• Draft Senior Care Letter

• Draft Washington Times Oped

• Legal Reform Drafting

• Draft Weekly Radio Address

Tuesday

• Public Event: Remarks at EMMA - LaCrosse

• Public Event: Signing AB 1 Refund for Jobs Tax Credit – Eau Claire

• Public Event: Signing of SB 28 Composition of Board of Regents - Wasau

• Release for Bill Signing of AB 1 Send

• Release for SB 28 Send

• Advisory for Remember Pearl Harbor

• Advisory for New North

• Draft Release for New North focusing on mining

• Draft Release for SB 96

• Draft Release for Big Bill Signing

Wednesday

• Public Event: Remarks at Remember Pearl Harbor – Oshkosh

• Public Event: New North Summit – Green Bay

• Stakeholder Event : Signing of SB 96 - Madison

• Release for New North Send

• Release for SB 96 Send

• Release for Big Bill Signing Send

• Record Weekly Radio Address

Thursday

• Send Weekly Radio Address

• Senior Care Letter

Friday

• Executive Residence Tour Reminder

Saturday

• Potential: Pulaski Fire Advisory



**From:** Murray, Ryan M - GOV  
**Sent:** Thursday, May 26, 2011 2:03 PM  
**To:** Moroney, Matt S - DNR; Schutt, Eric - GOV  
**Cc:** Culotta, Jason - GOV; Roetker, Patrick - DOA  
**Subject:** RE: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - Final draft VTF Tribal Chair Mining Letter.

The attachments didn't come through. Can you resend?

**Ryan Murray | Office of the Governor**  
 Director of Policy and Legislative Affairs  
 (o) 608-266-1212 | (e) [ryan.murray@wisconsin.gov](mailto:ryan.murray@wisconsin.gov)

**From:** Moroney, Matt S - DNR  
**Sent:** Thursday, May 26, 2011 1:57 PM  
**To:** Murray, Ryan M - GOV; Schutt, Eric - GOV  
**Cc:** Culotta, Jason - GOV; Roetker, Patrick - DOA  
**Subject:** FW: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - Final draft VTF Tribal Chair Mining Letter.

Here is another letter that we should send. Let me know how you wish to proceed.



Deputy Secretary  
 Wisconsin Department of Natural Resources  
 phone: (608) 264-6266  
 fax: (608) 266-6983  
 e-mail: [Matt.Moroney@wisconsin.gov](mailto:Matt.Moroney@wisconsin.gov)

**From:** Gilkes, Keith - GOV  
**Sent:** Thursday, May 26, 2011 01:49 PM  
**To:** Moroney, Matt S - DNR  
**Subject:** RE: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - Final draft VTF Tribal Chair Mining Letter.

Looks fine from my perspective. You should have this run through the policy shop to get it printed and appropriately signed by the Governor.

KG

**From:** Moroney, Matt S - DNR  
**Sent:** Thursday, May 26, 2011 1:05 PM  
**To:** Gilkes, Keith - GOV  
**Subject:** FW: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - Final draft VTF Tribal Chair Mining Letter.  
**Importance:** High

Is this ok?



Deputy Secretary

Wisconsin Department of Natural Resources  
(☎) phone: (608) 264-6266  
(☎) fax: (608) 266-6983  
(✉) e-mail: [Matt.Moroney@wisconsin.gov](mailto:Matt.Moroney@wisconsin.gov)

---

**From:** Williams, Quinn L - DNR  
**Sent:** Wednesday, May 25, 2011 03:34 PM  
**To:** Moroney, Matt S - DNR; Gunderson, Scott L - DNR  
**Cc:** Williams, Quinn L - DNR; Lutz, Michael - DNR; Gozdziński, John F - DNR; Coakley, Ann M - DNR; Graff, Daniel A - DNR  
**Subject:** CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - Final draft VTF Tribal Chair Mining Letter.  
**Importance:** High

Hi folks,

Attached is a "clean" draft of a letter to go out from the Governor and Sec. Stepp regarding the proposed taconite mine and consultation under the Voigt decision, along with the appropriate mailing/email list for your consideration.

<< File: 052511-VTF Tribal Chair Mining Letter - Final Draft.doc >> << File: VTF list & emails.May2011.pdf >>

  
*Quinn L. Williams*

Staff Attorney  
Bureau of Legal Services  
Wisconsin Department of Natural Resources

(☎) phone: (608) 266-1318  
(☎) fax: (608) 266-6983

(✉) e-mail: [quinn.williams@wisconsin.gov](mailto:quinn.williams@wisconsin.gov)

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Mohr, Mark - GOV

**From:** Roetker, Patrick - DOA  
**Sent:** Thursday, May 26, 2011 4:20 PM  
**To:** Murray, Ryan M - GOV  
**Subject:** RE: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - Final draft VTF Tribal Chair Mining Letter.

Do we want the Secretary's signature as well?

**From:** Murray, Ryan M - GOV  
**Sent:** Thursday, May 26, 2011 2:34 PM  
**To:** Moroney, Matt S - DNR; Schutt, Eric - GOV; Culotta, Jason - GOV; Roetker, Patrick - DOA  
**Subject:** RE: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - Final draft VTF Tribal Chair Mining Letter.

I'm good.

Pat- Please put this one on letterhead too for the governor to sign.

Thanks.

**Ryan Murray | Office of the Governor**  
*Director of Policy and Legislative Affairs*  
[ryan.murray@wisconsin.gov](mailto:ryan.murray@wisconsin.gov) | (o) 608-266-1212 | (e) ryan.murray@wisconsin.gov

**From:** Moroney, Matt S - DNR  
**Sent:** Thursday, May 26, 2011 2:02 PM  
**To:** Schutt, Eric - GOV; Murray, Ryan M - GOV; Culotta, Jason - GOV; Roetker, Patrick - DOA  
**Subject:** FW: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - Final draft VTF Tribal Chair Mining Letter.  
**Importance:** High

**Matt Moroney**  
Deputy Secretary  
Wisconsin Department of Natural Resources

**(p)** phone: (608) 264-6266  
**(f)** fax: (608)266-6983  
**(e)** e-mail: [Matt.Moroney@wisconsin.gov](mailto:Matt.Moroney@wisconsin.gov)

**From:** Williams, Quinn L - DNR  
**Sent:** Wednesday, May 25, 2011 03:34 PM  
**To:** Moroney, Matt S - DNR; Gunderson, Scott L - DNR  
**Cc:** Williams, Quinn L - DNR; Lutz, Michael - DNR; Gozdziaski, John F - DNR; Coakley, Ann M - DNR; Graff, Daniel A - DNR  
**Subject:** CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - Final draft VTF Tribal Chair Mining Letter.  
**Importance:** High

Hi folks,

Attached is a "clean" draft of a letter to go out from the Governor and Sec. Stepp regarding the proposed taconite mine and consultation under the Voigt decision, along with the appropriate mailing/email list for your consideration.



<< File: 052511-VTFTRibChairMiningLetter - Final Draft.doc >> << File: VTF list & emails.May2011.pdf >>

 Quinn L. Williams

Staff Attorney

Bureau of Legal Services

Wisconsin Department of Natural Resources

(☎) phone: (608) 266-1318

(☎) fax: (608) 266-6983

(✉) e-mail: [quinn.williams@wisconsin.gov](mailto:quinn.williams@wisconsin.gov)

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**From:** Murray, Ryan M - GOV  
**Sent:** Thursday, May 26, 2011 4:51 PM  
**To:** Roetker, Patrick - DOA  
**Subject:** Re: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - Final draft VTF Tribal Chair Mining Letter.

Yes. We can send an intern to get it.

---

**From:** Roetker, Patrick - DOA  
**Sent:** Thursday, May 26, 2011 04:20 PM  
**To:** Murray, Ryan M - GOV  
**Subject:** RE: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - Final draft VTF Tribal Chair Mining Letter.

Do we want the Secretary's signature as well?

---

**From:** Murray, Ryan M - GOV  
**Sent:** Thursday, May 26, 2011 2:34 PM  
**To:** Moroney, Matt S - DNR; Schutt, Eric - GOV; Culotta, Jason - GOV; Roetker, Patrick - DOA  
**Subject:** RE: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - Final draft VTF Tribal Chair Mining Letter.

I'm good.

Pat- Please put this one on letterhead too for the governor to sign.

Thanks.

---

Ryan Murray | Office of the Governor

Director of Policy and Legislative Affairs

(o) 608-266-1212 | (e) [ryan.murray@wisconsin.gov](mailto:ryan.murray@wisconsin.gov)

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**From:** Moroney, Matt S - DNR  
**Sent:** Thursday, May 26, 2011 2:02 PM  
**To:** Schutt, Eric - GOV; Murray, Ryan M - GOV; Culotta, Jason - GOV; Roetker, Patrick - DOA  
**Subject:** FW: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - Final draft VTF Tribal Chair Mining Letter.  
**Importance:** High

Attachments

 **Matt Moroney**

Deputy Secretary

Wisconsin Department of Natural Resources

(P) phone: (608) 264-6266

(P) fax: (608) 266-6983

(E) e-mail: [Matt.Moroney@wisconsin.gov](mailto:Matt.Moroney@wisconsin.gov)

From: Williams, Quinn L - DNR

Sent: Wednesday, May 25, 2011 03:34 PM

To: Moroney, Matt S - DNR; Gunderson, Scott L - DNR

Cc: Williams, Quinn L - DNR; Lutz, Michael - DNR; Gozdziński, John F - DNR; Coakley, Ann M - DNR; Graff, Daniel A - DNR

Subject: CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGE - Final draft VTF Tribal Chair Mining Letter.

Importance: High

Hi folks,

Attached is a "clean" draft of a letter to go out from the Governor and Sec. Stepp regarding the proposed taconite mine and consultation under the Voigt decision, along with the appropriate mailing/email list for your consideration.

>> File: 052511-VTF Tribal Chair Mining Letter - Final Draft.doc >> << File: VTF list & emails.May2011.pdf >>

 Quinn L. Williams

Staff Attorney

Bureau of Legal Services

Wisconsin Department of Natural Resources

(P) phone: (608) 266-1318

(P) fax: (608) 266-6983

(E) e-mail: [quinn.williams@wisconsin.gov](mailto:quinn.williams@wisconsin.gov)

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Mohr, Mark - GOV

From: David Storey <david@capitolmanagementwi.com>  
Sent: Tuesday, May 17, 2011 11:12 AM  
To: Culotta, Jason - GOV  
Subject: Today's Meeting

Hi Jason.

Although I consider it a loss, I have to cancel (hopefully postpone) our meeting today at 2:00 PM. We have been asked to participate in a meeting with Keith at that time. Please accept my apologies and let's try to reconnect soon.

I'm sure you understand, but I really was looking forward to visiting with you.

Take care. Dave.

David Storey

[david@capitolmanagementwi.com](mailto:david@capitolmanagementwi.com)

From: Ryan Murray <[REDACTED]>  
Sent: Monday, June 06, 2011 8:03 AM  
To: Murray, Ryan M - GOV  
Subject: Staff Mtg Agenda w/ Governor - Gov is not on this e-mail

-----Forwarded message-----

From: Keith Gilkes <[REDACTED]>  
Date: Sun, Jun 5, 2011 at 7:06 PM  
Subject: Staff Mtg Agenda w/ Governor - Gov is not on this e-mail  
To: Mike Huebsch <[REDACTED]>, Eric Schutt <[REDACTED]>, Ryan Murray <[REDACTED]>, Chris Schrimpf <[REDACTED]>, Brian Hagedorn <[REDACTED]>

Executive Management Monday Briefing

*Agenda*

JFC Wrap Up - Eric Schutt

Policy/Legislative Update - Ryan Murray

- Mining Legislation Status Update

- Concealed Carry Legislation Status Update

- Contract Issue, Car Dealers v. Car Manufacturers

Comms - Chris Schrimpf

- Schedule for Upcoming Week

- Post Budget Messaging, Timeline for Department Efforts

- Objective for Weekly Standard Interview

- Goals for Address
- Takeaways for the Senators

Legal – Brian Hagedorn

- GAB Appointment

- BRB Legal Update

Cabinet Agenda Review – Keith Gilkes

Agencies

Scheduling

- June 19-20 US Chamber Meeting, Washington, DC

- o Todd Wanek is confirmed, Need alternate for Lisa Mauer

- June 13, 14, 15 – Twin Cities Trip, United Health, 3M Confirmed

**Mohr, Mark - GOV**

**From:** Ristow, Nate - GOV  
**Sent:** Wednesday, June 01, 2011 2:24 PM  
**To:** Culotta, Jason - GOV  
**Subject:** RE: Draft review: LRB 11-2035/3 Topic: Regulation of mining for ferrous metallic minerals

**Attachments:** EO #33.pdf

Done.

Nate Ristow  
Assistant Legal Counsel  
Office of Governor Scott Walker  
115E State Capitol  
(608) 266-1212  
Nate.Ristow@Wisconsin.gov

---

**From:** Culotta, Jason - GOV  
**Sent:** Wednesday, June 01, 2011 1:36 PM  
**To:** Ristow, Nate - GOV  
**Subject:** FW: Draft review: LRB 11-2035/3 Topic: Regulation of mining for ferrous metallic minerals

The Senate companion will be LRB-218/11.

---

**From:** Culotta, Jason - GOV  
**Sent:** Wednesday, June 01, 2011 12:41 PM  
**To:** Ristow, Nate - GOV  
**Subject:** RE: Draft review: LRB 11-2035/3 Topic: Regulation of mining for ferrous metallic minerals

No. LRB-2035/3 will be the jacketed Assembly version. Working on getting a Senate companion from LRB.

---

**From:** Ristow, Nate - GOV  
**Sent:** Wednesday, June 01, 2011 12:18 PM  
**To:** Culotta, Jason - GOV  
**Subject:** RE: Draft review: LRB 11-2035/3 Topic: Regulation of mining for ferrous metallic minerals

I just want to confirm that there is an LRB draft for both the Senate bill and the Assembly bill. I have the numbers as, LRB 2035/3 and 2036/3. Is all that correct?

Nate Ristow  
Assistant Legal Counsel  
Office of Governor Scott Walker  
115E State Capitol  
(608) 266-1212  
Nate.Ristow@Wisconsin.gov

---

**From:** Culotta, Jason - GOV  
**Sent:** Wednesday, June 01, 2011 9:17 AM  
**To:** Ristow, Nate - GOV  
**Subject:** FW: Draft review: LRB 11-2035/3 Topic: Regulation of mining for ferrous metallic minerals







**OFFICE OF THE GOVERNOR**

**EXECUTIVE ORDER # 33**

**Relating to a Special Session of the Legislature and Amending Executive Orders #1, #4, #14, and #25**

**WHEREAS, on January 3, 2011, I, Scott Walker, Governor of the State of Wisconsin, by Executive Order #1, convened a special session of the Legislature at the State Capitol on January 4, 2011, at 10:00 a.m. solely to consider and act upon specified legislation;**

**NOW THEREFORE, I, Scott Walker, Governor of the State of Wisconsin, pursuant to Article IV, Section 11 and Article V, Section 4 of the Wisconsin Constitution, hereby amend and supplement Executive Orders #1, #4, #14, and #25 as follows:**

1. In addition to considering the legislation previously specified in Executive Orders #1, #4, #14, and #25, the Legislature shall consider and act upon LRB 2035/3 and LRB 2181/1.



**IN TESTIMONY WHEREOF, I have herunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capitol in the City of Madison this first day of June, in the year two thousand eleven.**

**SCOTT WALKER**  
GOVERNOR

By the Governor  
*Scott Walker*  
DOUGLAS A. FOHLERT  
Secretary of State

Mohr, Mark - GOV

From:

Ristow, Nate - GOV

Sent:

Wednesday, June 01, 2011 12:18 PM

To:

Culotta, Jason - GOV

Subject:

RE: Draft review: LRB 11-2035/3 Topic: Regulation of mining for ferrous metallic minerals

I just want to confirm that there is an LRB draft for both the Senate bill and the Assembly bill. I have the numbers as, LRB 2035/3 and 2036/3. Is all that correct?

Nate Ristow

Assistant Legal Counsel

Office of Governor Scott Walker

115E State Capitol

(608) 266-1212

[Nate.Ristow@Wisconsin.gov](mailto:Nate.Ristow@Wisconsin.gov)

From: Culotta, Jason - GOV

Sent: Wednesday, June 01, 2011 9:17 AM

To: Ristow, Nate - GOV

Subject: FW: Draft review: LRB 11-2035/3 Topic: Regulation of mining for ferrous metallic minerals

**Mohr, Mark - GOV**

**From:** Culotta, Jason - GOV  
**Sent:** Wednesday, June 01, 2011 12:41 PM  
**To:** Ristow, Nate - GOV  
**Subject:** RE: Draft review: LRB 11-2035/3 Topic: Regulation of mining for ferrous metallic minerals

No. LRB-2035/3 will be the jacketed Assembly version. Working on getting a Senate companion from LRB.

---

**From:** Ristow, Nate - GOV  
**Sent:** Wednesday, June 01, 2011 12:18 PM  
**To:** Culotta, Jason - GOV  
**Subject:** RE: Draft review: LRB 11-2035/3 Topic: Regulation of mining for ferrous metallic minerals

I just want to confirm that there is an LRB draft for both the Senate bill and the Assembly bill. I have the numbers as, LRB 2035/3 and 2036/3. Is all that correct?

Nate Ristow  
Assistant Legal Counsel  
Office of Governor Scott Walker  
115E State Capitol  
(608) 266-1212  
Nate.Ristow@Wisconsin.gov

---

**From:** Culotta, Jason - GOV  
**Sent:** Wednesday, June 01, 2011 9:17 AM  
**To:** Ristow, Nate - GOV  
**Subject:** FW: Draft review: LRB 11-2035/3 Topic: Regulation of mining for ferrous metallic minerals

**Mohr, Mark - GOV**

**From:** Ristow, Nate - GOV  
**Sent:** Monday, July 25, 2011 9:23 AM  
**To:** Mueller, Jill - GOV  
**Subject:** FW: Requested Info on Mining

Nate Ristow

Assistant Legal Counsel

Office of Governor Scott Walker

115E State Capitol

(608) 266-1212

[Nate.Ristow@Wisconsin.gov](mailto:Nate.Ristow@Wisconsin.gov)

---

**From:** Himbauch, Casey - GOV  
**Sent:** Thursday, July 21, 2011 5:15 PM  
**To:** Ristow, Nate - GOV  
**Cc:** Roetker, Patrick - DOA  
**Subject:** FW: Requested Info on Mining

Bad River Submits Water Standards To EPA In Light Of Potential Mine

---

**From:** Shea, Allen K - DNR  
**Sent:** Wednesday, July 20, 2011 5:10 PM  
**To:** Moroney, Matt S - DNR; Roetker, Patrick - DOA; Himbauch, Casey - GOV  
**Cc:** Coakley, Ann M - DNR; Johnson, Kenneth G - DNR  
**Subject:** RE: Requested Info on Mining

Casey and Pat,

The practical application of TAS, if granted by EPA, is that surface water discharges to water within or running through the reservation (e.g. the Bad River and its tributaries) would have to meet the water quality standards set by the tribe. For example, if the tribe proposed and EPA approved a surface water quality standard for sulfides, the Bad River would have to meet those standards as it entered the reservation. A facility discharging wastewater upstream of the reservation that causes the exceedance at the reservation boundary could be subject to action by the tribe.

Hope this helps. Call if you have questions 219-6427.

  
Matt Shea

Director  
Office of Business Support and Sustainability  
Wisconsin Department of Natural Resources  
(cell): [REDACTED]

(☎) phone (office): (608) 266-5896  
(✉) e-mail: allen.shea@wisconsin.gov

**From:** Shea, Allen K - DNR  
**Sent:** Wednesday, July 20, 2011 01:26 PM  
**To:** Roetker, Patrick - DOA; Himebauch, Casey - GOV  
**Cc:** Moroney, Matt S - DNR; Coakley, Ann M - DNR; Shea, Allen K - DNR  
**Subject:** Requested Info on Mining

Gentlemen,

Per your request, I offer the following information and perspectives:

1. Please ensure the Governor is cognizant of the state's responsibility under the Voigt decision to consult with Wisconsin's tribes on matters that may materially affect their interests in off-reservation lands within the ceded territory. This would obviously include issuing a mining permit for a mine within the ceded territory. Acknowledgement of the State's responsibility to consult will be a very important issue to the tribe.

2. While the Department has approved exploratory borings, there has been no formal mining application for the Gogebic deposit. As a result, we have seen nothing formal or detailed about the particulars (exact location, resources impacted, technology and process to be used, etc) of a mine in the Gogebic range in Ashland and Iron counties. Ergo, we cannot provide specific information to the Governor on the mining processes, technologies and their potential impacts on water use, water discharges, or water resource impacts.

3. For the meeting next week, I recommend the Governor:

\* Acknowledge the tribe's sovereign rights on their reservation lands;

\* The State's obligation to consult with the tribe on any mine permitting within the ceded territory and his intent to direct DNR to do so; and

\* That he is interested in hearing their perspectives and concerns.

