firms have the infrastructure necessary to provide the support services that are often necessary to take on major litigation.

In Wisconsin, our approach is to request local units of government, or citizens groups who come to our office for assistance, to hire their own attorney. If we intervene, we agree to pick up most, if not all, incidental litigation expenses beyond the attorneys fees. We also agree to spearhead the motions practice, briefing, discovery, and other activities. We believe that a legal team comprised of public advocacy and local citizens' lawyers, provides for many litigation options as well as optimum citizen influence on the decision-making process. We have established a group of private attorneys who have gained substantial environmental litigation experience. We are comfortable referring local citizens and local units of government to these lawyers. This system minimizes expenses to local communities and maximizes the experience level of the private bar. This system has worked very well in Wisconsin.

Consensus Politics

You will want to build an appropriate coalition to assist you as you protect a particular wetland. Coalition makeup will range from the League Of Women Voters and the Sierra Club to ad hoc farm groups who may be negatively impacted by a given drainage project. Courts and the regulatory agencies need to know that you are not alone in your efforts.

Many wetlands cases will have a special interest component. For example, the case may involve the solid waste industry, the mining industry, or industrialized agriculture. Each of these three groups in turn have specialized lawyers and lobbyists. Your relationship with them will most likely be adversary in nature.

After the environmental advocate is successful in one or two cases involving a given special interest, however, it may become possible to establish a different relationship with the special interest groups. New administrative rules or legislation often follow from this new working relationship. This has happened in Wisconsin time after time, and represents what we call "consensus politics." Every major environmental bill that has passed in Wisconsin, since 1973, has been a result of consensus between the environmental movement and special interests groups. To date, the single major environmental issue that has not been susceptible to consensus politics has been the adoption of a state permit program for wetlands protection.

Special Hearing Times for Citizens

A developer and the regulatory agency will often decide on hearing times which are incompatible with maximum citizen participation. As the environmental defense attorney, your responsibility is to make sure that there is maximum opportunity for effective citizen participation. There are several ways to accomplish this.

First, you can insist that night sessions be held. In Wisconsin, we often make motions to the hearing examiner asking that specific evenings be set aside for citizen comment, and that the order specifically preclude agency or developer testimony during those evenings.

Second, whether or not such an order is secured from the hearing examiner, you should plan on one or more briefing sessions with potential citizen witnesses so as to acquaint them with what they may expect during the proceedings.

Third, you should attempt to get all sides to agree to allow the hearing examiner to hear from citizens who are non-experts, even in a contested-case hearing. You should ask all parties to stipulate that the citizen testimony will be received for whatever limited probative value it may have. Wisconsin's mining statute has a master contested-case hearing process incorporated in it. However, before the master contested-case hearing begins, there is opportunity for an informational hearing at which citizens feel free to testify about the merits of the permit proposal without the fear of cross-examination.

This procedure worked very effectively in the Kennecott case. During the daylight hours of the first day of the hearing, the hearing examiner considered motions by the environmental defense team. The first evening of the hearing had been set aside for citizen testimony. Seventeen citizens testified. Each and every one of those citizens were opposed to the permit. Included as one of those who testified was the

Secretary of State for Wisconsin. The hearing examiner was clearly left with the impression that the proposal of Kennecott did not have local citizen support. An internal memorandum of Kennecott observed about the hearing procedures that occurred,

> The hearing examiner who theoretically had no exposure to the mining project part of the hearing must be influenced by the continued and aggressive strong opposition of the lawyers, combined with the public's opposing statements, with no contribution by any person other than by our lawyer in support of the project. I believe that in an important matter such as this, we should have enlisted or encouraged the support participation of all of the voices possible.

It is interesting to note that on the second day of the Kennecott hearing, the hearing examiner granted one of the motions of the environmental defense team, and the permit application hearing came to an end.

Agency Contact

Agencies which make decisions about wetlands destruction are, by their bureaucratic nature, very complex. Certain agency staff members will be very sympathetic to wetlands protection. Others will have different concerns. Because of this, agency personnel will be involved in their own political in-fighting as wetland cases proceed through the agency.

The environmental attorney should be prepared to maximize contacts with agency staff. The developer will have its consultant working consistently with agency staff. The environmental attorney needs to establish ongoing working relationships and goodwill with the same staff.