4. I have attached two documents that I hope provide background for the Governor on:


a. The recently proposed mining legislation;

<< File: Background on Mining Bill.doc >>

b. The Gogebic range ore deposit:

<< File: Gogebic Review 12-2010.doc >>

5. Lastly, please ensure the Governor is aware that the Bad River Tribe recently submitted a request to EPA for approval of Treatment as a State status for implementing the Clean Water Act.

 Allen Shea

Director  
Office of Business Support and Sustainability  
Wisconsin Department of Natural Resources

(☎) phone (cell): [REDACTED]  
(☎) phone (office): (608) 266-5896  
(✉) e-mail: allen.shea@wisconsin.gov

**From:** Himebauch, Casey - GOV  
**Sent:** Thursday, July 21, 2011 5:15 PM  
**To:** Ristow, Nate - GOV  
**Cc:** Roetker, Patrick - DOA  
**Subject:** FW: Requested Info on Mining

Bad River Submits Water Standards To EPA In Light Of Potential Mine

**From:** Shea, Allen K - DNR  
**Sent:** Wednesday, July 20, 2011 5:10 PM  
**To:** Moroney, Matt S - DNR; Roetker, Patrick - DOA; Himebauch, Casey - GOV  
**Cc:** Coakley, Ann M - DNR; Johnson, Kenneth G - DNR  
**Subject:** RE: Requested Info on Mining

Casey and Pat,

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Hope this helps. Call if you have questions 219-6427.

 Allen Shea

Director  
Office of Business Support and Sustainability  
Wisconsin Department of Natural Resources

(☎) phone (cell): [REDACTED]  
(☎) phone (office): (608) 266-5896  
(✉) e-mail: allen.shea@wisconsin.gov

**From:** Shea, Allen K - DNR  
**Sent:** Wednesday, July 20, 2011 01:26 PM  
**To:** Roetker, Patrick - DOA; Himebauch, Casey - GOV  
**Cc:** Moroney, Matt S - DNR; Coakley, Ann M - DNR; Shea, Allen K - DNR  
**Subject:** Requested Info on Mining

Gentlemen,

Per your request, I offer the following information and perspectives:

1. Please ensure the Governor is cognizant of the state's responsibility under the Voigt decision to consult with Wisconsin's tribes on matters that may materially affect their interests in off-reservation lands within the ceded territory. This would obviously include issuing a mining permit for a mine within the ceded territory. Acknowledgement of the State's responsibility to consult will be a very important issue to the tribe.

2. While the Department has approved exploratory borings, there has been no formal mining application for the Gogebic deposit. As a result, we have seen nothing formal or detailed about the particulars (exact location, resources impacted, technology and process to be used, etc) of a mine in the Gogebic range in Ashland and Iron counties. Ergo, we cannot provide specific information to the Governor on the mining processes, technologies and their potential impacts on water use, water discharges, or water resource impacts.

3. For the meeting next week, I recommend the Governor:

\* Acknowledge the tribe's sovereign rights on their reservation lands;

\* The State's obligation to consult with the tribe on any mine permitting within the ceded territory and his intent to direct DNR to do so; and

\* That he is interested in hearing their perspectives and concerns.

4. I have attached two documents that I hope provide background for the Governor on:

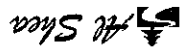
a. The recently proposed mining legislation;

<< File: Background on Mining Bill.doc >>

b. The Gogebic range ore deposit.

<< File: Gogebic Review 12-2010.doc >>

5. Lastly, please ensure the Governor is aware that the Bad River Tribe recently submitted a request to EPA for approval of Treatment as a State status for implementing the Clean Water Act.

 M Shea

Director  
Office of Business Support and Sustainability  
Wisconsin Department of Natural Resources

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**From:** Cuiotta, Jason - GOV  
**Sent:** Wednesday, June 01, 2011 1:36 PM  
**To:** Ristow, Nate - GOV  
**Subject:** FW: Draft review: LRB 11-2035/3 Topic: Regulation of mining for ferrous metallic minerals

The Senate companion will be LRB-2181/1.

---

**From:** Cuiotta, Jason - GOV  
**Sent:** Wednesday, June 01, 2011 12:41 PM  
**To:** Ristow, Nate - GOV  
**Subject:** RE: Draft review: LRB 11-2035/3 Topic: Regulation of mining for ferrous metallic minerals

No. LRB-2035/3 will be the jacketed Assembly version. Working on getting a Senate companion from LRB.

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**From:** Ristow, Nate - GOV  
**Sent:** Wednesday, June 01, 2011 12:18 PM  
**To:** Cuiotta, Jason - GOV  
**Subject:** RE: Draft review: LRB 11-2035/3 Topic: Regulation of mining for ferrous metallic minerals

I just want to confirm that there is an LRB draft for both the Senate bill and the Assembly bill. I have the numbers as, LRB 2035/3 and 2036/3. Is all that correct?

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Nate Ristow  
Assistant Legal Counsel  
Office of Governor Scott Walker  
115E State Capitol  
(608) 266-1212  
Nate.Ristow@Wisconsin.gov

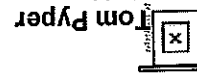
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**From:** Cuiotta, Jason - GOV  
**Sent:** Wednesday, June 01, 2011 9:17 AM  
**To:** Ristow, Nate - GOV  
**Subject:** FW: Draft review: LRB 11-2035/3 Topic: Regulation of mining for ferrous metallic minerals



From: Pypier, Thomas TMP (7122) <TPYPER@whdlaw.com>  
Sent: Wednesday, May 25, 2011 11:17 AM  
To: Culotta, Jason - GOV  
Cc: BUZECKY, Jennifer D. JDB (5749)  
Subject: FW: Corrections  
Attachments: Corrections\_05\_25\_11(WHD\_7876242\_1).DOC\,DOC\,DOC

Please see attached.



Tom Pypier

Shareholder

Whyte Hirschboeck Dudek S.C.

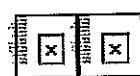
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tpypier@whdlaw.com



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CORRECTIONS

The document provided yesterday contained the following on page 4:

**Section 295.46, page 81, should include the following after line 13:**

“(6) If no bulk sampling plan is filed under s. 295.45 or no approvals are required for bulk sampling, the notice and public information procedures under s. 295.45(10)(b), (c) and (e) shall apply to the general description of the proposed mining project under this section.”

The reference back to s. 295.45(10)(b), (c) and (e) does not work because some of the language applies to approvals needed and is inapplicable to a public informational hearing only on a general description of the proposed mining project. Accordingly, please substitute the following:

**Section 295.46, page 86 (page cite corrected), after line 13 add:**

(6) If no bulk sampling plan is filed under s. 295.45 or the department provides notice to the applicant under s. 295.45(3) that no approvals are needed for bulk sampling, the department shall publish a Class I notice of a public informational hearing in accordance with ch. 985, Stats. at the same time it provides notice that no approvals are required for bulk sampling or after the preapplication description is filed with the department if no bulk sampling plan is filed. The notice shall describe the availability of the preapplication description and the opportunity to submit comments within 30 days after the notice is published. The notice shall also specify the date, time and location of the public information hearing, which shall be held in the county where the majority of the proposed mining will take place within 30 days after publication of the notice. The department shall also send the notice to all known departments and agencies that may be required to grant any approval for the mining project, to any regional planning commission within which the affected area lies, to the governing bodies of all towns, villages, cities and counties within which any part of the proposed mining site lies, to the governing bodies of all towns, villages or cities contiguous to any town, village or city within which any part of the proposed mining site lies, any affected states and to any interested persons who have requested such notification.

The following two citations to the Bill in the document provided yesterday should have been:

On page 4, the fifth (5th) reference should have been:


**Section 295.46, page 86, line 4, instead of Section 295.45.**

On page 7, the fourth (4th) reference should have been:

**Section 295.61(4)(bn), page 156, lines 7-8, instead of to lines 7-13.**


**From:** Pypier, Thomas TMP (7122) <TPYPER@whdlaw.com>  
**Sent:** Wednesday, May 25, 2011 11:33 AM  
**To:** Culotta, Jason - GOV  
**Subject:** FW: Corrections  
**Attachments:** Corrections 05\_25\_11(WHD\_7876242\_1).DOC\,DOC

Made one correction to the last entry (changed pages 7-8 to 8-9).

 **From Pypier**  
Shareholder  
Whyte Hirschboeck Dudek S.C.  
33 East Main Street, Suite 300  
Madison, WI 53703-4655  
(608) 258-7122  
(608) 258-7138  
tpyper@whdlaw.com

**From:** Pypier, Thomas TMP (7122)  
**Sent:** Wednesday, May 25, 2011 11:17 AM  
**To:** Jason Culotta  
**Cc:** BUZECKY, Jennifer D. JDB (5749)  
**Subject:** FW: Corrections

Please see attached.

 **From Pypier**  
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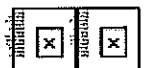
The information in this e-mail is confidential and may be protected by the attorney's work product doctrine or the attorney/client privilege. It is intended solely for the addressee(s); access to anyone else is unauthorized. If

I see that the first set of instructions, which were provided to Robin while I was away, eliminated the reference to s. NR 140.28 in proposed s. 295.645 (8). I do not understand the intent behind that alternatives governing whether exemptions to groundwater quality standards should be given. explanation is not clear to me. I am not aware that the draft includes language that provides alternatives in the bill govern whether an exemption should be given, not those in the Rule." This to s. NR 140.28, Wis. Adm. Code on page 173, lines 10-11 should be deleted, because "the 2) The 5th instruction on page 1 of the document referenced in point 1) indicates that the reference

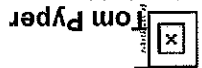
these changes.  
operation." Changing the title as you suggest is fine. Please let me know if I should make one of changed to read "Mining waste site location criteria; feasibility study and plan of "waste site feasibility study and plan of operation under s. 295.51 (2)." Perhaps the title could be into a new section or I could narrow the references in other parts of the bill so that they refer to contents of the section and the location criteria are in that section. I could move the location criteria 5:23, indicates that the title for proposed s. 295.51 should be changed. The title must reflect the 1) The 3rd instruction on page 1 of the document titled "Changes to LRB-2035/2," sent Tuesday at responses in writing (including email), by phone, or in a meeting, which ever would work best for you. I have some questions and comments about the drafting instructions. I am happy to receive

Jason:

**From:** Tradewell, Becky [mailto:Becky.Tradewell@legis.wisconsin.gov]  
**Sent:** Wednesday, May 25, 2011 5:10 PM  
**To:** Culotta, Jason - GOV  
**Cc:** Kite, Robin - LEGIS  
**Subject:** Comments and questions on the redrafting instructions



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(608) 258-7138  
t.pyper@whdlaw.com



Jason asked that I respond to your inquiries. Please see responses below. Please let me know if you have any further questions. Thanks for your help.

Becky:

**From:** Pyper, Thomas TMP (7122) [mailto:TPYPER@whdlaw.com]  
**Sent:** Thursday, May 26, 2011 1:21 PM  
**To:** Tradewell, Becky  
**Cc:** BUZECKY, Jennifer D. JDB (5749); Culotta, Jason - GOV  
**Subject:** FW: Comments and questions on the redrafting instructions

change. If it is intended to allow DNR to grant exemptions without providing any guidance, that is probably an invalid delegation of legislative intent.

Note that NR 140 applies under the draft to the extent that it does not conflict with proposed s. 295.645. Also, the draft includes several specific references to provisions in ch. NR 140, including another reference to s. NR 140.28 on page 176, line 16.

Please provide some clarification of these issues.

The elimination of the references to NR 140.28 was not intended to eliminate the applicability of NR 140.28. As you indicate, NR 140 applies to the extent it does not conflict. Referencing NR 140.28 for the only provision to request an exemption may be too limiting. We want to preserve the ability to request exemptions pursuant to any applicable exemption provisions that currently exist under law, including s. 295.56. So deleting the reference preserves all options available under law, including NR 140.28.

3) The 2nd instruction on page 5 of the document referenced in point 1) indicates that the language on page 124, lines 8,9, and 10-11 should be replaced with the language proposed last week. My understanding is that Robin did not use the proposed language because it is not clear. I agree that "includes the categories of information identified in" is not clear. I am working on alternatives. OK. The issue is that this needs to remain an objective, quantitative "check the box" type of review by the DNR. If you cannot figure a way to ensure that is the case, then please just eliminate everything after "plan" in lines 7 and 8 and after "operation" in line 9 (i.e., reverting to where we were before the last round of changes).

4) Fees. Looking at the language of proposed s. 295.73 in LRB-2035/1, the instructions sent to Robin last week, and the instructions beginning on the bottom of page 2 of the document referenced in point 1), I find that the proposed language is unclear in some respects. Proposed s. 295.73 (1) requires a \$10,000 filing fee for a mining permit. I see no instructions to change this. Proposed s. 295.73 (3) (a) in LRB-2035/1 requires DNR to determine its costs for evaluating the mining projects upon completion of its action on all approvals. I see no instructions to change this. Proposed s. 295.73 (3) (b) in LRB-2035/1 requires DNR to assess the lesser of the amount by which its costs exceed the \$10,000 filing fee or \$750,000, whichever is less. The only requested change I see to this is to change \$750,000 to \$1,100,000. The instructions then require the "assessed" amount to be paid in installments, starting with a \$100,000 payment to be made when the preapplication general description is given. This would be before the \$10,000 filing fee is to be paid.

The \$10,000 filing fee does not seem to make sense if the mining company has already been required to pay \$100,000. Should the filing fee be eliminated? Shouldn't the language in sub. (3) (a) be eliminated or changed to require DNR to just keep track of its costs? And shouldn't the existing language in sub. (3) (b) be modified to reflect the requested approach of "paying costs in arrears"? You are correct. Sub. (1) lines 6-9 and (3)(a) lines 14-18 should be eliminated and sub. (b) lines 19-21 on p. 178 should be modified to indicate that the fee is "up to \$1.1 million" and that it is paid out in arrears as indicated in the language we did include. If you could do that (as you propose), that would be great. Then have the payout periods be as outlined in what you received.

Also, the proposed language does not seem to clearly address the situation in which the applicant has made one or more of the \$250,000 payments when DNR approves or denies the permit application, but its total costs do not use up the last \$250,000 payment. Do you want the draft to require a refund in this situation? You are correct that #6 only addresses refund in the event the

application is withdrawn. I expect it will be unlikely that the money is not fully allocated against actual costs by the time the permit is approved or denied, but it won't hurt to cover that issue. Maybe you could add that to #6.

5) About the changes to the mining waste site location criteria. Robin changed proposed s. 295.51 (1m) as requested last week. I think that the changes may have an unintended effect, however. In the /1 version of the draft, the exception in sub. (1m) (b) only applied to the 6 location restrictions then in par. (a). By adding the 4 additional location restrictions to par. (a) without changing par. (b), the exception in par. (b) applies to the 4 new restrictions as well as the 6 preexisting ones. So, for example, a waste site may be located in a floodplain if the waste site is visually screened. That is not the intent is it? If not, I will change the draft. It would be more logical to place the new restrictions outside of par. (a), as is already the case with sub. (1m) (c) and (d). We agree that the exception in sub. (1m)(b) should only apply to the location restrictions of (1m)(a)1.-6. and that the new restrictions can be located outside of par. (a).

I will let you know of any other issues that come up.

Please do not hesitate to let me know if there are questions about this message.

Becky Tradewell  
Managing Attorney  
Legislative Reference Bureau  
266-7290

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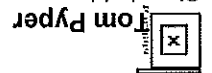
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**From:** Pyper, Thomas TMP (7122) <TPYPER@whdlaw.com>  
**Sent:** Wednesday, May 25, 2011 5:47 PM  
**To:** Culotta, Jason - GOV  
**Subject:** RE: Comments and questions on the redrafting instructions

Is it ok if either Jennifer or I just call her directly?



Tom Pyper

Shareholder

Whyte Hirschboeck Dudek S.C.

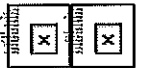
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---

**From:** Culotta, Jason - GOV [mailto:Jason.Culotta@wisconsin.gov]

**Sent:** Wednesday, May 25, 2011 5:11 PM

**To:** Pyper, Thomas TMP (7122)

**Subject:** FW: Comments and questions on the redrafting instructions

---

**From:** Tradewell, Becky [mailto:Becky.Tradewell@legis.wisconsin.gov]

**Sent:** Wednesday, May 25, 2011 5:10 PM

**To:** Culotta, Jason - GOV

**Cc:** Kite, Robin - LEGIS

**Subject:** Comments and questions on the redrafting instructions

Jason:

I have some questions and comments about the drafting instructions. I am happy to receive responses in writing (including email), by phone, or in a meeting, which ever would work best for you.

(1) The 3rd instruction on page 1 of the document titled "Changes to LRB-2035/2," sent Tuesday at 5:23, indicates that the title for proposed s. 295.51 should be changed. The title must reflect the contents of the section and the location criteria are in that section. I could move the location criteria into a new section or I could narrow the references in other parts of the bill so that they refer to "waste site feasibility study and plan of operation under s. 295.51 (2)." Perhaps the title could be changed to read "Mining waste site location criteria; feasibility study and plan of operation." Please let me know if I should make one of these changes.



2) The 5th instruction on page 1 of the document referenced in point 1) indicates that the reference to s. NR 140.28, Wis. Adm. Code on page 173, lines 10-11 should be deleted, because "the alternatives in the bill govern whether an exemption should be given, not those in the Rule." This explanation is not clear to me. I am not aware that the draft includes language that provides alternatives governing whether exemptions to groundwater quality standards should be given. I see that the first set of instructions, which were provided to Robin while I was away, eliminated the reference to s. NR 140.28 in proposed s. 295.645 (8). I do not understand the intent behind that change. If it is intended to allow DNR to grant exemptions without providing any guidance, that is probably an invalid delegation of legislative intent.

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The \$10,000 filing fee does not seem to make sense if the mining company has already been required to pay \$100,000. Should the filing fee be eliminated? Shouldn't the language in sub. (3) (a) be eliminated or changed to require DNR to just keep track of its costs? And shouldn't the existing language in sub. (3) (b) be modified to reflect the requested approach of "paying costs in arrears"?

Also, the proposed language does not seem to clearly address the situation in which the applicant has made one or more of the \$250,000 payments when DNR approves or denies the permit application, but its total costs do not use up the last \$250,000 payment. Do you want the draft to require a refund in this situation?

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the intent is it? If not, I will change the draft. It would be more logical to place the new restrictions outside of par. (a), as is already the case with sub. (1m) (c) and (d).

I will let you know of any other issues that come up.

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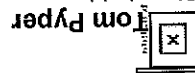
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Mohr, Mark - GOV

**From:** Pyper, Thomas TMP (7122) <TPYPER@whdlaw.com>  
**Sent:** Thursday, May 26, 2011 2:39 PM  
**To:** Tradewell, Becky - LEGIS  
**CC:** BUZECKY, Jennifer D. JDB (5749); Culotta, Jason - GOV  
**Subject:** RE: Comments and questions on the redrafting instructions

Jennifer did that one. Jennifer?



Shareholder

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---

**From:** Tradewell, Becky [mailto:Becky.Tradewell@legis.wisconsin.gov]  
**Sent:** Thursday, May 26, 2011 2:38 PM  
**To:** Pyper, Thomas TMP (7122)  
**CC:** BUZECKY, Jennifer D. JDB (5749); Culotta, Jason - GOV  
**Subject:** RE: Comments and questions on the redrafting instructions

I believe so.

On my point 5 below, should any of the new location criteria (page 97, lines 12 to 14) include the following language from the current introduction to s. 295.51 (1m) (a): "excluding the portion of a mining site from which ferrous minerals are extracted and that is backfilled with mining waste"?

---

**From:** Pyper, Thomas TMP (7122) [mailto:TPYPER@whdlaw.com]

**Sent:** Thursday, May 26, 2011 2:32 PM

**To:** Tradewell, Becky

**CC:** BUZECKY, Jennifer D. JDB (5749); Culotta, Jason - GOV

**Subject:** RE: Comments and questions on the redrafting instructions

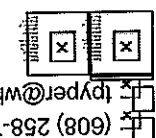
I think that is ok. However, I know DNR has requested that the Environmental Impact Report (without a trailing phrase per our modification) and a list of permits applied for be added to the list for the completeness determination. Did you get that request and our response?



Tom Pyper

Shareholder

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**From:** Tradewell, Becky [mailto:Becky.Tradewell@legis.wisconsin.gov]  
**Sent:** Thursday, May 26, 2011 2:14 PM  
**To:** Pyper, Thomas TMP (7122)  
**Cc:** BUZECKY, Jennifer D. JDB (5749)  
**Subject:** RE: Comments and questions on the redrafting instructions

Tom,

What I am thinking about for the determination of administrative completeness is:

The department may determine that an application is not administratively complete only if the applicant does not submit one of the following:

1. The fee under sub. (1) (a).
2. A mining plan that contains the types of information specified in s. 295.48 (1), (2), (3), and (4).
3. A reclamation plan that contains the types of information specified in s. 295.49 (1), (2), and (3).
4. A mining waste site feasibility study and plan of operation that contains the types of information specified in s. 295.51 (5), (6), and (7).