In September 1980, the principal environmental lawyer for industry in Wisconsin gave a speech to a trade association on dealing with environmental law. Part of his speech dealt with agencies. He said,

> 4. Don't be taken in by the "trust us" doctrine prevalent in bureaucratic operations. Personal assurances of individual federal or state employees are essentially worthless. Even written assurances often turn out to be essentially worthless. Rarely do contacts between engineers from the private sector and engineers within government turn out to be bad. However, rarely do contacts between attorneys in the private sector and attorneys in the public sector turn out to be good. Another related corollary is that once government attorneys get their hands into your case, all assurances by technical people within the government to you are in jeopardy. As a result, at every turn of your relationship with the bureaucracy, it is desirable for you to make certain that you are defending your rights and preserving them regardless of what may appear to be a good working relationship.

The advice this industry lawyer gave to his clients is equally applicable for the environmental attorney.

Public Education

Public education is an important part of any complex environmental defense effort. The public, including the news media, needs to understand the process and the substantive

issues involved. It is your obligation as the environmental litigant to foster this understanding. The industrial environmental attorney, quoted above, told his clients the following about public education, which also applies to environmental protection litigation:

> 12. Finally, have a public affairs ability to tell your story. Too often we see experienced, superably qualified businessmen who are terribly inarticulate in expressing their positions or the facts with respect to the operations of their companies or industry. It is extremely important to understand that total honesty in public affairs is not only desirable, but absolutely necessary. A credibility gap exists in the media and in the public with respect to what it is told by business and industry. Facts, but facts related in a way that the common person can understand them, are an absolute necessity. Talking in terms of parts per million or in terms of acronyms mean nothing to the person on the street. Further, although the man on the street may not be highly educated, this does not mean that he does not have common sense. As a result, although he may not totally believe everything he hears or sees in the media, in the absence of any effective communication from business or industry, the constant repetition of false information eventually has to take its toll.

Expert Witnesses

Expertise, both legal and technical, is the key to successful environmental litigation. A lawyer with general law practice skills, or a scientist with only general knowledge about the subject of litigation, may be able to give adequate representation in certain environmental cases. However, this is not true for other cases that require specific expertise to win.

There are certain problems you ought to keep in mind with respect to experts. Experts can cost a great deal of money. At times, even highly paid consultants produce work of minimal quality and value. Many experts will refuse to work for the environmental side. Experts in the academic community often want to avoid becoming involved in brutal litigation because it is either too emotionally demanding or they are afraid of losing credibility as an educator. Once in awhile, you will even find a technical consultant who wants to act like he or she is the lawyer in the case.

Despite all of the shortcominings, you must try to get the very best minds available. You may spend more time identifying the appropriate expert than any other aspect of the case. The industrial environmental lawyer had this to say about expertise:

> 9. Get the expertise you need to make environmental judgments--whether that expertise be legal or technical. Environmental law has become so specialized that no one group or one person can have total knowledge of all of its areas. Another basic truism is that people who make tires, for example, know a great deal about making tires, but they may not know a great deal about air, water and solid waste pollution -- nor on the methods of avoiding or controlling them. In other words, merely because you or someone on your payroll is an engineer does not automatically make that person an expert in environmental technology. The same, I might add, can be true with a vendor who is not well known to you or who does not have an established expertise in this area. In short, there are many times when you may be able to build the house that you want by working directly with the general contractor. On the other hand, there may well be those times when you will want to work with or through an architect to assure that the final work product is precisely what you want. That

> same analogy is applicable to obtaining the necessary expert skills that you need to assure yourself of compliance with environmental laws and requlations.

Defense Attorney

Above all, when you are opposing a proposed development in a wetland, you should view yourself as a criminal defense attorney would. Normally, the burden of proof will be on the developer. You only need to win one point in order to prevail. You may win on jurisdictional grounds, on due process grounds, or on one of many substantive grounds. An intense and comprehensive realization of the posture of the defense attorney for the environment will provide results. After having observed use of this technique, one major corporation officer analyzed his attorney's conduct as follows:

> The actions of the local [corporate] attorney were not very impressive during the course of the hearing. He did admit to us after the hearing adjourned that he had misjudged the procedure and the case could have been presented in a different manner.