How does that sound?  
Becky

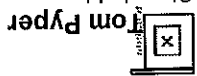
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**From:** Pyper, Thomas TMP (7122) [mailto:TPYPER@whdlaw.com]  
**Sent:** Thursday, May 26, 2011 1:21 PM

**To:** Tradewell, Becky  
**Cc:** BUZECKY, Jennifer D. JDB (5749); Cuiotta, Jason - GOV  
**Subject:** FW: Comments and questions on the redrafting instructions

Becky:

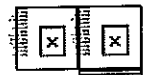
Jason asked that I respond to your inquiries. Please see responses below. Please let me know if you have any further questions. Thanks for your help.



Shareholder  
**Tom Pyper**

**Whyte Hirschboeck Dudek S.C.**  
33 East Main Street, Suite 300  
Madison, WI 53703-4655

(608) 258-7122  
(608) 258-7138  
tpyper@whdlaw.com



**From:** Tradewell, Becky [mailto:Becky.Tradewell@legis.wisconsin.gov]  
**Sent:** Wednesday, May 25, 2011 5:10 PM  
**To:** Cuiotta, Jason - GOV  
**Cc:** Kite, Robin - LEGIS  
**Subject:** Comments and questions on the redrafting instructions

Jason:

I have some questions and comments about the drafting instructions. I am happy to receive responses in writing (including email), by phone, or in a meeting, which ever would work best for you.

(1) The 3rd instruction on page 1 of the document titled "Changes to LRB-2035/2," sent Tuesday at 5:23, indicates that the title for proposed s. 295.51 should be changed. The title must reflect the contents of the section and the location criteria are in that section. I could move the location criteria into a new section or I could narrow the references in other parts of the bill so that they refer to "waste site feasibility study and plan of operation under s. 295.51 (2)." Perhaps the title could be changed to read "Mining waste site location criteria; feasibility study and plan of operation." Changing the title as you suggest is fine. Please let me know if I should make one of these changes.

(2) The 5th instruction on page 1 of the document referenced in point 1) indicates that the reference to s. NR 140.28, Wis. Adm. Code on page 173, lines 10-11 should be deleted, because "the alternatives in the bill govern whether an exemption should be given, not those in the Rule." This explanation is not clear to me. I am not aware that the draft includes language that provides alternatives governing whether exemptions to groundwater quality standards should be given.

I see that the first set of instructions, which were provided to Robin while I was away, eliminated the reference to s. NR 140.28 in proposed s. 295.645 (8). I do not understand the intent behind that change. If it is intended to allow DNR to grant exemptions without providing any guidance, that is probably an invalid delegation of legislative intent.

Note that NR 140 applies under the draft to the extent that it does not conflict with proposed s. 295.645. Also, the draft includes several specific references to provisions in ch. NR 140, including another reference to s. NR 140.28 on page 176, line 16.

Please provide some clarification of these issues.

The elimination of the references to NR 140.28 was not intended to eliminate the applicability of NR 140.28. As you indicate, NR 140 applies to the extent it does not conflict. Referencing NR 140.28 for the only provision to request an exemption may be too limiting. We want to preserve the ability to request exemptions pursuant to any applicable exemption provisions that currently exist under law, including s. 295.56. So deleting the reference preserves all options available under law, including NR 140.28.

(3) The 2nd instruction on page 5 of the document referenced in point 1) indicates that the language on page 124, lines 8,9, and 10-11 should be replaced with the language proposed last week. My understanding is that Robin did not use the proposed language because it is not clear. I agree that "includes the categories of information identified in" is not clear. I am working on alternatives. OK.

Please do not hesitate to let me know if there are questions about this message.

I will let you know of any other issues that come up.

can be located outside of par. (a).

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could add that to #6.

Also, the proposed language does not seem to clearly address the situation in which the applicant has made one or more of the \$250,000 payments when DNR approves or denies the permit application, but its total costs do not use up the last \$250,000 payment. Do you want the draft to require a refund in this situation? You are correct that #6 only addresses refund in the event the application is withdrawn. I expect it will be unlikely that the money is not fully allocated against actual costs by the time the permit is approved or denied, but it won't hurt to cover that issue. Maybe you

The \$10,000 filing fee does not seem to make sense if the mining company has already been required to pay \$100,000. Should the filing fee be eliminated? Shouldn't the language in sub. (3) (a) be eliminated or changed to require DNR to just keep track of its costs? And shouldn't the existing language in sub. (3) (b) be modified to reflect the requested approach of "paying costs in arrears"? You are correct. Sub. (1) lines 6-9 and (3)(a) lines 14-18 should be eliminated and sub. (b) lines 19-21 on p. 178 should be modified to indicate that the fee is "up to \$1.1 million" and that it is paid out in arrears as indicated in the language we did include. If you could do that (as you propose), that would be great. Then have the payout periods be as outlined in what you received.

4) Fees. Looking at the language of proposed s. 295.73 in LRB-2035/1, the instructions sent to Robin last week, and the instructions beginning on the bottom of page 2 of the document referenced in point 1), I find that the proposed language is unclear in some respects. Proposed s. 295.73 (1) requires a \$10,000 filing fee for a mining permit. I see no instructions to change this. Proposed s. 295.73 (3) (a) in LRB-2035/1 requires DNR to determine its costs for evaluating the mining projects upon completion of its action on all approvals. I see no instructions to change this. Proposed s. 295.73 (3) (b) in LRB-2035/1 requires DNR to assess the lesser of the amount by which its costs exceed the \$10,000 filing fee or \$750,000, whichever is less. The only requested change I see to this is to change \$750,000 to \$1,100,000. The instructions then require the "assessed" amount to be paid in installments, starting with a \$100,000 payment to be made when the preapplication general description is given. This would be before the \$10,000 filing fee is to be paid.

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The issue is that this needs to remain an objective, quantitative, check the box" type of review by the DNR. If you cannot figure a way to ensure that is the case, then please just eliminate everything after "plan" in lines 7 and 8 and after "operation" in line 9 (i.e., reverting to where we were before the last

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Mohr, Mark - GOV

**From:** BUZECKY, Jennifer D. JDB (5749) <jbuzECKy@whdlaw.com>  
**Sent:** Thursday, May 26, 2011 3:26 PM  
**To:** Tradewell, Becky - LEGIS; Pypier, Thomas TMP (7122)  
**Cc:** Culotta, Jason - GOV  
**Subject:** RE: Comments and questions on the redrafting instructions

The language "excluding the portion of the mining site from which ferrous minerals are extracted and that is backfilled with mining waste" should apply to all of the locational criteria in (1m) - this would include (1m)(a) 1.-10. as well as (1m)(c) and (1m)(d).

---

**From:** Tradewell, Becky [mailto:Becky.Tradewell@legis.wisconsin.gov]  
**Sent:** Thursday, May 26, 2011 2:38 PM  
**To:** Pypier, Thomas TMP (7122)  
**Cc:** BUZECKY, Jennifer D. JDB (5749); Culotta, Jason - GOV  
**Subject:** RE: Comments and questions on the redrafting instructions

I believe so.

On my point 5 below, should any of the new location criteria (page 97, lines 12 to 14) include the following language from the current introduction to s. 295.51 (1m) (a): "excluding the portion of a mining site from which ferrous minerals are extracted and that is backfilled with mining waste"?

---

**From:** Pypier, Thomas TMP (7122) [mailto:TPYPER@whdlaw.com]

**Sent:** Thursday, May 26, 2011 2:32 PM

**To:** Tradewell, Becky  
**Cc:** BUZECKY, Jennifer D. JDB (5749); Culotta, Jason - GOV  
**Subject:** RE: Comments and questions on the redrafting instructions

I think that is ok. However, I know DNR has requested that the Environmental Impact Report (without a trailing phrase per our modification) and a list of permits applied for be added to the list for the completeness determination. Did you get that request and our response?

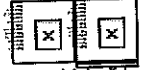
Tom Pypier

Shareholder

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tpyper@whdlaw.com



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**Sent:** Thursday, May 26, 2011 2:14 PM  
**To:** Pypier, Thomas TMP (7122)



**Cc:** BUZECKY, Jennifer D. JDB (5749)  
**Subject:** RE: Comments and questions on the redrafting instructions

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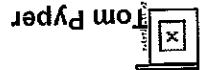
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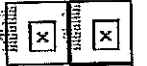
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5) About the changes to the mining waste site location criteria. Robin changed proposed s. 295.51 (1m) as requested last week. I think that the changes may have an unintended effect, however. In the /1 version of the draft, the exception in sub. (1m) (b) only applied to the 6 location restrictions then in par. (a). By adding the 4 additional location restrictions to par. (a) without changing par. (b), the exception in par. (b) applies to the 4 new restrictions as well as the 6 preexisting ones. So, for example, a waste site may be located in a floodplain if the waste site is visually screened. That is not the intent is it? If not, I will change the draft. It would be more logical to place the new restrictions outside of par. (a), as is already the case with sub. (1m) (c) and (d). We agree that the exception in sub. (1m)(b) should only apply to the location restrictions of (1m)(a) 1-6, and that the new restrictions can be located outside of par. (a).

I will let you know of any other issues that come up.

Please do not hesitate to let me know if there are questions about this message.

Becky Tradewell  
Managing Attorney  
Legislative Reference Bureau  
266-7290

To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that, unless

expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including any attachments, was not intended or written to be used, by any person for the purpose of (i) avoiding any penalties that may be imposed by the Internal Revenue Service, or (ii) promoting, marketing or recommending to another person any tax-related matter addressed herein.

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From: Shea, Allen K - DNR  
Sent: Wednesday, July 20, 2011 1:26 PM  
To: Roetker, Patrick - DOA; Himebauch, Casey - GOV  
Cc: Moroney, Matt S - DNR; Coakley, Ann M - DNR; Shea, Allen K - DNR  
Subject: Requested Info on Mining

Gentlemen,

Per your request, I offer the following information and perspectives:

1. Please ensure the Governor is cognizant of the state's responsibility under the Voigt decision to consult with Wisconsin's tribes on matters that may materially affect their interests in off-reservation lands within the ceded territory. This would obviously include issuing a mining permit for a mine within the ceded territory. Acknowledgement of the State's responsibility to consult will be a very important issue to the tribe.

2. While the Department has approved exploratory borings, there has been no formal mining application for the Gogebic deposit. As a result, we have seen nothing formal or detailed about the particulars (exact location, resources impacted, technology and process to be used, etc) of a mine in the Gogebic range in Ashland and Iron counties. Ergo, we cannot provide specific information to the Governor on the mining processes, technologies and their potential impacts on water use, water discharges, or water resource impacts.

3. For the meeting next week, I recommend the Governor:

\* Acknowledge the tribe's sovereign rights on their reservation lands;

\* The State's obligation to consult with the tribe on any mine permitting within the ceded territory and his intent to direct DNR to do so; and

\* That he is interested in hearing their perspectives and concerns.

4. I have attached two documents that I hope provide background for the Governor on:

a. The recently proposed mining legislation:



Background on Mining Bill.doc

b. The Gogebic range ore deposit:



Gogebic Review 12-2010.doc

5. Lastly, please ensure the Governor is aware that the Bad River Tribe recently submitted a request to EPA for approval of Treatment as a State status for implementing the Clean Water Act.

*Al Shea*

Director  
Office of Business Support and Sustainability  
Wisconsin Department of Natural Resources  
(☎) phone (cell): [REDACTED]  
(☎) phone (office): (608) 266-5896



**Background on Mining Bill**  
July 20, 2011

1. In what ways does the legislation change Wisconsin's existing environmental laws?
2. What are the changes and in what ways does the legislation mitigate the effects of these changes?
3. What improvements can the Department recommend to further enhance the environmental protections contained in the legislation?

The proposed legislation recognizes mining operations are unique due to the location of metallic ore bodies. Unlike other business operations or developments where alternative sites can be possible, mining operations cannot be relocated and as a result, environmental impacts may be unavoidable. To address this reality, Version 3 of the mining bill (LRB—2053/3) proposes environmental law changes, including mitigation and compensation in some cases, to the following key areas.

**1. Navigable Waters**

**Change:** The mining bill contains provisions that could allow the filling of more navigable waters than would be allowed under current law. However, the bill does require that any unavoidable impacts be mitigated or compensated. The bill is silent on the location of mitigation and compensation.

**Mitigation:** The bill has measures to offset significant impacts to navigable waters by providing public access to, restoring, or enlarging up to 1.5 acres of navigable waters in exchange for each acre of navigable waters that is significantly impacted; measures to improve public rights or interests in navigable waters, offset significant impacts to water quality or quantity, enhance flood storage; and/or compensation or mitigation, or conservation measures.

**Suggested Improvements:**

295.605 (4) *Measures.* The person applying for the permit or contract shall submit a plan to the department containing proposed measures to meet the requirements under par. (a) and a proposed schedule for implementing the measures. The plan shall include one or more of the following measures: mitigation within the basin where the mining operation is located at a ratio of 1.5 acres of mitigation for each 1 acre of adversely impacted navigable water.

## 2. Wetlands

### Change:

1. The bill may allow for wetland impacts that are not allowed under current law. However, unlike existing law, significant adverse impacts to functional values and water quality must be mitigated or compensated.
2. Current law prohibits the department from considering wetland mitigation in reviewing whether to grant a permit or other approval for a project that adversely affects a wetland in an area of special natural resource interest (ASNRI). Under the bill, mitigation and compensation to offset significant adverse impacts to these areas and ASNRI wetlands are allowed.

Mitigation: The bill provides the department the authority to require mitigation for up to 1.5 acres for the loss of every acre of wetland or implementation of a project for compensation or mitigation. Projects for compensation at a site other than an on-site location may include projects to protect upland and groundwater recharge areas, shoreline stabilization projects, and riparian restoration projects.

### Suggested Improvements:

(a) Contents. A compensation and mitigation program to offset significant adverse impacts to functional values and water quality of wetlands shall contain all of the following:

1. Proposed projects for compensation or mitigation and a schedule for implementing the projects. The projects may include riparian restoration projects. These projects may be performed by a person other than the applicant, subject to the department's approval of the projects and schedule.
2. If the program is applicable to a federal wetland, all federal compensatory mitigation requirements associated with the federal wetland application.

(b) Option of applicant. An applicant submitting a program under par. (a) may submit proposals for compensation or mitigation or any combination thereof.

(c) Ratios for mitigation. The amount of mitigation required for on-site mitigation shall be at a ratio of 1 acre of mitigation for each 1 acre of adversely impacted wetland. The amount of mitigation required for off-site mitigation shall be at a ratio of 1.5 acres of mitigation for each acre of adversely impacted wetland. The amount of mitigation required for wetlands in areas of special natural resource interest shall be a ratio of 2 acres of mitigation for each acre of adversely impacted wetland. ~~may not exceed 1.5~~

acres of mitigation for each acre of adversely impacted wetland. For purpose of credits in a mitigation bank, each acre that is subject to mitigation shall count as at least one credit. (d) Sequence. If the department determines it is not practicable or ecologically preferable to conduct compensation or mitigation at an on-site location or if there is no on-site location that will provide sufficient wetland acreage, the department may shall allow the applicant to conduct compensation or mitigation at a site other than an on-site location. Compensation or mitigation shall be accomplished through the following options:



1. Implementation of a project for compensation or mitigation within the basin where the mining operation is located. Projects for compensation at a site other than an on-site location may include projects to protect upland and ground water recharge areas, shoreline stabilization projects, and riparian restoration projects.
2. Purchase of credits from a mitigation bank for a site in a mitigation bank that is located within the basin where the mining operation is located anywhere in the state.
3. Purchase of mitigation credits from a mitigation bank within the basin where the mining operation is located established prior to February 1, 2002, if the department determines that the bank sponsor is in compliance with any applicable memorandum of understanding between the bank sponsor and the department.

### 3. Water Withdrawal

**Change:** Current law requires a high capacity well approval to dewater a mine or for water supply purposes. Under the bill, there is a new water withdrawal permit that may cover both surface and ground water withdrawals. Under current law, a high capacity well approval may not be issued if it will result in unreasonable detriment to public or private water supplies or the unreasonable detriment of public rights in the waters of the state. Under the bill, there are similar criteria for water withdrawal; however, if the applicant cannot meet the criteria, a permit may still be issued if the department determines that public benefits resulting from the mining operation exceed any injury to public rights and interests in a body of water that is affected by the mining operation.

**Mitigation:** The bill contains conservation measures to address water withdrawal impacts, including:

- environmentally sound and economically feasible water conservation measures, restoration of hydrologic conditions and functions of the source watershed, or if the withdrawal is from a stream tributary to one of the Great Lakes, restoration of the hydrologic conditions and functions of that stream,
- protection of important upland and ground water recharge areas,
- stabilization of shorelands,
- restoration or enhancement of the natural beneficial uses and values of a stream or river,
- implementation of any feasible methods to offset impacts to water quality or quantity,
- supplementation of additional water to water bodies to offset lower water levels, taking steps to improve public rights or interests in navigable waters, if navigable waters are subject to the permit,
- measures to offset significant impacts to navigable waters by providing public access to, restoring, or enlarging up to 1.5 acres of navigable waters in exchange for each acre of natural navigable waters that is significantly impacted, or
- a riparian restoration project.

Suggested Improvements:

Under s. 295.61(4)(a) create a new par. 7. or add this language to par. 3.: The withdrawal and uses of the water will not result in the unreasonable detriment of public or private water supplies.

(b) *Conservation measures.* If the department determines that the person applying for the permit has not met all the requirements under par. (a), the person shall submit a plan to the department containing proposed conservation measures to mitigate the adverse impacts caused by the withdrawal to meet those requirements under par. (a) and a proposed schedule for implementing the measures. The plan shall include one or more of the following measures within the basin where the mining operation is located:

1. Environmentally sound and economically feasible water conservation measures;
2. Restoration of hydrologic conditions and functions of the source watershed, or if the withdrawal is from a stream tributary to one of the Great Lakes, restoration of the hydrologic conditions and functions of that stream;
3. Protection of important upland ground water recharge areas;
4. Stabilization of shorelands;
5. Restoration or enhancement of the natural beneficial uses and values of a stream or river;
6. Implementation of any feasible methods to offset impacts to water quality or quantity.
7. Supplementation of additional water to affected water bodies to offset lower water levels.
8. Taking steps to improve public rights or interests in navigable waters, if navigable waters are subject to the permit.

(bg) Mitigation measures. If the Department determines that the measures in par. (b) cannot be implemented, the plan shall include one or more of the following mitigation measures within the basin where the mining operation is located:

1. 9- Mitigation or compensation as provided in s. 295.60.
2. 10- Measures to offset significant impacts to navigable waters by providing public access to, restoring, or enlarging up to 1.5 acres of navigable waters in exchange for each acre of natural navigable waters that is significantly impacted.
11. A riparian restoration project as defined in s. 295.60 (1) (n).
12. Measures as provided in s. 295.605.

(bn) *Plan review; finding.* In reviewing the plan, the department may require that conservation measures that are in addition to, or in conjunction with, one or more of the conservation measures specified in par. (b) 1. to 3+2. or par. (bg) 1. to 2. be included in the plan. After reviewing the plan and application, if the department finds that the requirements under par. (a) will be met by implementing some or all of the conservation measures contained in the plan, the department shall determine which measures shall be required, shall approve a schedule for implementation, and shall issue the permit.

#### 4. Environmental Liability

Change: Both current law and the bill contain provisions for owner financial responsibility during mine operation and for a 40-year long term care period after mining ceases. However, current law requires environmental liability in perpetuity through the use of an irrevocable trust agreement, whereas the bill does not.

Mitigation: NA

Suggested Improvement: Require environmental liability in perpetuity through the use of an irrevocable trust agreement, as specified in Wisconsin Administrative Code NR 132.085. The purpose of the trust agreement is to assure adequate funds to undertake preventive and remedial activities related to the mine in perpetuity.

#### 5. Additional Suggested Improvement:

In addition to the previous four environmental issues, the department feels the preapplication notification should be a minimum of 18 months prior to filing an application for a mining permit. This change would help ensure a complete application is received and enhance timely issuance of a mining permit.

**295.465 Preapplication notification. (1)** At least 18 +2-months before filing an application for a mining permit under s. 295.47, a person proposing to engage in a mining project shall notify the department in writing of the intention to file an application for a mining permit. After receiving the notification, the department shall hold at least one meeting with the person to make a preliminary assessment of the project's scope, to make an analysis of alternatives, to identify potential interested persons, and to ensure that the person making the proposal is aware of all of the following:

Note: There are numerous less significant technical and policy changes within the bill. The department is in the process of analyzing the bill and we will promptly make further recommendations.