Conclusion

Environmental protection litigation is a very complex, unstructured process. Many different initiatives may be going on contemporaneous with each other. There is no magical formula to suggest which technique, or techniques, you should use. Instinct will play a big part in how you approach the cases. Above all, however, your litigation techniques must be comprehensive and often must be aggressive. The odds are so frequently stacked against the environmental defense attorney that you need to view the case as a very complex systems problem with no single mode to follow and no single answer to be found.

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WISCONSIN'S STRATEGY ON PREPARATION FOR
A NEW GROUNDWATER PROTECTION --Consensus Or Conflict

Annual Wisconsin Manufacturers And Commerce Legislative Conference
Presented by Peter A. Peshek
Wisconsin Public Intervenor
January 27, 1981

On December 15, 1980, I had the distinct pleasure of presenting a paper at the Second Annual WMC Mining Conference at Stevens Point. I argued then that there were six reasons why the consensus process was preferable to conflict and litigation as Wisconsin prepared for its new mining industry.

I said that consensus makes sense for the environmental movement because:

First, the results of a consensus approach tend to be very logical;

Second, the end results of a political and legal process are often less certain than the results of the consensus process;

Third, the State of Wisconsin has neither the personnel nor the financial resources necessary to allow Northern Wisconsin to feel comfortable with new mining operations in the absence of drawing upon the resources of the mining companies to help establish public policy;

Fourth, there is a limit of energy and resources available to a local unit of government, or to an environmental group, to sustain over a prolong period of time major and political initiatives;

Fifth, one of the significant reasons why the consensus approach to the development of mining regulations was selected was because the towns and the environmentalists needed allies to overcome the Wisconsin Department of Natural Resources' inability to decide the major issues surrounding mining in Northern Wisconsin;

Sixth, the consensus approach to policy development is a sound social and political way to meet the legitimate needs of both industry and the environment.

Today, there are two Wisconsin resources that are either unprotected or under-protected. They are Wisconsin's wetlands and Wisconsin's groundwater. There is little hope that a comprehensive wetlands protection program can be formulated in the foreseeable future. The conflict, bitter rhetoric, and substantial litigation surrounding wetlands protection will continue.

The question I pose for you today is whether there will be consensus or conflict over the protection of another vital Wisconsin resource, namely Wisconsin's groundwater. I believe the necessary good faith and skills are present to reach a consensus on the basic frameworks for protecting Wisconsin's groundwater by late spring of this year. The failure to bring closure to this process by then will result in a prolonged conflict over the regulation of this resource and will, almost invariably, end in the unsatisfactory protection of this resource. In order to insure that consensus in groundwater protection occurs, I would make the following recommendations.

First, environmentalists and local citizen groups should be very careful during the next few months as they select new legal initiatives to protect their groundwater resources. These new legal initiatives must be undertaken in a manner which makes them compatible with the consensus process.

Second, it is important to industry to have groundwater standards. Your engineers and technicians need to know what state rules they must meet. It is cheaper to engineer early rather than re-engineer later. Legal proceedings and associated costs can be avoided with clear standards. Like everyone else, industry and business needs to protect themselves and their investment from careless neighbors.

Third, private sectors, special interests groups and consulting firms must immediately tone down their statements about appropriate state groundwater regulation and protection. We must all stress the benefits that come from a prompt and thorough resolution of the groundwater problems. We must stress the dangers that come from a prolonged dispute with uncertain results.

Fourth, our state regulatory agency should continue to emphasize the need for sharing the responsibility to devise protection strategies. This sharing process will strengthen the ultimate regulatory tools and enhance the acceptability of a regulatory program.

Finally, all of us have the responsibility of telling the story of how much is at stake. Our rural Wisconsin citizens are becoming increasingly aware of the problems that exist in

our groundwater resource. We are not doing nearly as well as we once thought we were in protecting this resource. We all have the responsibility to tell the story of the need for groundwater protection and the additional problems that will develop in the absence of such protection.

In closing, I would like to express my appreciation to Paul Hassett, Pat Blankenburg, Jim Derouin, and the numerous other members of Wisconsin Manufacturer And Commerce who have, for several years, fostered the concept of working together, so that environmentalists, regulators and industry can all accomplish the desired goal of a healthy economy and a very healthy environment. Paul Hassett's style of fostering moderation and communication in environmental decision-making helps in making Wisconsin a great place to live and work.