DATE: December 22, 2010 FILE REF: Metallic Mining

TO: Ann Coakley WA/5

FROM: Phillip Fauble WA/5

SUBJECT: The Gogebic/Penokee Iron Range

As requested, the following memorandum summarizes what is known regarding the iron ore potential in the Gogebic/Penokee Iron Range, Iron and Ashland Counties, with a review of the Department's Waste & Materials Management Program's (WMMP) involvement.

The Gogebic/Penokee Iron Range

The Gogebic Range consists of a range of low hills approximately 120 kilometers long extending from the Upper Peninsula of Michigan near Lake Gogebic to a point 4 kilometers west of Mineral Lake in the Chequamegon National Forest where the iron formation has been truncated by the Atkins Lake-Marenisco Fault. The range consists mainly of a northwest-dipping sequence of Early Proterozoic iron formation (Ironwood Iron-Formation) with interbedded volcanic rocks and cross-cutting igneous dikes between a thick sequence of carbonaceous slates (Tyler Formation) to the north and a thickly bedded relatively pure quartzite (Palms Formation) to the south. The USGS (Professional Paper 1730, 2008) divides up the Gogebic Range into an Eastern, Central and Western portion based on the depositional history of the basin and metamorphism. Since the Eastern Range exists solely in Michigan, we will concentrate only on the Central and Western portions of the Range.

There is some confusion when referring to this low range of hills; in some literature it is referred to as the Gogebic Range and in some places, especially when referring to the Wisconsin portion of the range, the hills are known as the Penokee Range. In general, the entire range of hills where there is an outcropping of Ironwood Iron-Formation is referred to as the Gogebic Iron Range, especially when discussing the area as a geologic feature. The southern low line of hills stretching from Hurley to Mineral Lake is generally known as the Penokee Range and is more of a physiographic description. This reference is derived from the [O]bse word for iron (Pewabic) and was conferred to this range of hills by Colonel Whittlesly in the late 1800's.

The Central portion of the Gogebic Range extends from Wakefield, Michigan to the Tyler Forks River Gap in Iron County, Wisconsin. In this part of the Range, large quantities of "natural" iron ore were mined in the late 1800's to the 1950's. These ores consisted of irregular masses of soft, earthy oxides and hydroxides that had concentrated iron due to the hydrothermal removal of the silicate minerals. These deposits were located in deep pockets and best obtained by underground workings. Most of these reserves are now mined out.

The Western Gogebic Range extends from the Tyler Fork River Gap westward to the Atkins Lake-Marenisco Fault just west of Mineral Lake in Ashland County. There is some dispute about the boundary: Marsden (U.S. Bureau of Mines, 1978) describes the western range as extending from Upton, WI to the AL-M Fault, a distance of 21.5 miles. The USGS (2008) however, refers to the western portion of the range as extending from further west, with a boundary at the Tyler Forks River Gap. Since the Gap is the eastern limit of the intense Penokean deformation and metamorphism, it is likely the better boundary for



defining the potential for taconite resources. It also corresponds to the eastern limit of taconite exploration by US Steel in the late 1950's.

This is important due to the nature of taconite ores versus natural ores. Taconite ores occur in more highly metamorphosed iron formation where the hematite of the more natural ores has been metamorphosed into magnetite. The higher metamorphism also eliminates the possibility of hydrothermal concentration of the ore, so the iron content of taconite ore is only between 20 and 35 percent. However, when crushed the magnetite in the taconite ore can be magnetically separated and concentrated. It also means that the ore needs much more processing and produces much more waste rock than underground mining of the higher-grade natural ores. Given the low iron content, the only practical way to extract the ore is by surface mining.

## History

Although the presence of iron ore in the Gogebic Range has been known since at least the 1840's, intensive mining didn't start until the 1880's. Underground mining for the naturally concentrated iron ore continued in the Central Range until the easily accessible ore was depleted by the 1960's. US Steel owned the mineral and surface rights to the Western Range for many years and conducted an extensive exploration effort to evaluate the potential taconite reserves in an area between the Penokee Gap (Bad River) and the Tyler Fork Gap in the late 1950's. They conducted a smaller scale effort in the late 1970's, but determined that the deposit was not economic and sold their land and mineral rights. In addition to the low grade of the ore, the deposit dips steeply to the north at between 50 and 65 degrees, limiting the accessibility of the ore for surface mining. The taconite potential of the range west of the Penokee Gap has been much less studied, but is significantly more metamorphosed as it approaches the Mellen Complex Intrusives to the west. There has never been taconite ore mining in any part of the Gogebic Range.

In the 2000's, the surface and mineral rights were acquired by the LaPointe Iron Company out of Hibbing, MN. They presented a conceptual mining plan with local officials and the DNR in 2006 which included a phased mining plan with excavations 1,200 feet wide and 500-800 feet deep which would flood after mining to form linear lakes. To make the project economical, they also proposed further processing the ore on-site using an electric-arc furnace or even building a steel manufacturing plant. LaPointe estimated it would take 1.5 to 2 billion dollars in capital to build the mine.

In 2010, DNR was contacted by the Cline Group, a privately held resource investment firm, to inform us that they had purchased an option on the LaPointe rights and would be evaluating the deposit for possible permitting. Aside from some informal conversations with Tim Meyers of the Cline Group (now incorporated as Gogebic Iron, LLC), there has been no formal contact or detailed plans submitted to the Department.

From: David Storey <david@capitolmanagementwi.com>  
Sent: Wednesday, July 27, 2011 4:04 PM  
To: Schoenfeldt, Eileen - GOV  
Subject: FW: Draft review: LRB 11-2035/3 Topic: Regulation of mining for ferrous metallic minerals  
Attachments: 11-20353.pdf; 11-20353dn.pdf

Hi Eileen,

It was great visiting with you this afternoon. Thanks for taking the time. As promised, attached is the most recent copy of the bill draft...all 195 pages. As a result of our conversation, I feel very comfortable in both your desire and your ability to internalize this monster and serve as the "expert" in support of the bill's spokesperson. As we discussed, I will connect with Rep. Tom Tiffany immediately to ask if he would be willing to serve in this capacity. Once we have him on board, I will set a meeting for all three of us to order to insure we are all on the same page.

I will also start making sure you on looped in on all updates (news articles, press releases, etc.) associated with the mine.

Thanks again Eileen. Your willingness to lend your support is really appreciated.

Dave.

Mohr, Mark - GOV

**From:** Culotta, Jason - GOV  
**Sent:** Wednesday, June 01, 2011 3:27 PM  
**To:** 'Bauknecht, Jason'; Karius2, Bob - LEGIS  
**Subject:** LRB 11-2035/3 Topic: Regulation of mining for ferrous metallic minerals  
**Attachments:** EO #33.pdf



**OFFICE OF THE GOVERNOR**

**EXECUTIVE ORDER # 33**

Relating to a Special Session of the Legislature and Amending Executive Orders #1, #4, #14, and #25

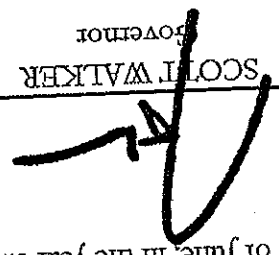
WHEREAS, on January 3, 2011, I, Scott Walker, Governor of the State of Wisconsin, by Executive Order #1, convened a special session of the Legislature at the State Capitol on January 4, 2011, at 10:00 a.m. solely to consider and act upon specified legislation;


NOW THEREFORE, I, Scott Walker, Governor of the State of Wisconsin, pursuant to Article IV, Section 11 and Article V, Section 4 of the Wisconsin Constitution, hereby amend and supplement Executive Orders #1, #4, #14, and #25 as follows:

1. In addition to considering the legislation previously specified in Executive Orders #1, #4, #14, and #25, the Legislature shall consider and act upon LRB 2035/3 and LRB 2181/1.



IN TESTIMONY WHEREOF, I have herunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capitol in the City of Madison this first day of June, in the year two thousand eleven.

  
SCOTT WALKER  
GOVERNOR

By the Governor:   
DOUGLAS LA FOLLETTE  
Secretary of State



From: Culotta, Jason - GOV  
Sent: Wednesday, May 25, 2011 8:35 AM  
To: 'Pyper, Thomas TMP (7122)'  
Subject: RE: Bill

OK.  
Please submit it to me this morning.  
Thanks,  
--Jason

-----Original Message-----

From: Pyper, Thomas TMP (7122) [mailto:TPYPER@whdla.w.com]  
Sent: Wednesday, May 25, 2011 8:04 AM  
To: Culotta, Jason - GOV  
Cc: BUZECKY, Jennifer D. JDB (5749)  
Subject: Bill


Jason:  
We have one change that needs to be made to what we sent yesterday. We are working on it. You might want to let LRB know so they do not issue "/3" until they get it.

Tom  
To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including any attachments, was not intended or written to be used, and cannot be used, by any person for the purpose of (i) avoiding any penalties that may be imposed by the Internal Revenue Service, or (ii) promoting, marketing or recommending to another person any tax-related matter addressed herein.

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**From:** Pypier, Thomas TMP (7122) <TPYPER@whdlaw.com>  
**Sent:** Friday, May 20, 2011 4:09 PM  
**To:** Culotta, Jason - GOV  
**Subject:** RE: Question regarding cross-reference in drafting instructions.

Yes, it is a problem from a general standpoint. I'm not yet sure if it is a problem for my client. Give me a call.

 **Tom Pypier**  
Shareholder  
Whyte Hirschboeck Dudek S.C.  
33 East Main Street, Suite 300  
Madison, WI 53703-4655  
(608) 258-7122  
(608) 258-7138  
tpyper@whdlaw.com

---


**From:** Culotta, Jason - GOV [mailto:Jason.Culotta@wisconsin.gov]  
**Sent:** Friday, May 20, 2011 4:05 PM  
**To:** Pypier, Thomas TMP (7122)  
**Subject:** RE: Question regarding cross-reference in drafting instructions.

I'm going to be calling you in a few minutes about the bulk sampling plan.  
On page 74, line 20, a bulk sampling plan "may" and not "shall" be submitted.  
Is that a problem to make shall?

---

**From:** Pypier, Thomas TMP (7122) [mailto:TPYPER@whdlaw.com]  
**Sent:** Friday, May 20, 2011 3:51 PM  
**To:** Culotta, Jason - GOV  
**Subject:** RE: Question regarding cross-reference in drafting instructions.

OK, I'm good at "disregarding"

 **Tom Pypier**  
Shareholder  
Whyte Hirschboeck Dudek S.C.  
33 East Main Street, Suite 300  
Madison, WI 53703-4655  
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to another person any tax-related matter addressed herein. penalties that may be imposed by the Internal Revenue Service, or (ii) promoting, marketing or recommending not intended or written to be used, by any person for the purpose of (i) avoiding any expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including any attachments, was To ensure compliance with requirements imposed by the Internal Revenue Service, we inform you that, unless

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Mary

Thanks,

The cross reference to "par (a) 7-8, on page 11 (in the instructions for 295.51 (1m) makes no sense to me. There is no par. (a) 7 or 8 near there. Is the cross-reference supposed to be just to par. (a) in general?

Jason,

**Subject:** Question regarding cross-reference in drafting instructions.

**To:** Culotta, Jason - GOV

**Sent:** Friday, May 20, 2011 1:39 PM

**From:** Gibson-Glass, Mary [mailto:Mary.Gibson-Glass@legis.wisconsin.gov]

**Subject:** FW: Question regarding cross-reference in drafting instructions.

**To:** 'tpyper@whdlaw.com'

**Sent:** Friday, May 20, 2011 3:49 PM

**From:** Culotta, Jason - GOV

--Jason

She figured it out.

Disregard.

Tom,

**Subject:** FW: Question regarding cross-reference in drafting instructions.

**To:** Pyper, Thomas TMP (7122)

**Sent:** Friday, May 20, 2011 3:50 PM

**From:** Culotta, Jason - GOV [mailto:Jason.Culotta@wisconsin.gov]

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**Mohr, Mark - GOV**

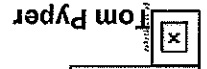
**From:** Culotta, Jason - GOV  
**Sent:** Friday, May 20, 2011 4:05 PM  
**To:** Pyper, Thomas TMP (7122)  
**Subject:** RE: Question regarding cross-reference in drafting instructions.

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**Sent:** Friday, May 20, 2011 3:51 PM  
**To:** Culotta, Jason - GOV  
**Subject:** RE: Question regarding cross-reference in drafting instructions.

OK, I'm good at "disregarding."



Shareholder  
**Whyte Hirschboeck Dudek S.C.**  
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Madison, WI 53703-4655

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tpyper@whdlaw.com

---

**From:** Culotta, Jason - GOV [mailto:Jason.Culotta@wisconsin.gov]  
**Sent:** Friday, May 20, 2011 3:50 PM  
**To:** Pyper, Thomas TMP (7122)  
**Subject:** FW: Question regarding cross-reference in drafting instructions.

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**Subject:** Question regarding cross-reference in drafting instructions.

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Thanks,

Mary

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CORRECTIONS

The document provided yesterday contained the following on page 4:

**Section 295.46, page 81, should include the following after line 13:**

“(6) If no bulk sampling plan is filed under s. 295.45 or no approvals are required for bulk sampling, the notice and public information procedures under s. 295.45(10)(b), (c) and (e) shall apply to the general description of the proposed mining project under this section.”

The reference back to s. 295.45(10)(b), (c) and (e) does not work because some of the language applies to approvals needed and is inapplicable to a public informational hearing only on a general description of the proposed mining project. Accordingly, please substitute the following:

**Section 295.46, page 86 (page cite corrected), after line 13 add:**

(6) If no bulk sampling plan is filed under s. 295.45 or the department provides notice to the applicant under s. 295.45(3) that no approvals are needed for bulk sampling, the department shall publish a Class I notice of a public informational hearing in accordance with ch. 985, Stats. at the same time it provides notice that no approvals are required for bulk sampling or after the preapplication description is filed with the department if no bulk sampling plan is filed. The notice shall describe the availability of the preapplication description and the opportunity to submit comments within 30 days after the notice is published. The notice shall also specify the date, time and location of the public information hearing, which shall be held in the county where the majority of the proposed mining will take place within 30 days after publication of the notice. The department shall also send the notice to all known departments and agencies that may be required to grant any approval for the mining project, to any regional planning commission within which the affected area lies, to the governing bodies of all towns, villages, cities and counties within which any part of the proposed mining site lies, to the governing bodies of all towns, villages or cities contiguous to any town, village or city within which any part of the proposed mining site lies, any affected states and to any interested persons who have requested such notification.



The following two citations to the Bill in the document provided yesterday should have been:

On page 4, the fifth (5th) reference should have been:

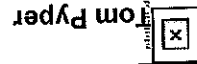
**Section 295.46, page 86, line 4, instead of Section 295.45.**

On page 7, the fourth (4th) reference should have been:

**Section 295.61(4)(bn), page 156, lines 8-9, instead of to lines 7-13.**

From: Pypier, Thomas TMP (7122) <TPYPFER@whdlaw.com>  
Sent: Thursday, May 26, 2011 11:55 AM  
To: Culotta, Jason - GOV  
Subject: DNR Proposed Changes  
Attachments: additional amendments to LRB-20352.doc

Attached are responses to DNR's proposed changes. Let me know if you need anything further from us. Otherwise, we will assume that you will get those changes to which we agreed, as modified, down to LRB. Thanks.



Shareholder  
Tom Pypier

Whyte Hirschboeck Dudek S.C.

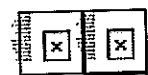
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tpypier@whdlaw.com



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### 1. Clarification of Pre-Application Process

Goals:

- To provide certainty to the process for the mine applicant, the department, and the public.
- To maximize timely completeness determination of the mine permit application.

There are 2 main problems with the proposals in this section (and other revisions are addressed in the edits below):

(1) The 180 days is not workable for a number of reasons. The applicant and the DNR should meet early and often before the applications are filed. However, predicting in advance when the application will be filed and working backward 18 months to schedule the first meeting is extremely difficult. In most cases the applicant will not know whether it intends to proceed until it receives the results of the analysis from the samples extracted from exploration and on the bulk sampling. Also, the bulk sampling allows the applicant to gather the type of information that will be needed for the application. Accordingly, we have provided that the first meeting will take place no later than 12 months before the mining permit application is filed. This allows exploration and bulk sampling to be completed before the required meeting. Nothing prevents the applicant and the DNR from meeting earlier to begin the process that will be formalized by the required meeting.

(2) The requirement that the EIR be filed with the mining permit application and the "provided" information sufficient to complete the EIS transforms the completeness test from an objective, quantitative test to a subjective, qualitative test. That allows the DNR to delay the completeness determination on the qualitative basis that the EIS does not have sufficient information. That eliminates the 360 day permitting period and makes it indefinite. That proposed change has not been accepted. An EIS is required under s. 196.491 (and must be final before the CPCN hearing because it is a required exhibit for the hearing record, which requires it to be available within app. 300 days at the latest to allow for the hearing, post hearing briefing and time for the decision) and is always completed within the 360 day period. The applicant takes the risk in not providing sufficient information to enable the department to complete an EIS because both the State and federal EIS must be done in sufficient time to meet all applicable permit time periods or the permits do not issue.

Specific edits to the proposed changes are included below.

The bill includes two separate sections [(295.465(10 and 295.53(1))] with provisions for pre-application or pre-submittal meetings with the Department. The goal here is a clear process in the bill. In concept, it would make sense to consolidate these sections into one process, whereby:

1. At least XX months prior to a mine permit application, applicant notifies DNR and Department staff.

2. Within XX days of the meeting, DNR shall provide: a detailed list of all permits and approvals required, a list of the information required in an EIR, and a detailed list of filing requirements for each permit or approval.

3. Within XX days of the meeting, the DNR shall provide any pertinent data and maps to the applicant for use in preparing the application materials

4. Applicant submits a package that includes: a document that outlines where each item in #2 is addressed; fee; mining plan; reclamation plan; mine waste feasibility study and Plan of Op; and an EIR that includes details required in wetland compensation program and navigable waters mitigation measures.

5. Within 30 days, completeness determination.

Here are suggested language changes to accomplish the above:

**295.465 Preapplication notification. (1) At least 1812 months prior to before filing an application for a**

**mining permit under s. 295.47, a person proposing to engage in a mining project shall notify the department of the intention to file an application for a mining permit, and shall provide a general project plan that addresses the information in 295.46. After receiving the notification and project plan, the department shall hold at least one meeting with owner with the person to make a preliminary assessment of the project's scope, to make an analysis of alternatives, to identify potential interested persons, and to ensure that the person making the proposal is aware of all of the following:**

(a) The approvals, including the filing requirements for the approvals, that the person may be required to obtain for the mining project.  
(b) The requirements for submission of an environmental impact report and for submission of any other information required by the department to prepare an environmental impact statement under s. 295.53.  
(c) The information the department will require to enable the department to process the application for the mining permit in a timely manner.

(2) If the person proposing to engage in mining did not file a bulk sampling plan under s. 295.45, the person shall include in the notification to the department under sub. (1) the information required under s. 295.46.

(3) Within 60 days of the meeting in sub. (1), the department shall provide to the applicant a written detailed summary of filing requirements to address sub. (1) (a)-(c).  
(4) Within 60 days of the meeting in sub. (1), the department shall provide to the person any available information relevant to

potential impacts of the mining project on rare, threatened, or endangered species and historic or cultural resources and any other information relevant to potential

**Comment [TMP1]:** This language is unnecessary. If a bulk sampling plan has been filed, the info required by s. 295.46 will already have been filed with the DNR. If no bulk sampling plan has been filed, sub (2) to this section requires it to be filed with the notice required by this section.

impacts that may occur from the project that are required to be considered under s. 1.11. The department shall also provide to the person available information to evaluate the environmental impact of the project and to expedite the preparation of the environmental impact report and the environmental impact statement, including information concerning preliminary environmental reviews, field studies, and investigations; monitoring programs to establish baseline water quality; laboratory studies and investigations; advisory services; and the timing and the processes associated with any necessary consultations with other state or federal agencies and within the department, such as those required for endangered resources and cultural resource consultations and approvals.

**295.53 Environmental impact statement. (1) ASSISTANCE TO APPLICANTS.**

(a) Before filing with the department an application for a mining permit or other approval associated with a mining project, a person considering a mining project may provide the department with a preliminary description of the anticipated by-products and pollutant discharges.

(b) Following the receipt of a preliminary description under par. (a), the department shall provide to the person any available information relevant to the potential impacts of the mining project on rare, threatened, or endangered species and historic or cultural resources and any other information relevant to potential impacts that may occur from the project that are required to be considered under s. 1.11.

(c) The department shall meet with any person considering a mining project upon the person's request, before or after the submission of a preliminary description under par. (a) or an application for a mining permit or other approval. The department shall also provide to the person available information to evaluate the environmental impact of the project and to expedite the preparation of the environmental impact report and the environmental impact statement, including information concerning preliminary environmental reviews, field studies, and investigations; monitoring programs to establish baseline water quality; laboratory studies and investigations; advisory services; and the timing and the processes associated with any necessary consultations with other state or federal agencies and within the department, such as those required for endangered resources and cultural resource consultations and approvals. **USE OF CONSULTANTS.**

(d) The department may enter into contracts for environmental consultant services under s. 23.41 to assist in the preparation of an environmental impact statement or to provide assistance to applicants.

(e) Within 20 calendar days of receipt of a preliminary description under par. (a), the department shall provide the person with all of the following in writing:

1. Notice of the requirement to prepare an environmental impact report, including the format, required content, level of detail, and number of copies to be submitted;
2. A list of any approvals that may be required;
3. A description of any other information that the person must collect for an application for a mining permit or for any other approval that may be required and for the environmental impact report.

4. Any relevant time frames associated with the environmental impact report, environmental impact statement or studies, evaluations, or data collection that the department may need for its environmental review or approvals.

(2) NOTICE. After the department receives an application for a mining permit, it shall notify the public and affected agencies that an environmental impact statement will be prepared for the proposed mine and that the process of identifying major issues under s. NR 150.21 (3), Wis. Adm. Code, is beginning.

(3) ENVIRONMENTAL IMPACT REPORT. (a) An applicant shall prepare an environmental impact report for the mining project. In the environmental impact report, the applicant shall provide a description of the proposed mining project, the present environmental conditions in the area and the anticipated impacts of the proposed mining project, details on the wetland and compensation program as required under 295.60(8), the conservation measures for navigable waters under 295.60(4), proposed changes to forestry land designations pursuant to 295.53 (4)(c), and the alternatives to the proposed mining project. As the applicant provides more information or makes modifications to the proposed mining project, the department may revise the requirements it specified under 295.465(4) sub. (1)(e) to ensure the potential environmental effects can be identified in the department's environmental impact statement.

(b) The department shall assist the applicant in meeting the deadlines for ultimate submission and review of those analyses consistent with this subchapter. If a particular scientific analysis is not completed as of the date the environmental impact report is required to be submitted, the applicant shall identify in the environmental impact report the scope of the analysis and anticipated date that it will be submitted.

(c) 1. The applicant shall submit the environmental impact report no later than 30 days after submitting with the application for the mining permit. 2. If an applicant submits the environmental impact report more than 30 days after submitting the application for the mining permit, the 360-day deadlines under s. 295.57 (7) (a) and (8) (a) are extended by the number of days over 30 days between the submission of the application for the mining permit and the submission of the environmental impact report.

32. Upon receipt of the environmental impact report, the department shall review the environmental impact report and, if the department finds that the environmental impact report does not contain information reasonably necessary for the department to evaluate the proposed mining project and its environmental effects, the department may request additional information from the applicant.

(d) The department shall accept original data from an environmental impact report for use in the environmental impact statement and need not verify all original data provided by the applicant to accept the data as accurate. The department shall use original data from an environmental impact report in the environmental impact statement if the data contains the information identified in sub. (1) (e) 1. and any of the following conditions is met:

Comment [MP3]: We have reinserted these provisions but required that the EIR be filed with the application.

Comment [s2]: Suggest moving to EIS procedures under sub (4)



1. The department, its consultant, or a cooperating state or federal agency collects sufficient data to perform a limited statistical comparison with data from the environmental impact report that demonstrates that the data sets are statistically similar within a reasonable confidence limit.

2. An expert who is employed by, or is a consultant to, the department or is employed by, or is a consultant to, a cooperating state or federal agency determines that the data is adequate for the tests being performed.

3. The department, its consultant or a cooperating state or federal agency determines that the methodology used in the environmental impact report is scientifically and technically adequate for the tests being performed.

**295.57(2) DETERMINATION OF ADMINISTRATIVE COMPLETENESS.** (a) An application for a mining permit is administratively complete on the 30th day after the department receives the application, unless, before that day, the department provides the applicant with written notification that the application is not administratively complete. The department may determine that an application is not administratively complete only if the applicant does not submit one of the following:

1. The fee under sub. (1) (a).
2. A mining plan that meets the requirements of s. 295.48.
3. A reclamation plan that meets the requirements of s. 295.49.
4. A mining waste site feasibility study and plan of operation that meets the requirements of s. 295.51.

5. An Environmental Impact Report that meets the requirements of 295.52 and provides information sufficient to complete the EIS

6. A list of all department permits and approvals the applicant has applied for as called for under 295.47 (2)(g).

- (b) In making the determination under par. (a), the department may not consider the quality of the information provided.
- (c) In a notice provided under par. (a), the department shall specify what is missing from the application.
- (d) The running of the 30-day period under par. (a) is tolled from the day on which the department provides notification, in compliance with par. (a), that an application is not administratively complete until the day on which the applicant submits the missing fee, mining plan, reclamation plan, or mining waste site feasibility study and plan of operation, EIR, or list of permits and approvals. The department shall notify the applicant when it receives the missing fee, mining plan, reclamation plan, or waste site feasibility study and plan of operation, EIR, or list of permits and approvals. The application is administratively complete on the day on which the applicant or on the expiration of the remainder of the 30-day period, whichever is sooner.

**2. Avoidance of impacts to water supplies as a result of a water withdrawal**

**Comment [TP4]:** This was changed in 2, 3 and 4 to read "includes the categories of information identified in" to eliminate a qualitative review of the information and leave it as a quantitative review for the reasons expressed above.

*Goal: To ensure mitigation of nearby residential and public water supply wells affected by water withdrawal from a mining operation.*

We are ok with the following as a substitute for what you have proposed below:

p. 154, create s. 295.61(4)(a)(7) between lines 4-5 to read:

"(d) Public or Private Water Supplies. If the proposed withdrawal of water would result in significant impacts to public or private water supplies, then the applicant shall offset the impacts may include, when necessary, procedures to provide replacement water supplies of similar quality or to provide an increased amount of water to the public or private water supply.

1) p. 154 - Under s. 295.61(4)(a) create a new par. 7. or add this language to par. 3.:

The proposed withdrawal and uses of the water will not result in the unreasonable detriment of public or private water supplies.

2) p. 155 - Create new s. 295.61(4)(b)13 to read:

13. Measures to mitigate impacts to public and private water supplies including, when necessary, procedures to provide replacement water supplies of similar quality and quantity.

### 3. Confidentiality

*Goal: To ensure a balance between protecting confidential information related to a proposed mine with the public right to know (Open Record Law).*

The confidentiality provisions below should not be modified. There are already similar provisions in Ch. 107, which have been made to apply only to nonferrous mining. So we used them the language of s. 107(4)(f) as a model:

"Exploration data and samples ... shall be kept confidential until December 31 of the 3<sup>rd</sup> year following the date of submission. The confidentiality of the data and samples obtained during prospecting or mining shall extend to the time of the abandonment of the site subsequent to prospecting, the termination of mining if mining occurs, or 10 years after the core samples or drill cuttings were obtained, whichever is earlier."

See also *Noranda Exploration, Inc. v. Ostrom*, 113 Wis. 2d 612, 335 N.W.2d 596 (1983) public disclosure of confidential mining exploration data and core samples is an unconstitutional taking of property without just compensation.)

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Also, Wis. Stat. s. 289.09(2)(b) makes confidential production or sales figures, or to processes or production unique to an owner or operator of a solid waste facility or that would tend to adversely affect the competitive position of the owner or operator if made public. Thus there is precedent for the type of confidentiality provisions in the bill. Accordingly, the information should be classified as confidential without the need to go through the NR 2.19 procedure.

**Proposed Revisions:**

**Pg 65 - 295.44 Exploration.** 295.44(2m) CONFIDENTIALITY. The department shall protect as confidential any information, other than effluent data, contained in an application for an exploration license, upon a showing that the information is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), and any information relating to the location, quality, or quantity of a ferrous mineral deposit, or to processes or production unique to the applicant or that would tend to adversely affect the competitive position of the applicant if made public.

**Pg 79 - 295.45 Bulk sampling plan.** 295.45(2m) The department shall protect as confidential any information, other than effluent data, contained in a bulk sampling plan and in any application for an approval that is required before the bulk sampling may be implemented, upon a showing that the information is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), and any information relating to the location, quality, or quantity of a ferrous mineral deposit, or to processes or production unique to the applicant or that would tend to adversely affect the competitive position of the applicant if made public.

**Pg 123 - 295.57 Application procedure.** (1)(b) The department and the state geologist shall protect as confidential any information, other than effluent data, contained in an application for a mining permit, upon a showing that the information is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), and any information relating to production or sales figures, or to processes or production unique to the applicant or that would tend to adversely affect the competitive position of the applicant if made public.

**4. Protecting the State from Long Term Liability**

*Goal: To ensure a mining company has long term responsibility at a mine site.*

Already pointed out to the DNR with a request that the reference to the Spills Law be made.

A note regarding the Spills Law applicability was not included in the draft.

**5. Timely Permit Issuance**

*Goal: To ensure all department permits are issued within the 360 day mine permit application review period.*

These are ok.

The problem is not that zoning ordinances and regulations "exceed state standards." Existing law requires that they incorporate state standards and the standards may prevent building in shoreland areas or flood plains. The bill provides that DNR can allow building in flood plains and shoreland areas, but that does not change the zoning ordinances or regulations that are already in place. So, the bill simply says that all zoning

*Goal: To ensure counties do not jeopardize their eligibility for the National Flood Insurance Program.*

### 7. Treatment of Floodplain and Shoreland Zoning Ordinances

Wetlands: 1:1 onsite and 1.5:1 offsite  
Streams: 1.5:1  
ASNRI Waters: 1.5:1

Suggested Revisions:

The language "up to 1.5" already allows the DNR to set these ratios. Leaving as is gives the DNR the discretion to set a ratio anywhere between 1 and 1.5 depending on the particular wetland, stream and location. No change appears to be necessary.

*Goal: To ensure degradation of wetlands and public trust waters are adequately mitigated and compensated*

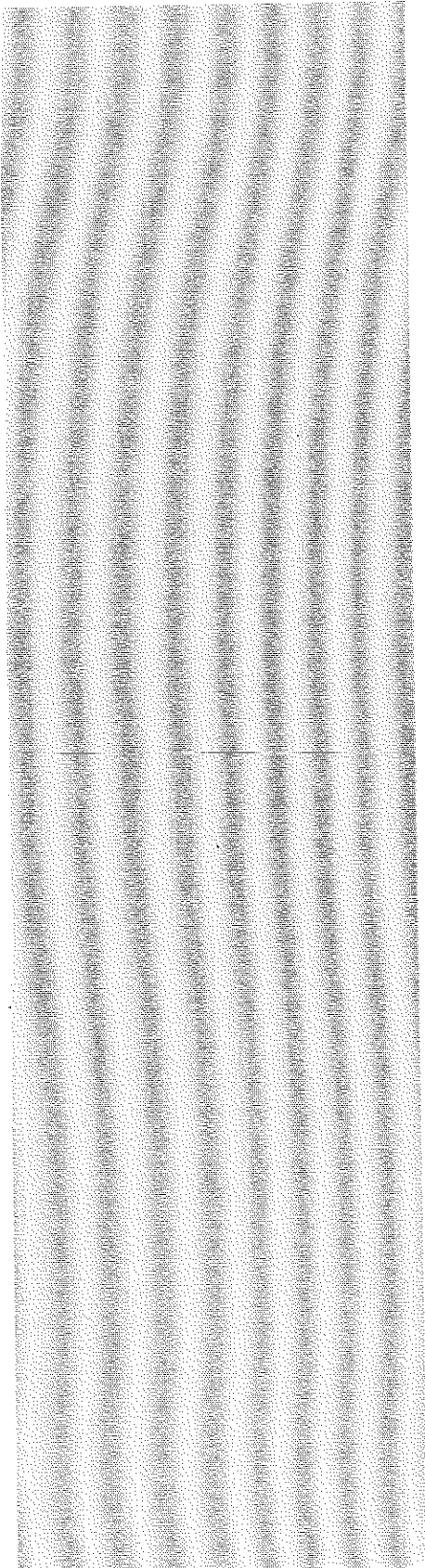
### 6. Compensatory Mitigation Ratios for Wetlands and Public Waters

295.60 (8)(a) *Contents. A compensation and mitigation plan shall be submitted to the department with the mine permit application and mitigation program to offset significant adverse impacts to functional values and water quality of wetlands shall contain all of the following:*

295.605 (4)(b) and 295.61 (4)(b) *Plan; measures. For the purpose of assisting the department in making a finding as to whether the requirements under par. (a) will be met, the person applying for the permit or contract shall submit a plan as part of the mine permit application process to the department containing proposed conservation measures to be taken for meeting those requirements and a proposed schedule for implementing the measures. The plan shall include one or more of the following measures:*

295.47 (2)(g) *Evidence the applicant has applied or will apply for necessary permits or other permissions under all applicable zoning ordinances and that the applicant has applied or will apply as part of the mine permit application process to the department for any approval and has applied or will apply for any other license or permit required under state law.*

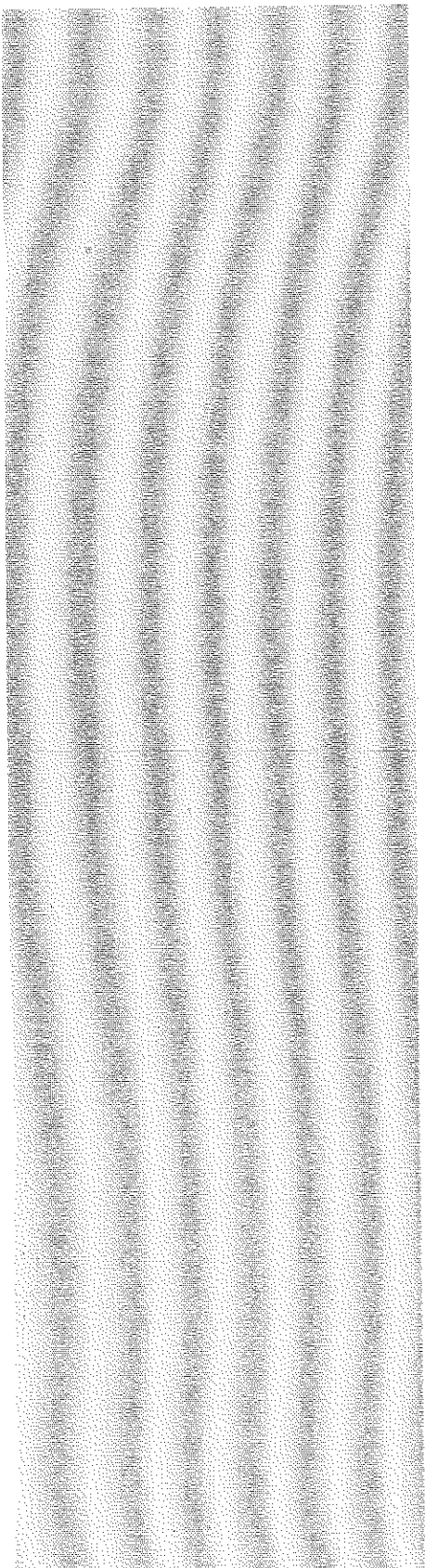
Suggested revisions:



ordinances and regulations are in place, but they are not violated if building that DNR has permitted takes place where the ordinances would otherwise not allow due their incorporation of state standards. That is why this proposed change is not being accepted.

Suggested Revision to 295.607: While the department has statewide oversight of local floodplain and shoreland zoning, the department does not have the authority to issue floodplain and shoreland zoning permits established under local ordinance.

In order to maintain their eligibility for the National Flood Insurance Program, counties must implement these zoning ordinances. A potential solution is for the bill to prohibit counties from enacting floodplain or shoreland zoning ordinances that exceed state standards at mine sites.



Mohr, Mark - GOV

**From:** Culotta, Jason - GOV  
**Sent:** Wednesday, May 18, 2011 6:20 PM  
**To:** TYPYPER@HDLAW.COM  
**Subject:** FW: Drafts of Pre-Application Language and Checklist

**Importance:** High

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**From:** Culotta, Jason - GOV  
**Sent:** Wednesday, May 18, 2011 6:19 PM  
**To:** 'ttypy@hdlaw.com'  
**Subject:** FW: Drafts of Pre-Application Language and Checklist

**Importance:** High

Tom,  
Just back to the office.  
Here you go!  
--Jason

---

**From:** Shea, Allen K - DNR  
**Sent:** Wednesday, May 18, 2011 4:42 PM  
**To:** Moroney, Matt S - DNR; Culotta, Jason - GOV  
**CC:** Stevens, Patrick K - DNR; Shea, Allen K - DNR; Coakley, Ann M - DNR  
**Subject:** Drafts of Pre-Application Language and Checklist

Jason and Matt,

As requested, I am forwarding to you drafts of two items:

1. Stat. language for the Pre-application Process; and

2. The Filing Requirements (completeness checklist) to be used under the bill. We based the checklist on content in both the Flambeau and Crandon mine EISs, as well as the checklist that PSC uses for their reviews. Also, please note that this draft was developed in less than one day and, believe it or not, could be missing some key information or could be overly onerous in other areas.

As you can see, the checklist is not suitable for inclusion in stat. language. This would best be included in a guidance document governed by categorical language in a rule or statute. A middle ground would be for the drafters to include the major headings of information in the checklist in the bill, with a clear indication that the Department shall develop a detailed list of filing requirements. Ideally, the applicant and the department would cooperate in the pre-application process and jointly develop the checklist, so that the filing requirements are tailored to the specific project.

Al



Preapplication  
Process for Min...



Ferrous Mining  
Filing Requirem...


*Al Shea*

Director  
Office of Business Support and Sustainability  
Wisconsin Department of Natural Resources  
(☎) phone (cell): (608) 219-6427  
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**From:** Pyper, Thomas TMP (7122) <TPYPER@whdlaw.com>  
**Sent:** Thursday, May 19, 2011 5:31 PM  
**To:** Cullotta, Jason - GOV  
**Subject:** FW: LRB analysis 2035/1  
**Attachments:** LRB analysis 2035\_1(WHD\_7864824\_1) (2).DOC

Jason:



Attached are my suggested track changes to the LRB Analysis based on the amendments being proposed and the original issues we had with the Analysis.

  
Tom Pyper  
Shareholder

Whyte Hirschboeck Dudek S.C.  
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and the other new approvals differ in some respects from the standards, procedures, and requirements under current law, as described below.

Current law requires DNR to promulgate rules specifying standards for metallic mining and for the reclamation of mining sites. The rules relating to mining must contain standards for grading and stabilization, backfilling, vegetative cover, prevention of pollution resulting from leaching of waste materials, and prevention of significant environmental pollution. The rules relating to reclamation must contain provisions for disposal of wastes in disposal facilities licensed under the solid waste laws or otherwise in an environmentally sound manner, for management of runoff so as to prevent soil erosion, flooding, and water pollution, and for minimization of disturbance to wetlands. DNR has promulgated rules on these matters.

The bill places some of the current standards for iron mining and for the reclamation of iron mining sites in the statutes, rather than requiring rule-making which are not in the existing mining statutes. The standards in the bill are similar in many respects to DNR's current rules and are less stringent in other respects. It will be up to the DNR as to what additional standards should be established through rule-making.

### APPLICATION FOR MINING PERMIT

Under current law, a person who wishes to obtain a permit for metallic mining must submit an application to DNR that includes a mining plan, a reclamation plan, information about the owners of the mining site, and information related to the failure to reclaim mining sites and any criminal convictions for violations of environmental laws in the course of mining by persons involved in the proposed mining. The application must also include evidence that the applicant has applied for necessary approvals under applicable zoning ordinances and for any approvals issued by DNR that are necessary to conduct the mining, such as air pollution permits and wastewater discharge permits.

This bill includes similar provisions for the application for an iron mining permit, except that the applicant may provide evidence that the applicant will apply, rather than has applied, for necessary zoning approvals and other approvals issued by DNR.

The required content of the mining plan for iron mining under the bill is similar to that required under current statutes and DNR rules, but the applicant is not required to include a risk assessment of accidental health and environmental hazards potentially associated with the mining operation. The required content of the reclamation plan for iron mining is also similar to that required under current law.

DNR's current rules require the applicant for a metallic mining permit to show that the mining and reclamation will comply with specified minimum standards. The bill requires showings by the applicant for an iron mining permit that differ in some ways from DNR's rules. For example, the rules require a demonstration that water runoff from the mining site will be managed so as to prevent soil erosion to the extent practicable, flooding, damage to agricultural lands or livestock, damage to wild animals, pollution of ground or surface waters, damage to public health, and threats to public safety. The bill requires a showing that water runoff from an iron mining site will be managed in compliance with any approval that regulates construction site

erosion control or storm water management. It will be up to the DNR whether to set additional standards through rule-making as it has done under current law.

### PERMITTING PROCESS

Environmental impact statement

Current law requires DNR to prepare an environmental impact statement (EIS) for every proposed metallic mine. An EIS contains detailed information about the environmental impact of a proposed project, including any adverse environmental effects that cannot be avoided if the proposal is implemented, alternatives to the proposed project, the beneficial aspects of the proposal, and the economic advantages and disadvantages of the proposal. For a metallic mining project, current law requires a description of significant long-term and short-term impacts, including impacts after the mining has ended, on tourism, employment, schools, social services, the tax base, the local economy, and "other significant factors."