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1980

MINING PUBLIC POLICY SCORECARD
December 15, 1980

I. MINING RULES - NR 131, 132, 182, 105

A. Serious deficiencies in DNR drafts of NR 132 and 182

1. Marketing of wastes requirement missing
2. Availability of ch. 147 (point source law) to regulate mining wastes not present
3. Design Criteria list incomplete
4. Quality Assurance, Monitoring and Verification programs incomplete
5. Groundwater rules do not contain adequate enforcement provisions, quantity protections or backfill options and viability of quality provisions unclear

B. Issues mining companies have agreed to decide in future

1. Accurate and chronic toxicity regulations
2. Uranium and radioactive waste regulations
3. Role of point source law in regulating mining wastes

II. FUTURE ENVIRONMENTAL ISSUES NOT INVOLVING MINING RULES

A. Solvency of Waste Management Fund

B. Clarifying statutes requiring DNR to protect groundwater quantit

C. Administrative search warrants for local communities

D. State zoning override not to include mining wastes

E. Administrative rules for strick liability legislation

F. Amend Sec. 107.05, Stats., by:

1. Allowing claims for mine-related activities not just note withdrawals
2. Allowing claims for both quantity and quality damage
3. Prohibit water withdrawals which are detrimental to public rights in the water of the state

G. Funding for University of Wisconsin pyrite marketing studies

H. Taxes and mining waste disposal

III. FUTURE NONENVIRONMENTAL ISSUES

A. Impact Fund Board Block Grants

B. Repeal of condemnation rights under sec. 32.02(5), Stats.

C. Taxes and facilties/mine locations--definition of extraction

(more . . . over)

D. Domestic and agricultural well water supply guarantees

E. Capital formation

F. Employment opportunities

G. Mining company sponsorship/participation in community/technical forums

H. DNR staffing capacity

Peter A. Peshek
Wisconsin Public Intervenor

Kathleen M. Falk
Wisconsin's Environmental Decade, Inc

WISCONSIN'S STRATEGY FOR PREPARING FOR A NEW MINING INDUSTRY-- CONSENSUS OR CONFLICT (1976-1980 in Review)

December 15, 1980
Presented at the Second Annual WMC Mining Conference
By Peter A. Peshek
Wisconsin Public Intervenor

Metal mining has had a central role in the political, economic and social history of the Upper Great Lakes region. The results of mining have been uneven, ranging from prosperity and full employment, to serious environmental damage and high unemployment. The Upper Great Lakes Region now has the opportunity to develop an entirely new generation of copper, zinc and nickel mines. Wisconsin is preparing itself for a new era of copper and zinc mining in Northern Wisconsin.

I have been asked to describe this exciting and positive process of preparation. This paper will be divided into the following parts: 1) a historical overview of new mining opportunities and the original conflicts; 2) the beginnings of political consensus on mining, the advantages and risks of participating in consensus polictics, and the accomplishments already achieved from consensus politics; 3) the remaining environmental issues; 4) the current shortcomings with the Mining Investment and Local Impact Fund Board; and 5) mining wastes and mining taxes.

A Historical Overview

So far three possible, economically, feasible metaliferous deposits have been discovered in Northern Wisconsin. In 1968, Kennecott Copper Corporation found a 6 million ton copper-bearing ore body in the Town of Grant, near Ladysmith, Rusk County, Wisconsin. In 1974, Noranda announced the discovery of a 2.3 million ton zinc-copper body in Oneida County. In 1976, Exxon Minerals Company, U.S.A., announced its finding of at least a 70 million ton zinc-copper ore body located in the Towns of Nashville and Lincoln in Forest County, Wisconsin.

Kennecott was the first and only one of the three companies to seek state permits to mine its ore body. When the hearing on the permits was held in November 1976, the 889 citizens of the Town of Grant stated their collective belief that it was premature to approve the permit applications.

The legal and political fight between the Town of Grant and Kennecott was long and bitter. The mining permit hearing was indefinitely postponed in November 1976, and ultimately dismissed in September 1978. Eight legal proceedings were commenced. The approach employed by the Town of Grant and by Kennecott was one of conflict, both legal and political. The Town succeeded in all of the legal proceedings that have been completed.

The Roots of Consensus on Mining Issues in Wisconsin

Immediately upon the adjournment of the Kennecott mining permit application hearings in November 1976, there began a political process which would propel Wisconsin into leading the national efforts to regulate metallic mining operations. The Natural Resources Defense Council, under the guidance of Attorney Frank M. Tuerkheimer, now United States Attorney for the Western District of Wisconsin, prepared a comprehensive paper on the inadequacies of the 1973 Metallic Mine Reclamation Act and made a series of recommendations for changes. Special committees of the Legislature, which to that point had been principally concerned with taxation of mining operations, formed a special working group to evaluate the need for additional regulation of the industry. Proposed changes in the statutes were made.

The people of the Town of Grant came to Madison and did their own lobbying. They found that the Legislature was receptive. Industry was also willing to push for change. Exxon lead the way for industry. In time, Kennecott also began to effectively, and positively, participate as new management concluded that conflict was a sure way to no mining in Wisconsin. Two days after Kennecott saw its mining permit application hearing adjourned in November 1976, a Kennecott official told his superior what had become painfully obvious: "Getting into bed with environmentalists might rub raw with many of our colleagues, but in this day and age I cannot recommend a better course of action for expedition of our project." Inland Steel has now joined up with Exxon and Kennecott in supporting important environment initiatives.

The Environment Needs Consensus

Given the high rate of success in litigation, why is it then that the Towns of Grant, Nashville and Lincoln, the Wisconsin's Environmental Decade, Inc., the Wisconsin Public Intervenor, and others, are prepared to use consensus as a vehicle to meet the legitimate needs of the environment? Consensus makes sense for the environmental movement for at least six reasons.

First, the results of a consensus approach tend to be very logical. The ideas which survive the intense scrutiny in the negotiation process generally prove to be very sensible. The work product survives scientific and legal policy analysis with all the competitors being represented.

Second, the end results of the political and legal process are often less certain than results in a consensus process. Particularly in the legal process, a good advocate cannot always predict the outcome. Using consensus, one is able to have a greater degree of control over the outcome or work product developed.

Third, the state of Wisconsin has neither the personnel nor the financial resources necessary to allow Northern Wisconsin to feel comfortable with new mining operations. The mining companies, who wish to develop major mining enterprises in Northern Wisconsin, can provide major personnel and cash contributions to the process. For example, I estimate that Exxon has spent well in excess of $400,000 participating in the development of administrative rules for the protection of the environment from metallic mining waste. Kennecott has also spent a considerable sum of money to assist the state. The kinds of expertise, both internal and external, that Exxon, Kennecott and Inland Steel have been able to bring to the process, for writing appropriate regulations, are not available in

the state of Wisconsin. The consensus approach maximizes utilization of the companies' resources in helping to formulate public policy.

Fourth, there is a limit of energy and resources available to a local unit of government, or to an environmental group, to sustain over a prolonged period of time major political and legal initiatives. For a developer who is prepared to sustain a legal or political fight for an indefinite period, it is reasonable to expect that a prolonged struggle will wear down the environmental group or local citizens. Therefore, it is important that environmental groups and local units of government carefully pick their fights. If the environmental movement can secure its legitimate objectives without a fight, it should do so in order to save energy and resources for those times and places when conflict is inevitable.

Fifth, one of the significant reasons why the consensus approach to the development of mining regulations was selected was because the towns and the environmentalists needed allies to overcome the Wisconsin Department of Natural Resources' (DNR) inability to decide the major issues surrounding mining in Northern Wisconsin. Exxon, and later Kennecott and Inland Steel, came to recognize that mining in Northern Wisconsin would only be a reality if the state could complete its regulatory framework. For a variety of reasons--some internal to DNR and some caused by the efforts of the consensus group--DNR did play a major role in the development of Wisconsin's mining policy during 1980.

Sixth, the consensus approach to policy development is a sound social and political way to meet the legitimate needs of both industry and environment. It is an approach which should be

encouraged, because it provides a vehicle for maximum citizen participation.