This bill requires DNR to prepare an EIS for every proposed iron mine. The bill also requires DNR to include a description of significant impacts on most of the same matters as under current metallic mining law to the environment by the proposed project.

Under current law, when a person applies for a permit or other approval for which DNR is required to complete an EIS, DNR is generally authorized to require the applicant to prepare an environmental impact report (EIR) that discloses environmental impacts of the proposed project to assist DNR in preparing the EIS. Current law authorizes DNR rules authorize it to enter into an agreement with a person considering applying to DNR for approval of a project that is large, complex, or environmentally sensitive to provide preapplication services necessary to evaluate the environmental impact of the project and to expedite the anticipated preparation of an EIS for the project.

The bill requires the applicant for a mining permit to prepare an EIR. The bill requires DNR to meet with adopt a new preapplication procedure that requires for a mining permit and also that the DNR may provide the person with available information to evaluate the environmental impact of the project, and to expedite the preparation of the EIR and the EIS, to identify the permits needed and to tell the person the information the DNR will need to evaluate the application.

The bill also authorizes a person considering a mining project to provide to DNR a preliminary description of the proposed project. After receiving the description, DNR must provide to the person any available information relevant to the potential impact of the project on threatened or endangered species and historic or cultural resources and any other information relevant to impacts that are required to be considered in the EIS. Within 20 days, DNR must also provide the person with information about the preparation of an EIR, a list of any approvals issued by DNR that may be required for the mining project, and a description of any other information that the person must provide for an application for a mining permit, any other approval that may be required, and the EIR.



Current law does not specify a time, after the application for a mining permit is filed, within which DNR must act on a metallic mining permit application. It does require the mining hearing to be held between 120 days after DNR issues the EIS and requires DNR to act on the permit within 90 days after the completion of the record for the public hearing.

**Deadlines; automatic approval**

This bill requires DNR to hold a public informational hearing for a proposed iron mining project. The hearing does not include a contested case hearing. The hearing must cover the mining permit, the EIS, and all other approvals issued by DNR that are required for the mining project, unless the application is filed too late to allow the approval to be considered at the mining hearing. Under the bill, the provisions related to notice, hearing, and comment in the metallic mining law apply to any other needed approval.

Current law requires DNR to hold a hearing on an application for a metallic mining permit. The hearing includes both a contested case hearing, with testimony under oath and the opportunity for cross-examination, and a public informational hearing. The law requires that the hearing cover the EIS and cover all other approvals issued by DNR that are required for the mining project, to the extent possible. Under current law, the provisions related to notice, hearing, and comment in the metallic mining law apply to any other needed approval, unless the applicant fails to make an application for an approval in time for it to be considered at the hearing on the mining permit.

**Mining hearing**

The bill creates a new requirement that, prior to filing a mining permit application, the person intending to engage in mining will file a preapplication description of the project, which will be part of the public informational hearing to be conducted on the bulk sampling plan, which is discussed below.

**Preapplication Description**

The bill requires DNR to conduct its environmental review process for a proposed iron mine jointly with other state agencies and requires the preparation of one joint EIS. The bill requires DNR to conduct its environmental review process jointly with any federal or local agency that consents to a joint process.

Current law requires DNR to hold at least one informational meeting on a preliminary environmental report for a mining project before it issues the EIS. This bill does not require such an informational meeting.

Current law authorizes DNR to conduct the processes related to an EIS jointly with other agencies who have responsibilities related to a proposed project.

The bill requires the applicant for a mining permit to submit the EIR within 30 days after submitting the application for the mining permit. If the applicant does not do so, the deadline for DNR to act on the mining permit, described below, is extended by the number of days that the EIR is late.

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Current law requires DNR to deny an application for a mining permit if the mining operation is reasonably expected to cause any of the following: 1) hazards resulting in irreparable

This bill requires DNR to deny an application for an iron mining permit under the same standards for unsuitability as under current law, except that archaeological areas and other areas designated by DNR as being unique or unsuitable for surface mining are not considered for the purposes of determining unsuitability. They are currently part of the Wisconsin Environmental Protection Act ("WEPAA") analysis, which is not changed by the bill.

Current law requires DNR to deny an application for a metallic mining permit for a proposed surface mine if the site is unsuitable for surface mining. A site is unsuitable for surface mining if the surface mining may reasonably be expected to destroy or damage either: 1) habitats required for the survival of endangered species of vegetation or wildlife that cannot be firmly reestablished elsewhere; or 2) unique features of the land, as determined by state or federal designation, as, for example, wilderness areas, national or state parks, archaeological areas, and other lands of a type specified by DNR by rule, as unique or unsuitable for surface mining. DNR has designated more than 150 specific scientific areas for the purposes of the determination of unsuitability.

**Grounds for denial**

**GRANT OR DENIAL OF MINING PERMIT**

The bill authorizes DNR to request additional information needed to process the application for a mining permit after the application is considered to be complete, but it may not delay the determination that the application is complete based on a request for additional information unless the information required to be included in the application under the bill is missing.

Under the bill, the application for a mining permit is considered to be complete on the 143rd day after DNR receives it, unless, before that day DNR provides the applicant with written notification that a mining plan, reclamation plan, or waste site feasibility study and plan of operation is missing from the application. DNR may not consider the quality of the information provided in determining whether the application is complete.

If DNR does not act within the deadline for acting on the application for an iron mining permit, the application is automatically approved. The 360-day permitting period and the automatic approval provisions are consistent with the approval process for a large utility project.

The bill requires DNR to act on an application for an iron mining permit no more than 300-360 days after the application is considered to be complete, unless the applicant submitted the EIR more than 30 days after submitting the application for the mining permit. Under the bill, if the applicant submits the application for another approval within 60 days after the application for the mining permit is considered to be complete, DNR must also act on the application for that approval by the 300-360-day deadline. If the applicant files the application for another approval more than 60 days after the application for the mining permit is considered to be complete, the deadline for DNR's action on the approval is extended by the number of days the application is late.

Under this bill, the standards for approval of an iron mining permit differ in some respects from the standards under current law. Under the bill, if none of the grounds for denial of the application for an iron mining permit apply, DNR must issue an iron mining permit if it finds the following: 1) the mining plan and reclamation plan are reasonably certain to result in reclamation of the mining site as required by the provisions of this bill; 2) the applicant has committed to conducting the proposed iron mining in compliance with the mining permit and

Under current law, if none of the grounds for denial of the application for a metallic mining permit apply, DNR must issue the mining permit if it finds the following: 1) the mining plan and reclamation plan are reasonably certain to result in reclamation of the mining site as required by current law and DNR has approved the mining plan; 2) the proposed mining operation will comply with all applicable air, groundwater, surface water, and solid and hazardous waste management statutes and rules; 3) the proposed mine will not endanger public health, safety, or welfare; 4) the proposed mine will result in a net positive economic impact in the area expected to be most impacted by the mine; and 5) the proposed mining operation conforms with all applicable zoning ordinances.

**Standards for approval**

As under the current metallic mining laws, the bill requires DNR to deny a mining permit if the applicant has violated and continues to fail to comply with this state's mining laws. As also provided under current metallic mining law, the bill contains requirements for the denial of an iron mining permit based on the failure to reclaim mining sites and based on criminal convictions for violations of environmental laws in the course of mining in the United States by persons involved in the proposed iron mining.

The bill requires DNR to deny an application for an iron mining permit if the mining operation is reasonably expected to cause any of the following: 1) hazards resulting in irreparable damage to specified kinds of structures, such as residences, schools, or commercial buildings, or to public roads, but not to other public property designated by DNR by rule, if the damage cannot be prevented under the mining laws, avoided by removal from the area of hazard, or mitigated by purchase or by obtaining the consent of the owner; or 2) irreparable environmental damage to lake or stream bodies despite adherence to the metallic mining laws, and 3) landslides or substantial deposition in stream or lake beds that cannot be feasibly prevented; or 4) the destruction or filling in of a lake bed unless DNR has authorized the activity that causes the damage, but not on the bases described in 3) or 4) above. With regard to items 3 or 4, if the DNR authorizes depositions in stream or lake beds, any impacts to public water bodies must be offset through the reclamation or addition of up to 1.5 acres of public water bodies for every acre impacted.

The bill requires DNR to deny an application for an iron mining permit if the mining operation is reasonably expected to cause any of the following: 1) hazards resulting in irreparable damage to specified kinds of structures, such as residences, schools, or commercial buildings, to public roads, or to other public property designated by DNR by rule, if the damage cannot be prevented under the mining laws, avoided by removal from the area of hazard, or mitigated by purchase or by obtaining the consent of the owner; 2) irreparable environmental damage to lake or stream bodies despite adherence to the metallic mining laws, unless DNR has authorized the activity that causes the damage; 3) landslides or substantial deposition in stream or lake beds that cannot be feasibly prevented; or 4) the destruction or filling in of a lake bed.

Current law relating to wetlands also makes a distinction between wetlands that are in, or in close proximity to, an area of special natural resource interest (ASNRI wetlands) and wetlands that are outside these areas. Current law defines "an area of special natural resource interest" as being an area that has significant ecological, cultural, aesthetic, educational, recreational, or

and other activities in these wetlands (nonfederal wetlands). Those that are nonnavigable and isolated, intrastate waters. Current state law regulates discharges of waters involved (federal wetlands). Wetlands that are exempt from federal jurisdiction are permit to be issued by the U.S. Army Corps of Engineers (ACE). Wetlands are usually the type regulations promulgated by the federal Environmental Protection Agency in order for a federal waters subject to federal jurisdiction must comply with certain guidelines contained in jurisdiction. Under federal law, activities involving the discharge of dredged or fill material into dredged or fill material into a wetland depending on whether the wetland is subjected to federal Under the current permitting process there are two permitting procedures for discharging

**Wetland water quality certification**

Wetlands apply to wetlands that are impacted by iron mining. This bill makes various changes in current law relating to iron mining and impacts to wetlands and establishes different requirements than those found under current law but that comply with the Wisconsin Public Trust Doctrine. All of the changes explained below regarding

**WETLANDS**

The bill does not provide for citizen suits related to iron mining. Instead, it allows citizens the right to intervene in enforcement actions brought by the Wisconsin Department of Justice.

Current law authorizes citizen suits against a person alleged to be in violation of the metallic mining laws and against DNR when there is alleged to be a failure of DNR to perform a duty under those laws.

Under this bill, no person is entitled to a contested case hearing on a decision by the DNR under the iron mining laws or a decision by DNR on any environmental approval needed for iron mining or bulk sampling. Similar to federal law, judicial review of such a decision, on the administrative record before DNR, is the exclusive method for challenging the decision.

Currently, any person aggrieved by a decision of DNR under the metallic mining laws may obtain a contested case administrative hearing under this state's administrative procedure laws.

**REVIEW OF DNR DECISIONS**

any other approvals issued by DNR; 3) the proposed iron mining is not likely to result in substantial adverse impacts to public health, safety, or welfare; 4) the proposed iron mine will result in a net positive economic impact in the area expected to be most impacted by the mine; 5) the applicant will obtain all applicable zoning approvals; and 6) the waste site feasibility study and plan of operation comply with the provisions of this bill.

scientific values and specifically lists certain areas, including Lake Michigan and Lake Superior, state forests, and state parks.

Under current law, before ACE may issue a federal permit, DNR must issue a water quality certification that certifies that the discharge complies with state water quality standards applicable to wetlands. For a discharge into nonfederal wetlands, DNR must issue a water quality certification that certifies that the discharge complies with these water quality standards. In issuing water quality certification for both federal wetlands and nonfederal wetlands, DNR may impose conditions that must be met as part of the water quality certification.

This bill limits DNR's authority in imposing conditions for federal permits as part of the water quality certification. If DNR determines that implementation of the federal compensatory mitigation requirements will offset any significant adverse impact to the wetlands or if for federal ASNRI wetlands avoidance and minimization of adverse impacts are offset by federally allowed extent practicable and any remaining significant adverse impacts are offset by federal compensatory mitigation, DNR may not impose any additional conditions. If DNR does not make this determination, DNR may impose only the conditions necessary to offset significant adverse impacts that are not offset by the federal compensatory mitigation requirements. The bill also provides that DNR may not increase the number of acres to be mitigated under the federal compensatory mitigation requirements.

For issuing a wetland water quality certification for nonfederal wetlands, if DNR determines that avoidance and minimization of impacts to the wetland will be avoided or minimized to the extent practicable, any remaining impacts to nonfederal wetlands or an area of special natural resource interest, may not be used as a basis for denying certification if any remaining significant adverse impacts to the wetland or an area of special natural resource interest will be offset by compensation or mitigation similar to its federal process. Under the bill, DNR must issue water quality certification for nonfederal wetlands if DNR determines that all practicable measures will be taken to minimize the adverse impacts to wetlands and any remaining significant adverse impacts are offset through compensation or mitigation.

The bill requires that an applicant for a wetland water quality certification for a nonfederal wetland submit a siting analysis as to various configurations associated with the proposed areas of iron deposits to be mined and areas contiguous to these deposits. In reviewing the analysis, DNR must recognize limitations associated with the proposed locations for iron mining, the need for waste sites and processing facilities to be contiguous to the location of the iron deposits, and the presumption that nonfederal wetlands will be impacted. If it is impracticable to avoid an impact or use of a nonfederal wetland, the applicant shall identify in the analysis the configurations that would result in impacts to the fewest acres. DNR then determines which configuration will affect the fewest acres and evaluates how that configuration will impact the functional values and water quality of the nonfederal wetland, as in existing DNR rules.

### Wetland water quality standards

Under rules promulgated by DNR, the state wetland water quality standards require that various functional values of the wetlands be protected from adverse impacts. These functional



Under current law, DNR rules, mitigation must occur within one-half mile of the impacted wetland (on-site). If DNR determines that it is not practicable or ecologically preferable that the

law.

significant adverse impacts to these areas and ASNRI wetlands are allowed like under federal grant a permit or other approval for a project that adversely affects an area of special natural Current law prohibits DNR from considering wetlands mitigation in reviewing whether to

or preserved receives one credit. Under the bill, each acre improved acre created receives one-half credit with a limited exception. Under the bill, each acre improved one credit, the range of credits for each acre enhanced is from no credits to one credit, and each number of credits a person will receive in implementing mitigation, each acre restored receives mitigation may not exceed 1.5 acres. Under current law, DNR rules, in determining calculating the exception allowing the ratio to be one acre to one acre. The bill specifies that the ratio for 1.5 acres of wetlands be improved to every one acre that is adversely impacted with limited

Under current law, DNR rules, the ratio of acres for purposes of mitigation requires that

Under the bill, compensation allows for the offsetting of adverse impacts to other water quality functions besides those in wetlands. Compensation may include preservation of ecologically important wetlands under certain circumstances and other projects such as riparian restoration projects and shoreline stabilization projects if such projects are at locations that are more than one-half mile from the mining site.

Under current law, DNR is authorized, but is not required, to consider mitigation in determining whether to grant a water quality certification or other permit or approval affecting wetlands. Under current law, wetland mitigation consists of a project that restores, enhances, or creates (improves) a wetland to offset adverse impacts to other wetlands or that uses credits from a wetlands mitigation bank. A wetlands mitigation bank is a system of accounting for wetland loss that includes one or more sites where wetlands are improved to provide transferable credits to be subsequently applied to offset adverse impacts to other wetlands. Mitigation is based on a ratio of acres improved compared to the number of acres adversely impacted. The bill requires DNR to consider mitigation or compensation when issuing water quality certifications for both federal and nonfederal wetlands.

**Mitigation and compensation**

Under current law, DNR is authorized, but is not required, to consider mitigation in determining whether to grant a water quality certification or other permit or approval affecting wetlands. Under current law, wetland mitigation consists of a project that restores, enhances, or creates (improves) a wetland to offset adverse impacts to other wetlands or that uses credits from a wetlands mitigation bank. A wetlands mitigation bank is a system of accounting for wetland loss that includes one or more sites where wetlands are improved to provide transferable credits to be subsequently applied to offset adverse impacts to other wetlands. Mitigation is based on a ratio of acres improved compared to the number of acres adversely impacted. The bill requires DNR to consider mitigation or compensation when issuing water quality certifications for both federal and nonfederal wetlands.

values include providing protection from flooding, recharging groundwaters, providing habitat for wildlife, and providing protection to shorelines from erosion. Current law also sets forth criteria to be used to assure the maintenance or enhancement of these functional values. These criteria include requiring that certain solids, debris, or toxic substances be absent. This bill incorporates all of the functional values and criteria that are contained in the DNR rules for water quality certifications for wetlands. The wetland water quality standards under the bill require that the impacts must be minimized and that any remaining significant impacts be offset by compensation or mitigation. The bill also requires that in evaluating the significant adverse impacts, DNR must compare the functional values of the wetlands that will be impacted by the mining site with other wetlands and water bodies in the region.

mitigation occur on-site, DNR shall allow mitigation to be performed as near as practicable to the location of the adversely impacted wetland. Under the bill, if it is not practicable or ecologically preferable to conduct compensation or mitigation at an on-site location or if there is insufficient wetland acreage on-site, off-site compensation or mitigation may be performed. This may include purchases of credits from a mitigation bank located anywhere in the state. The bill also authorizes other persons to perform compensation or mitigation, subject to DNR approval.

#### Exemptions

Under current law, artificial wetlands are exempt from the wetland water quality standards unless DNR determines significant functional values are present. This bill exempts these same artificial wetlands from the wetland water quality standards and eliminates the exception to the exemption for wetlands with certain significant functional values.

Under current law, certain activities in nonfederal wetlands are exempt from the water quality certification requirements for wetlands. These include maintenance of drainage and irrigation ditches, damaged parts of structures that are in bodies of waters, and maintenance of certain temporary mining roads. Under current law, these activities lose their exemption under certain circumstances, such as using a wetland for a use for which it was not previously used, or conducting an activity that may impair the flow of a body of water. Under the bill, very similar exemptions apply to iron mining activities. However, the provision regarding losing the exemption does not apply. Instead, the exemptions only apply if the person conducting the activity first minimizes the adverse effect to the environment.

The bill also exempts from the water quality certification requirements isolated wetlands that do not exceed five acres in size. A similar exemption exists under the rules relating to the use of wetlands in other types of metallic mineral mining.

#### Other provisions

Under current law, for purposes of delineating the boundary of a wetland, DNR shall use the procedures contained in the wetlands delineation manual published by the ACE. The bill provides that if the applicant has provided information to DNR that is identified in the manual as being sufficient for determining where a wetland is or for delineating a wetland's boundaries, DNR must accept the information and may not discontinue processing the application for purposes of visiting the site and gathering additional site-specific data but doing so does not lengthen the 360 day review period.

Current law requires a permit holder to grant DNR an easement to ensure that an improved wetland is not destroyed or substantially degraded by subsequent owners. This bill imposes this requirement on persons who receive a water quality certification and requires DNR to suspend the certification if the permit holder fails to grant the easement within the time limit set forth in the mining permit.

## GROUNDWATER QUALITY

### Groundwater quality standards

Under current law, DNR and the Department of Health Services (DHS) establish groundwater quality standards, consisting of enforcement standards and preventive action limits, for substances that contaminate groundwater. The preventive action limit for a substance is 10 percent, 20 percent, or 50 percent of the enforcement limit depending on the type of substance.

Under this bill, the enforcement standards and preventive action limits established by DNR and DHS continue to apply to iron mining operations.

### Point of standards application

Current law generally requires each state regulatory agency, including DNR, to promulgate rules containing design and operational criteria for facilities and activities affecting groundwater that are designed, to the extent technically and economically feasible, to minimize the level of substances in groundwater and to maintain compliance with preventive action limits, unless compliance with the preventive action limits is not technically and economically feasible. Current law requires each regulatory agency to promulgate rules that specify the range of responses that the regulatory agency may take or that it may require the person controlling a facility or activity to take if a preventive action limit is attained or exceeded at what is called a point of standards application. Under current law and under this bill, any point at which groundwater is monitored is a point of standards application to determine whether a preventive action limit has been attained or exceeded.

Current law generally prohibits a regulatory agency from promulgating rules containing design and operational criteria that allow an enforcement standard to be exceeded at a point of standards application. Under current law and under this bill, for determining whether an enforcement standard has been attained or exceeded, a point of standards application is any point beyond the boundary of the property on which the regulated facility or activity is located, any point of present groundwater use, and, for certain facilities, such as waste disposal facilities, any point beyond a three-dimensional design management zone (DMZ) established by DNR by rule.

### Design management zone

Current mining statutes do not define a DMZ. Under DNR's rules, the horizontal dimensions of a DMZ vary depending on the type of facility. For a metallic mining waste site, the horizontal distance to the boundary of the DMZ is generally 1,200 feet from the outer waste boundary or at the boundary of the property owned or leased by the applicant, whichever distance is less. For a metallic surface mine, the horizontal distance to the boundary of the DMZ is generally 1,200 feet from the edge of the mining excavation or at the property boundary, whichever distance is less. Generally, the smaller the DMZ, the more likely that a preventive action limit or enforcement standard will be attained or exceeded at the boundary and the more likely that the operator will be required to implement a response.



Under this bill, for an iron mining site, the horizontal distance to the boundary of the DMZ is generally 1,200 feet from the engineered structures of a mining waste site, including any wastewater and sludge storage or treatment lagoon, the edge of the mine and adjacent mine mill and ferrous mineral processing and other facilities or at the property boundary, whichever distance is less.

Under current rules, DNR may reduce the horizontal distance to the boundary of the DMZ on a metallic mining site if certain conditions are met, but may not expand it.

Under the bill, DNR may expand the horizontal distance to the boundary of the DMZ on a metallic mining site by an additional 1,200 feet in any direction if DNR determines that preventive action limits and enforcement standards will be met at the boundary of the expanded DMZ and that preventive action limits and enforcement standards cannot be met at the boundary of the DMZ if it is not expanded.

Current mining statutes do not set a vertical DMZ distance. Under DNR's rules, a DMZ extends vertically from the land surface through all saturated geological formations. Under the bill, the vertical distance to the boundary of the DMZ on an iron mining site extends no deeper than 1,000 feet into the Precambrian bedrock or to the depth of the excavation of the mining site, whichever is deeper.

**Mandatory intervention boundary**

Currently, mining statutes do not provide for a mandatory intervention boundary. For metallic mining waste sites and metallic mines, in addition to the DMZ, DNR's rules provide for a mandatory intervention boundary that is 150 feet from the outer waste boundary or the edge of the mine. Under the rules, if a preventive action limit or an enforcement standard is exceeded beyond the mandatory intervention boundary, the department must require a response by the operator.

The bill also does not provide a mandatory intervention boundary for an iron mining site. It will be up to the DNR whether to create a rule for ferrous mining that includes a mandatory intervention boundary.

**Response when preventive action limit is attained or exceeded**

Current mining statutes do not set a preventive action limit or designate responses when they are exceeded. Under DNR's groundwater rules, when a preventive action limit is attained or exceeded at a point of standards application, DNR must determine the appropriate response, taking into consideration the response proposed by the operator. The response must be designed and implemented to minimize the concentration of the substance in groundwater at the point of standards application to the extent feasible, to regain and maintain compliance with the preventive action limit, and ensure that the enforcement standard is not attained or exceeded at the point of standards application. DNR's rules specify a range of responses for when a preventive action limit is attained or exceeded at a point of standards application, including requiring a revision of operational procedures and requiring remedial action to restore groundwater quality. The DNR may implement those or alternate responses.

Under this bill, the current solid waste laws do not apply to iron mining waste facilities. Instead, the standards for an iron mining waste facility are specified in the iron mining laws and the process for approving an iron mining waste facility is part of the process for approving the iron mining permit. Just like under current DNR rules, the standards do not differ significantly from the solid waste statutes and rules. Under the bill, if a mining site will include a disposal facility for waste that is not mining waste, such as trash from an office or cafeteria, the current solid waste laws apply to that disposal facility.

Under current law, no person may construct or operate a solid waste disposal facility, such as a landfill, without the approval of DNR under the solid waste statutes and rules. The rules under which metallic mining waste facilities are regulated under current law, however, differ in some ways from the rules for other solid waste facilities.

**Approval of facility**

**DISPOSAL OF MINING WASTE**

Under the bill, when an enforcement standard is attained or exceeded at a point of standards application and the quality of groundwater is statistically significantly different from the quality of the groundwater unaffected by the iron mining, DNR must designate an appropriate response, and in doing so it evaluates the operator's proposed range of responses, and designate an appropriate response-DNR may not prohibit an activity or require closure of a mining waste site unless DNR determines that no other remedial action would prevent the violation of the enforcement standard at the point of standards application.

Under the bill, when an enforcement standard is attained or exceeded at a point of standards application and the quality of groundwater is statistically significantly different from the quality of the groundwater unaffected by the iron mining, DNR must designate an appropriate response, and in doing so it evaluates the operator's proposed range of responses, and designate an appropriate response-DNR may not prohibit an activity or require closure of a mining waste site unless DNR determines that no other remedial action would prevent the violation of the enforcement standard at the point of standards application.

**Response when enforcement standard is attained or exceeded**

Under the bill, when a preventive action limit is attained or exceeded at a point of standards application and the quality of groundwater is statistically significantly different from the quality of the groundwater unaffected by the iron mining, DNR designates the appropriate response. In doing so, the DNR evaluates the range of responses proposed by the operator, including alternative responses to the responses specified in DNR's rules, and designate the appropriate response. DNR may determine that no response is necessary if it determines that the preventive action limit will not be attained or exceeded at any point outside the DMZ or, in some cases, if the natural concentration of the substance is above the preventive action limit. It will be up to the DNR whether to create new rules to address this issue further.

### Location of facility

Current law requires DNR to promulgate rules for the location of solid waste facilities. Unless DNR grants an exemption, as described below (in the section on exemptions), the rules prohibit the location of a mining waste site in any of the following areas: 1) within 1,000 feet of a state trunk highway, a state park or scenic easement or overlook, a scenic or wild river, or a hiking or bike trail, unless the proposed waste site is visually inconspicuous or is screened; 2) within an area designated in the statutes as being unsuitable for surface mining, such as a wilderness area, a wildlife refuge, or a state or national park; 3) within 200 feet of the property boundary; 4) within a floodplain; 5) within 300 feet of a navigable river or stream; 6) within 1,000 feet of a lake; or 6) within 1,200 feet of a private or public water supply well.

This bill includes some of the same locational limits for an iron mining waste site, but it does not prohibit permits, an iron mining waste site from being located within an area designated in the statutes as being unsuitable for surface mining—within 200 feet of the property boundary; within a floodplain; within 300 feet of a navigable river or stream; or within 1,000 feet of a lake if approved under the water withdrawal and navigable water sections of the bill.

### Waste site feasibility study and plan of operation

The current solid waste statutes require an applicant for the approval of a solid waste disposal facility to submit a waste site feasibility study, to demonstrate the suitability of the site for the disposal of solid waste, and a plan of operation for the facility. DNR's rules concerning metallic mining waste facilities contain extensive requirements for the waste site feasibility study and plan of operation.

This bill requires an applicant for an iron mining permit to submit a waste site feasibility study and plan of operation as part of the application for the mining permit. The bill contains extensive requirements for the waste site feasibility study and plan of operation that are not required under current mining statutes, many of which are similar to the requirements in DNR's current rules. Some of the technical requirements in the bill differ from the current rules. It will be up to the DNR to determine if additional requirements should be added through rule-making.

The bill requires the applicant to perform analyses to assess the potential environmental impact of mining waste handling, storage, and disposal. The applicant must conduct investigations on the proposed waste site and in the laboratory to determine the characteristics of the site through measures such as soil borings and tests and determining groundwater levels and flow patterns and preliminary groundwater quality. The applicant must provide information about the ecosystems and climatology in the vicinity of the proposed mining waste site and about the geology, zoning, and land use in the area.

Under the bill, the applicant must submit a proposed waste site design that includes proposed methods for controlling water that has been contaminated by dissolved materials (leachate) and for controlling access to the facility and engineering plans and must submit a description of typical daily operations of the iron mining waste facility.

## Proof of financial responsibility

Under current law and under this bill, the operator of a mine must furnish to DNR a bond or other security in an amount sufficient to cover the cost of reclamation of the mining site.

Current law also requires the operator of a mining waste facility to provide proof of financial responsibility for the costs of the care, maintenance, and monitoring of the facility after it is closed (long-term care). The obligation to provide proof of financial responsibility for long-term care continues until DNR terminates that requirement, which it may not do until at least 40 years after closure of the mine.

Under this bill, the operator of an iron mining waste facility is also required to provide proof of financial responsibility for the costs of the long-term care of the facility. Under the bill, the operator of an iron mine may apply to DNR for termination of its obligation to provide proof of financial responsibility for long-term care of the mining waste facility after the facility has been closed for at least 20 years by submitting an application that demonstrates that proof of financial responsibility for long-term care is no longer necessary for adequate protection of public health or the environment. If DNR decides that additional proof of financial responsibility for long-term care is still needed, the operator may not submit another application for five years. There is no time period set by which the DNR must allow termination of the proof of financial responsibility. Under the bill, even after the requirement to provide proof of financial responsibility has been terminated by the DNR, the Spill Responsibility Law still applies.

## WATER WITHDRAWALS

Under current law, no person may withdraw water from a stream or lake without a permit (surface water withdrawal permit) issued by DNR. Current law also regulates withdrawals of groundwater. That law prohibits a property owner from withdrawing water from or constructing a well that, together with other wells on the same property, has a capacity of more than 100,000 gallons per day without an approval from DNR (high capacity well approval). DNR must review, using an environmental review process specified in DNR's rules, every application for an approval of a high capacity well that has a water loss of more than 95 percent of the amount of water withdrawn, that may have a significant environmental impact on a spring, or that is located in a groundwater protection area. A groundwater protection area is an area within 1,200 feet of certain outstanding or exceptional resource waters or certain trout streams. Current law also provides that if DNR determines that a proposed high capacity well may impair the water supply of a public utility, then DNR may not approve the well unless it includes certain approval conditions that will ensure that the water supply of the public utility will not be impaired and if DNR determines that a proposed high capacity well that has a water loss of 95 percent of the amount of water withdrawn, may have a significant impact on a spring or is located in a groundwater protection area, then DNR generally may not approve the well unless it includes certain approval conditions that will ensure that the high capacity well will not cause significant adverse environmental impact.

Current law also provides that if a person to whom DNR has issued a surface water withdrawal permit or a high capacity well approval proposes to begin a new withdrawal or increase an existing withdrawal that will result in a water loss beyond a specified threshold

amount, then that person must apply for a new or modified surface water withdrawal permit or high capacity well approval (water loss application). A water loss is a loss of water from the basin from which it is withdrawn as a result of interbasin diversion or consumptive use. The water loss application must contain certain information including the place and source of the proposed withdrawal, the estimated average volumes and rates of water loss, the anticipated costs of any proposed construction, and a description of the conservation practices that the applicant intends to follow. If DNR approves the water loss application then DNR must modify the applicant's existing surface water withdrawal permit or high capacity well approval or issue a new permit or approval that specifies certain conditions with regard to the water withdrawal.

This bill establishes different procedural requirements for surface water and groundwater withdrawals relating to iron mining. In lieu of a surface water withdrawal permit, a high capacity well approval, and a water loss application, a person who, as part of an iron mining operation or bulk sampling (explained below), engages in a surface water withdrawal or groundwater or groundwater or the dewatering of mines that exceeds 100,000 gallons a day, must obtain a single water withdrawal permit from DNR (mining water withdrawal permit). The bill specifies that a person who applies for a mining water withdrawal permit need not be a riparian owner. If the withdrawal of water will involve one or more high capacity wells, DNR must require the applicant to submit a siting analysis that includes alternate proposed locations for each well. In evaluating the siting analysis, DNR must recognize that there is a need for mining waste sites and processing facilities to be contiguous to the location of the ferrous mineral deposits and must allow any high capacity well to be located so that need will be met. DNR must also determine which location has the fewest overall adverse environmental impacts to the extent practicable. In determining what is practicable, DNR must take into consideration the ability to implement certain conservation measures.

The bill requires DNR to issue a mining water withdrawal permit if the withdrawal substantially meets certain requirements (general requirements). Among those requirements is that the proposed withdrawal and use of the water is substantially consistent with the protection of public health, safety, and welfare; that it will not be substantially significantly detrimental to the quantity or quality of the waters of this state; that it will not substantially significantly impair the rights of riparian owners or the applicant obtains the consent of riparian owners; and that it will not result in substantial significant injury to public rights in navigable waters. The bill provides that if an applicant cannot meet the general requirements but is able to without implementing specified conservation measures, such as mitigation or compensation by offsetting impacts to public water bodies or adding up to 1.5 acres of public water bodies for each one acre impacted, DNR may, nonetheless issue the permit if it finds that by doing so the general requirements have been met. The bill further provides that if the applicant cannot meet either the general requirements or the conservation measures, DNR may issue the mining water withdrawal permit if DNR determines that the public benefits resulting from the iron mining operation exceed any injury to public rights in a body of water that is affected by the mining operation. In making this determination, DNR is required to recognize certain factors, including the extent to which public rights in a navigable body of water may be substantially and irreparably injured by the proposed withdrawal, public benefits that may be provided, such as increased employment, from the iron mining operation, and the social benefits and costs that will result from the mining operation. This is consistent with the existing Wisconsin Public Trust Doctrine.



EXEMPTIONS

Under current law, to qualify for some of the individual or general permits or to conduct activities under certain permit exemptions, the person must be an owner of riparian (waterfront) property. Under the bill for purposes of iron mining, the requirement of being a riparian owner does not apply.

In order to receive an individual permit for the navigable waters activities regulated by DNR, the activity must meet certain requirements. These requirements vary depending on the type of permit issued, and may include requirements that address possible obstruction to navigation, reduction to flood flow capacity, and interference with the rights of other riparian owners. The bill modifies the requirements for the purpose of issuing individual permits associated with iron mining and provides that the same requirements apply to all of these permits. Under the bill, a navigable waters permit will be issued if it will not substantially significantly impair the public's rights and interests in navigable waters, will not substantially significantly reduce flood flow capacity, will not substantially significantly impact riparian rights without consent, and will not substantially significantly degrade water quality (no significant impact requirements). The bill provides that if the activity does not meet these requirements, DNR must nevertheless issue a permit for the activity if the applicant for the permit implements one or more measures approved by DNR, such as obtaining consent from any riparian owner whose rights may be affected, taking steps to improve public rights or interests in navigable waters, or implementing certain compensation, mitigation, or conservation measures, but only if doing so allows the DNR to find that the no significant impact requirements have been met. Where public water bodies have been impacted, the applicant must offset such impacts by reclaiming or adding up to 1.5 acres of public water bodies for each acre impacted.

Under current law, DNR regulates certain activities that occur in or near navigable waterways. In order for a person to conduct such an activity, the person may be required to place obtain one or more permits from DNR. Among the permits that DNR issues are permits to place structures or deposits in navigable waters, permits to construct or maintain bridges and culverts, permits to enlarge or connect waterways, permits to change the courses of streams and rivers, and permits to remove material from beds of navigable waterways. Current law also requires that DNR have in place general permits for some of these activities. Under current law, some activities are exempt from these requirements.

NAVIGABLE WATERS

The bill authorizes DNR to impose certain reasonable conditions in the mining water withdrawal permit, but the conditions may not interfere with, or limit the water supply needed for, the iron mining operation or bulk sampling. Like existing law, the bill also allows an iron mining operator to request a modification of any condition in the mining water withdrawal permit and establishes certain deadlines under which DNR must approve or deny the request for modification. The bill specifies that if a request for modification results in an existing withdrawal resulting in a water loss averaging more than a specified number of gallons per day in a 30-day period, then DNR must determine whether, under its rules, it is required to prepare an environmental assessment or environmental impact statement. If so, then DNR must prepare the environmental assessment or environmental impact statement.

Under the bill, DNR must deny the application for an exploration license if it concludes that, after the reclamation plan has been completed, the exploration will have a substantial and irreparable adverse impact on the environment or present a substantial risk of injury to public health and welfare. If DNR intends to deny a license, it must notify the applicant of that intent

Under the current rules, DNR must deny the application for an exploration and reclamation or if the explorer is in violation of the rules. Under the current rules, DNR must deny the application for an exploration and reclamation or if

DNR's current rules. This bill also requires a person who intends to engage in exploration for iron ore to be licensed by the department. The bill requires an applicant for an exploration license to file an exploration plan and a reclamation plan that include provisions related to the matters for which DNR is required to establish standards under current law. The bill contains requirements for filling drillholes once exploration has been completed that are similar to the requirements in exploration and for the reclamation of exploration sites. Current law requires a person who intends to engage in exploration to be licensed by DNR. Exploration is drilling to search for minerals or to establish the nature of a known mineral deposit. The law requires DNR to promulgate rules containing minimum standards for

**EXPLORATION**

Current law provides that if there is a standard under other state or federal statutes or rules that specifically regulates in whole an activity also regulated under the metallic mining law, the standard under the other states or rules is the controlling standard. If the other federal or state statute or rule only specifically regulates the activity in part, it is controlling as to that part. Under this bill, if there is a conflict between a provision of the iron mining laws and a provision in another state environmental law, the provision in the iron mining laws controls.

**RELATION TO OTHER LAWS**

Current law authorizes DNR to promulgate rules under which it may grant to an applicant for a metallic mining permit an exemption to a rule promulgated under the solid waste, hazardous waste, or metallic mining laws if the exemption does not result in a violation of any federal or state environmental statute or endanger public health, safety, or welfare or the environment. This bill authorizes an applicant for an iron mining permit to request an exemption from any requirement in the iron mining laws applicable to a mining permit application, a mining permit, or any other approval issued by DNR that is needed to conduct the iron mining. DNR must grant or deny the exemption within 15 days. DNR must grant the exemption if it is consistent with the purposes of the iron mining laws; it does not violate other applicable environmental laws; and either: 1) it will not result in substantial adverse environmental impacts, or 2) it will result in substantial adverse environmental impacts but the applicant will offset those impacts through compensation, mitigation, or conservation measures, except that DNR may not grant the exemption or variance if granting it would violate federal law.

1. Describe the bulk sampling site and the methods to be used for bulk sampling.
2. Submit a plan for controlling surface erosion that identifies how adverse impacts to plant and wildlife habitats will be avoided or minimized to the extent practicable.
3. Submit a plan for revegetation that describes how adverse environmental impacts will be avoided or minimized to the extent practicable, how the site will be revegetated and stabilized, and how adverse impacts to plant and wildlife habitats will be avoided or minimized to the extent practicable.
4. Describe any known adverse environmental impacts that are likely to be caused by bulk sampling and how those impacts will be avoided or minimized to the extent practicable.

Under the bill, a person intending to examine an area to determine the quantity and quality of iron ore by means other than drilling is not required to obtain a prospecting license. Instead, the bill dees-authorizes a person who intends to engage in bulk sampling to file a bulk sampling plan with DNR. Bulk sampling is excavating in a potential mining site to assess the quality and quantity of iron ore deposits and to collect and analyze data to prepare the application for a mining permit or other approval. A person who files a bulk sampling plan must do all of the following:

1. Under current law, a person may not prospect for metallic ore without a prospecting permit from DNR. Prospecting is examining an area to determine the quantity and quality of metallic minerals by means other than drilling, for example, by excavating.
2. Under current law, a person who intends to apply for a permit for mining for metallic ore must notify DNR before collecting data intended to be used to support the application. DNR is required to provide public notice when it receives such a notification. After considering public comments, DNR must tell the person who filed the notice of intent what information DNR believes is needed to support an application for a mining permit. The person must submit the information as soon as it is in final form.

**BULK SAMPLING AND PREAPPLICATION DESCRIPTION**

Under current DNR rules, the bill generally requires DNR to issue or deny an application for an exploration license within ten business days of receipt of the application. Under the bill, however, if DNR does not comply with that deadline, the exploration license is automatically issued.

As under current DNR rules, the bill generally requires DNR to issue or deny an application for an exploration license within ten business days of receipt of the application. Under the bill, however, if DNR does not comply with that deadline, the exploration license is automatically issued.

and the reasons for the intended denial and give the applicant ten days to correct the problems with its application.



The bill requires DNR, within 14 days of receipt of a bulk sampling plan, to identify in writing any kind of approval that DNR issues that is needed to conduct the proposed bulk sampling, such as a wastewater discharge permit or a wetland water quality certification, and any potentially available waivers, exemptions, or exceptions to those approvals that may be available.

The bill requires a person submitting a bulk sampling plan to submit at the same time all applications for approvals and for waivers, exemptions, or exceptions to approvals for the bulk sampling.

The bill also requires the person who files a bulk sampling plan to file a preapplication description of the proposed mining project. The description must include a description of the proposed mining site with a map, water table elevations, a general description of the nature, extent and final configuration of the proposed excavation and mining site and a conceptual description of the likely operating procedures, where the waste site and processing facilities are likely to be located and a general description of each.

The bill specifies deadlines for DNR to act on approvals needed to conduct bulk sampling that would not otherwise apply to those types of approvals. When a person who files a bulk sampling plan applies for an approval or a waiver, exemption, or exception to an approval, the application is considered to be complete on the 30th day after the department receives the application, unless before that day DNR informs the person that the application is not complete. Once an application is considered to be complete, DNR must act within 30 days on an application for a waiver, exemption, or exception to an approval, for a determination that an activity is below the threshold that requires an approval, or for a determination of eligibility for coverage under a general permit or a registration permit. For other approvals, DNR must act within 60 days after the application is considered to be complete, except that if it is not possible for DNR to act on approval for an individual permit, such as a wastewater discharge permit, for which federal law requires an opportunity for public comment or the ability to request a hearing before issuance of the permit within 60 days, it must act within 180 days. Before an approval is issued, the DNR shall provide notice to the public, provide a 30-day public comment period and hold a public informational hearing on the proposed approvals and the preapplication mining project description.

Under current law, if a proposed state agency action, such as the issuance of a permit, authorization, or exception, will affect any site that is significant in the history, prehistory, architecture, archaeology, or culture of this state (historic property), the state agency must notify the director of the State Historical Society (SHS) or his or her designee (state historic preservation officer). If the state historic preservation officer determines that the proposed agency action will have an adverse effect on a historic property that is listed on the national or state register of historic places, the Wisconsin inventory of historic places, or SHS' list of locally designated historic places, that officer may require negotiations with the state agency to reduce that adverse effect.

The bill requires a bulk sampling plan to include: 1) a description of any adverse effects that the bulk sampling might have on any historic property or on any scenic or recreational areas; and 2) plans to avoid or minimize those adverse effects to the extent practicable. The bill also

Under current law, the state imposes a net proceeds occupation tax on the mining of metallic minerals in this state. The tax is based, generally, on a percentage of net income from the sale of ore or minerals after certain mining processes have been applied to the ore or minerals. For purposes of administering the net proceeds occupation tax and assessing manufacturing property in this state for property tax purposes, the Department of Revenue (DOR) assesses the value of the lands from which metallic minerals are extracted, but excludes the value of the metalliferous mineral content of the land from the assessment.

### NET PROCEEDS OCCUPATION TAX

Current law imposes fees on the disposal of solid waste that are called tonnage fees or tipping fees. Under the bill, the operator of a mining waste site must pay the groundwater fee, and the environmental repair fee, but is not subject to and the waste facility siting board fee, or the recycling fee is not required.

Under this bill, the filing fee for a mining permit is \$10,000. The applicant is not required to pay an application or filing fee for any approval other than a mining permit. The annual payments are required. Upon completion of DNR's action on all approvals for a mine, the applicant must pay the amount by which the costs to DNR for evaluating the mining project, including all of the approvals, exceed \$10,000, but not more than \$750,000. The applicant must also pay \$100,000 when a bulk sampling plan is filed and up to four additional \$250,000 payments if DNR's actual costs require such payments to a total applicant payment of \$1.1 million.

Under current law DNR rules, a person who gives notice of intent to apply files an application for a metallic mining permit must pay a \$10,000 fee established by DNR by rule designed to cover the costs incurred by DNR in connection with its review of the proposed mining application during the year following receipt of the proposed notice application. The person must also pay fees for any approvals other than the mining permit that are needed to conduct the mining. The law requires DNR to annually compare the fees paid by an applicant with the costs incurred by DNR in connection with the proposed mining. If the costs incurred by DNR exceed the fees paid, the person must pay a fee equal to the difference.

### FEES

DNR is not required to prepare an environmental impact statement for proposed bulk sampling. Also, the bill requires DNR to act on any required construction site erosion control or storm water management approval, even if DNR has authorized a local program to issue approvals for construction site erosion control or stormwater management.

DNR determines that an applicant has taken measures to minimize the adverse effects of proposed bulk sampling on a historic property, DNR is not required to notify the state historic preservation officer, and the state historic preservation officer may not require negotiations to reduce that adverse effect. If that adverse effect cannot practicably be minimized, any negotiations between DNR and the state historic preservation officer must be completed within 60 days.

Current law provides that a structure, building, fill, or development (structure) that is placed or maintained in a floodplain in violation of a floodplain zoning ordinance is a public nuisance and provides that any person placing or maintaining the structure may be subject to a

Current law prohibits locating a solid waste facility in an area that is covered by a shoreland or floodplain zoning ordinance unless the facility is authorized under a permit issued by DNR. This bill requires DNR to specify in the mining permit the authorized location, height, or size of the facility that may be located in the area. This bill also specifies that DNR may not prohibit a waste site, structure, building, fill, or other development or construction activity (activity) to be located in an area that would otherwise be prohibited under a shoreland or floodplain zoning ordinance if the activity is authorized by DNR as part of a mining operation covered by an iron mining permit.

**Shoreland and floodplain zoning**

**OTHER**

Under current law, a school district may receive payments from the investment and local impact fund if the local impact fund board finds that the school district has incurred costs attributable to enrollment resulting from the operation of a metallic mineral mine. Under the bill, a school district may receive such payments only if the school district has incurred costs attributable to enrollment resulting from the operation of a nonferrous metallic mineral mine.

Under current law, each county, municipality, or Native American community that contains at least 15 percent of a minable ore body for which construction, but not extraction, has begun at a nonferrous metallic mining site receives a one-time payment of \$100,000 and each person constructing a nonferrous metallic mining site pays the construction fee. Under current law, each person constructing a metallic mining site must pay a construction fee in an amount sufficient to make the one-time construction payments. Under the bill, each county, municipality, or Native American community that contains at least 15 percent of a minable ore body for which construction, but not extraction, has begun at a metallic mining site receives a one-time payment of \$100,000. Under current law, each person constructing a metallic mining site must pay a construction fee in an amount

Under current law, the revenue collected from the net proceeds occupation tax is deposited into the investment and local impact fund. The fund is managed by the local impact fund board. The revenue is then, generally, distributed to the counties and municipalities in which metallic minerals are being mined. Part of the revenue is distributed to counties and municipalities as "first-dollar payments" equal to \$100,000, adjusted to reflect the annual change in gross national product. Additional payments are then made after the first dollar payments.

Under the bill, the maximum amount of the net proceeds occupation tax on the mining of metallic minerals in this state, as it relates to the mining of ferrous metallic minerals in any year, is an amount equal to \$1.35 for each 2,240 pounds of iron product sold in that year. Also, DOR continues to assess the value of lands from which ferrous or nonferrous metallic minerals are extracted, but excludes from the assessment the value of the ferrous or nonferrous metallic mineral content of the land and the value of the facilities and improvements used for processing the ferrous or nonferrous metallic minerals.

fine. The bill specifies that these provisions do not apply to a structure placed or maintained as part of a mining operation covered by an iron mining permit issued by DNR.

#### **Local impact committees**

Current law authorizes a local or tribal government likely to be substantially affected by proposed metallic mining to establish a local impact committee for purposes that include facilitating communications with the mining company, reviewing and commenting on reclamation plans, and negotiating an agreement between the local or tribal government and the mining company. The law requires the mining company to appoint a person to be the liaison with the local impact committee and requires the mining company to make reasonable efforts to design and carry out mining operations in harmony with community development objectives. Under some circumstances, a local impact committee may receive funding from the investment and local impact fund board.

This bill does not provide for local impact committees for proposed iron mines.

#### **Rights and conditions relating to mining contracts and leases**

Current law establishes certain rights and imposes certain conditions with respect to private party contracts or leases that authorize a person to dig for ores and minerals, including the conditions under which a miner may retain ore and minerals discovered on another person's land, a miner's obligation to keep and to provide certain records concerning mine operations, and the consequences to a miner who conceals or disposes of any ores or minerals for the purpose of defrauding a lessor. Current law also establishes a maximum term for exploration mining leases with regard to minerals that contain metals.

This bill limits these current law provisions to mining activities relating to nonferrous metallic mining.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

**From:** Culotta, Jason - GOV  
**Sent:** Monday, May 23, 2011 1:50 PM  
**To:** Pyper, Thomas TMP (7122)  
**Subject:** FW: Draft review: LRB 11-2035/2 Topic: Regulation of mining for ferrous metallic minerals  
**Attachments:** LRB-2035\_2.pdf; LRB-2035\_2 Drafters\_Note.pdf  
**Importance:** High

Tom,  
Please review this!  
We would like to be able to share this with others in the morning, but wanted to let you look it over first.  
--Jason

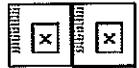
**From:** Pypier, Thomas TMP (7122) <TPYPER@whdlaw.com>  
**Sent:** Monday, May 23, 2011 2:06 PM  
**To:** Culotta, Jason - GOV  
**Cc:** BUZECKY, Jennifer D. JDB (5749)  
**Subject:** RE: Draft review: LRB 11-2035/2 Topic: Regulation of mining for ferrous metallic minerals

We will start looking it over. As a spot check, I looked at the Analysis description of the Mandatory Intervention Boundary. They included none of our suggested clarifying language. I continue to believe that the way they have presented that issue is mis-leading. They are comparing the existing DNR Rule to the new statutory language. Without a statement that just like the Bill, the existing statutes in Ch 293 likewise make no mention of the Boundary, it makes it sound like this is a change when instead it simply leaves it up to the DNR as to whether it wants to add through rule-making the same Boundary for ferrous mining.

**Tom Pypier**  
Shareholder

**Whyte Hirschboeck Dudek S.C.**  
33 East Main Street, Suite 300  
Madison, WI 53703-4655

(608) 258-7122  
(608) 258-7138  
tpypier@whdlaw.com



---

**From:** Culotta, Jason - GOV [mailto:Jason.Culotta@wisconsin.gov]

**Sent:** Monday, May 23, 2011 1:50 PM

**To:** Pypier, Thomas TMP (7122)

**Subject:** FW: Draft review: LRB 11-2035/2 Topic: Regulation of mining for ferrous metallic minerals

**Importance:** High

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Mohr, Mark - GOV

**From:** Culotta, Jason - GOV  
**Sent:** Wednesday, May 25, 2011 5:11 PM  
**To:** Tradewell, Becky - LEGIS  
**Subject:** RE: Comments and questions on the redrafting instructions

Becky,  
Thank you for sending this over. I will work on tracking down answers to these for you promptly, but will likely have them in the morning. Thanks again,  
--Jason

---

**From:** Tradewell, Becky [mailto:Becky.Tradewell@legis.wisconsin.gov]  
**Sent:** Wednesday, May 25, 2011 5:10 PM  
**To:** Culotta, Jason - GOV  
**Cc:** Kite, Robin - LEGIS  
**Subject:** Comments and questions on the redrafting instructions

Jason:

I have some questions and comments about the drafting instructions. I am happy to receive responses in writing (including email), by phone, or in a meeting, which ever would work best for you.

(1) The 3rd instruction on page 1 of the document titled "Changes to LRB-2035/2," sent Tuesday at 5:23, indicates that the title for proposed s. 295.51 should be changed. The title must reflect the contents of the section and the location criteria are in that section. I could move the location criteria into a new section or I could narrow the references in other parts of the bill so that they refer to "waste site feasibility study and plan of operation under s. 295.51 (2)." Perhaps the title could be changed to read "Mining waste site location criteria; feasibility study and plan of operation." Please let me know if I should make one of these changes.

(2) The 5th instruction on page 1 of the document referenced in point (1) indicates that the reference to s. NR 140.28, Wis. Adm. Code on page 173, lines 10-11 should be deleted, because "the alternatives in the bill govern whether an exemption should be given, not those in the Rule." This explanation is not clear to me. I am not aware that the draft includes language that provides alternatives governing whether exemptions to groundwater quality standards should be given. I see that the first set of instructions, which were provided to Robin while I was away, eliminated the reference to s. NR 140.28 in proposed s. 295.645 (8). I do not understand the intent behind that change. If it is intended to allow DNR to grant exemptions without providing any guidance, that is probably an invalid delegation of legislative intent.

Note that NR 140 applies under the draft to the extent that it does not conflict with proposed s. 295.645. Also, the draft includes several specific references to provisions in ch. NR 140, including another reference to s. NR 140.28 on page 176, line 16.

Please provide some clarification of these issues.

3) The 2nd instruction on page 5 of the document referenced in point 1) indicates that the language on page 124, lines 8, 9, and 10-11 should be replaced with the language proposed last week. My understanding is that Robin did not use the proposed language because it is not clear. I agree that "includes the categories of information identified in" is not clear. I am working on alternatives.

4) Fees. Looking at the language of proposed s. 295.73 in LRB-2035/1, the instructions sent to Robin last week, and the instructions beginning on the bottom of page 2 of the document referenced in point 1), I find that the proposed language is unclear in some respects. Proposed s. 295.73 (1) requires a \$10,000 filing fee for a mining permit. I see no instructions to change this. Proposed s. 295.73 (3) (a) in LRB-2035/1 requires DNR to determine its costs for evaluating the mining projects upon completion of its action on all approvals. I see no instructions to change this. Proposed s. 295.73 (3) (b) in LRB-2035/1 requires DNR to assess the lesser of the amount by which its costs exceed the \$10,000 filing fee or \$750,000, whichever is less. The only requested change I see to this is to change \$750,000 to \$1,100,000. The instructions then require the "assessed" amount to be paid in installments, starting with a \$100,000 payment to be made when the preapplication general description is given. This would be before the \$10,000 filing fee is to be paid.

The \$10,000 filing fee does not seem to make sense if the mining company has already been required to pay \$100,000. Should the filing fee be eliminated? Shouldn't the language in sub. (3) (a) be eliminated or changed to require DNR to just keep track of its costs? And shouldn't the existing language in sub. (3) (b) be modified to reflect the requested approach of "paying costs in arrears"? Also, the proposed language does not seem to clearly address the situation in which the applicant has made one or more of the \$250,000 payments when DNR approves or denies the permit application, but its total costs do not use up the last \$250,000 payment. Do you want the draft to require a refund in this situation?

5) About the changes to the mining waste site location criteria. Robin changed proposed s. 295.51 (1m) as requested last week. I think that the changes may have an unintended effect, however. In the /1 version of the draft, the exception in sub. (1m) (b) only applied to the 6 location restrictions then in par. (a). By adding the 4 additional location restrictions to par. (a) without changing par. (b), the exception in par. (b) applies to the 4 new restrictions as well as the 6 preexisting ones. So, for example, a waste site may be located in a floodplain if the waste site is visually screened. That is not the intent is it? If not, I will change the draft. It would be more logical to place the new restrictions outside of par. (a), as is already the case with sub. (1m) (c) and (d).

I will let you know of any other issues that come up.

Please do not hesitate to let me know if there are questions about this message.

Becky Tradewell  
Managing Attorney  
Legislative Reference Bureau  
266-7290



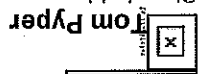
Mohr, Mark - GOV

**From:** Culotta, Jason - GOV  
**Sent:** Thursday, May 26, 2011 8:40 AM  
**To:** Pyper, Thomas TMP (7122)  
**Subject:** RE: Comments and questions on the redrafting instructions

Yes, absolutely.

**From:** Pyper, Thomas TMP (7122) [mailto:TPYPER@whdlaw.com]  
**Sent:** Wednesday, May 25, 2011 5:47 PM  
**To:** Culotta, Jason - GOV  
**Subject:** RE: Comments and questions on the redrafting instructions

Is it ok if either Jennifer or I just call her directly?



Shareholder

Whyte Hirschboeck Dudek S.C.

33 East Main Street, Suite 300

Madison, WI 53703-4655

(608) 258-7122

(608) 258-7138

tpyper@whdlaw.com

**From:** Culotta, Jason - GOV [mailto:Jason.Culotta@wisconsin.gov]  
**Sent:** Wednesday, May 25, 2011 5:11 PM  
**To:** Pyper, Thomas TMP (7122)  
**Subject:** FW: Comments and questions on the redrafting instructions

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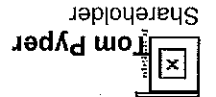
Becky Tradewell  
 Managing Attorney  
 Legislative Reference Bureau  
 266-7290

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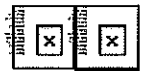
**From:** Pypier, Thomas TMP (7122) <TPYPER@whdlaw.com>  
**Sent:** Thursday, May 26, 2011 2:32 PM  
**To:** Tradewell, Becky - LEGIS  
**Cc:** BUZECKY, Jennifer D. JDB (5749); Culotta, Jason - GOV  
**Subject:** RE: Comments and questions on the redrafting instructions

I think that is ok. However, I know DNR has requested that the Environmental Impact Report (without a trailing phrase per our modification) and a list of permits applied for be added to the list for the completeness determination. Did you get that request and our response?



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**From:** Tradewell, Becky [mailto:Becky.Tradewell@legis.wisconsin.gov]  
**Sent:** Thursday, May 26, 2011 2:14 PM  
**To:** Pypier, Thomas TMP (7122)  
**Cc:** BUZECKY, Jennifer D. JDB (5749)  
**Subject:** RE: Comments and questions on the redrafting instructions

Tom,

What I am thinking about for the determination of administrative completeness is:

The department may determine that an application is not administratively complete only if the applicant does not submit one of the following:

1. The fee under sub. (1) (a).

2. A mining plan that contains the types of information specified in s. 295.48 (1), (2), (3), and (4).

3. A reclamation plan that contains the types of information specified in s. 295.49 (1), (2), and (3).

4. A mining waste site feasibility study and plan of operation that contains the types of information specified in s. 295.51 (5), (6), and (7).

How does that sound?  
Becky

**BILL**

AN ACT to repeal 70.375 (2m), 70.395 (2) (d) 5. a. and b., 107.001 (2) and 293.01 (8); to renumber and amend 30.123 (8) (c), 70.395 (2) (d) 5. c. and 87.30 (2); to amend 20.370 (2) (gh), 20.455 (1) (1) (gh), 29.604 (4) (intro.), 29.604 (4) (c) (intro.), 30.12 (3m) (c) (intro.), 30.133 (2), 30.19 (4) (c) (intro.), 30.195 (2) (c) (intro.), 44.40 (5), 70.375 (1) (ab), 70.375 (1) (ad), 70.375 (1) (as), 70.375 (1) (bm), 70.375 (1) (d), 70.375 (2) (a), 70.375 (3) (intro.), 70.375 (3) (g), 70.375 (4) (intro.), 70.375 (4) (a), 70.375 (4) (c), 70.375 (4) (d), 70.375 (4) (f), 70.375 (4) (i), 70.375 (4) (j), 70.375 (5) (intro.), 70.375 (6), 70.38 (1), 70.38 (2), 70.39 (3), 70.395 (2) (d) 1., 70.395 (2) (d) 2., 70.395 (2) (d) 3. a., 70.395 (2) (d) 3. b., 70.395 (2) (d) 3. c., 70.395 (2) (e) (intro.), 70.395 (2) (f) 1., 70.395 (2) (f) 2., 70.395 (2) (f) 3., 70.396 (2), 70.396 (3), 70.397 (3) (a), 70.995 (1) (a), 70.995 (5), 107.001 (1), 107.01 (intro.), 107.01 (2), 107.02, 107.03, 107.04, 107.11, 107.12, 107.20 (1), 107.20 (2), 107.30 (1), 107.30 (18), 107.30 (20), 160.19 (12), 196.491 (4) (b) 2., 281.65 (2) (a), 281.75 (17) (b), 287.13 (5) (e), 289.35, 289.62 (2) (g) 2. and 6., 292.01 (1m), chapter 293 (title), 293.01 (5), 293.01 (7), 293.01 (9), 293.01 (12), 293.01 (18), 293.01 (25), 293.01 (25), 293.25 (2) (a), 293.25 (4), 293.37(4) (b), 293.47 (1) (b), 293.50 (1) (b), 293.50 (2) (intro.), 293.50 (2) (a), 293.50 (2) (b), 293.51 (1), 293.65 (3) (a), 293.65 (3) (b), 293.86, chapter 295 (title), 295.16 (4) (f), 299.85 (7) (a) 2. and 4., 299.95, 323.60 (5) (d) 3. and 710.02 (2) (d); and to create 20.370 (2) (gi), 29.604 (7m), 31.23 (3) (e), 70.375 (7), 87.30 (2) (b), 293.01 (12m), subchapter III of chapter 295 [precedes 295.40] and 323.60 (1) (gm) of the statutes, relating to: regulation of ferrous metallic mining and related activities, the net proceeds occupation tax on ferrous and nonferrous metallic minerals mining, making an appropriation, and providing penalties.

**Analysis by the Legislative Reference Bureau**

**OVERVIEW**

Under current law, the Department of Natural Resources (DNR) regulates mining for metallic minerals. The laws under which DNR regulates metallic mining apply to mining for ferrous minerals (iron) and mining for nonferrous minerals, such as copper or zinc. This bill creates new statutes for regulating iron mining and modifies the current laws regulating metallic mining so that they cover only mining for nonferrous minerals. Under current law, a person who proposes to mine for metallic minerals must obtain a mining permit and any other permit, license, certification, or other authorization (approval) that is required under the environmental and natural resources laws, other than the mining laws, for example, wastewater discharge permits, high capacity well approvals, and water quality certifications for wetlands.

Under the bill, a person who proposes to mine for iron ore must obtain an iron mining permit. The person must obtain some of the approvals under other environmental and natural resources laws, for example, wastewater discharge permits, but the bill provides new approvals-permit requirements in lieu of some current approvals requirements, for example, high capacity well approvals and water quality certifications for wetlands. The standards and permit requirements and procedures for granting, and the requirements related to, an iron mining permit