Although there are distinct advantages to the consensus approach to policy development, it should be recognized that there is room for differences of opinion and conflict. When, and how, such conflict will occur will depend on the good faith of those involved in the process, as well as on the complexity and difficulty of the policy issues. While consensus should be the primary tool for policy resolution, it must be recognized that conflict may still occur and that all parties reserve the right to diverge from the consensus approach, if it is believed that such a course is the only way in which the particular parties' legitimate needs can be protected.

Risks of Participation in Consensus Process

When participating in the consensus process for the development of public policy for metallic mining in Northern Wiscnosin, the environmental groups are exposed to three risks.

First, an outside observer may conclude that the environmental movement is being soft on the mining companies. This observation may be based on the fact that those participating in the consensus movement work very closely with the mining companies. There are fewer voices raised, and less antagonism is expressed in the media. While that perception may exist, it is not accurate. None of the parties to the consensus efforts have lost sight of their individual needs. Private and public conversations and meetings are vigorous and, on occasion, even heated. Despite such conflict, however, the belief prevails that sound public policy will be developed if everyone cooperatively works with each other in an open and public process.

The second risk is the fact that consensus, to a large measure, is dependent upon the personalities responsible for representing various parties to the proceedings. For example, if Jim Wimmer and Dick Olson from Kennecott, Jim Derouin from Exxon, or Jeff Bartell from Inland Steel were not the representatives of those companies, different political and legal strategies might well have been developed by the mining companies.

Third, there is the risk that some participants will be overwhelmed by the experience, expertise and political muscle of others, particularly where the public forum which is part of the environmental movement's muscle, is not used by agreement. All parties to the consensus process need adequate resources.

Consensus Works

Since the initiation of the consensus process in early 1977 by State Representative Mary Lou Munts and State Senator Michele Radosevich, it has provided great dividends to industry, to the environment, and to the towns. I would like to list several examples where consensus played key roles in policy development for mining.

First, Wisconsin does have the most comprehensive metal mining environmental protection bill in the country. The regulatory scheme that we are developing is many times better than anything else that exists, on either the state or the federal level, to regulate metal mining. Exxon's excellent role in the development of such legislation should be recognized. It must be remembered that this is enabling legislation and the detailed rules have yet to be completed.

Second, with the help of Kennecott and Exxon, the consensus group was able to agree on the establishment of a Metallic Mining Council to help write the specific rules to protect Northern Wisconsin from mining wastes. When these rules are completed, Wisconsin will have administrative rules, establishing basic statements of public policy on the need for environmental protection, as well as the standards to be used in contested-case hearings, for making the difficult decisions about site design and location for mining wastes facilities.

Third, the consensus group played an instrumental role in developing a wetlands policy for mining that is based on a balanced approach to environmental protection. As an indirect result of this effort, the same approach, to a very large extent, has been adopted by the Natural Resources Board for all wetlands in Wisconsin.

Fourth, the consensus group has played a key role in pointing out that Wisconsin's groundwater needs protection by the DNR. There has been a sustained effort to get DNR to write rules to protect this valuable resource.

Fifth, the DNR is better equipped to deal with the regulation of metal mining in Northern Wisconsin as a result, in part at least, of the efforts of the consensus group. The organizational dilemmas and conceptual legal problems, that have long existed within DNR on the issue of regulating metal mining, are in the process of being corrected. There remain significant manpower problems at DNR to effectively regulate metal mining. There is almost no socioeconomic analysis staffing at DNR. There is a shortage of

geotechnical personnel in the field of metal mining in DNR. These staff voids may prove to be significant barriers to metal mining development in Northern Wisconsin. However, substantial progress has been made; thanks, in part, to environmentalists and mining companies coming together urging that improvements be made.

Sixth, the consensus process is providing industry with clear and detailed guidelines which establish the total comprehensive regulatory framework under which they must operate. A Kennecott official wrote in May 1977: "Wisconsin . . . possess sufficient quantities of base metal mineralization to place it in a position of being a significant metal supplier. What remains to be seen, however, is whether it is prepared to provide a reasonable and stable regulatory environment."

Wisconsin has not done well in providing the mining companies the kind of certainty, direction and regulatory assistance necessary to give corporate management the kind of security necessary to make wise mining development decisions in Wisconsin. As examples, Inland Steel has operated a mine in Jackson County since July 3, 1974, without necessary mining permits, some six and one-half years after the law began to require such permits. The hearing on the permits will be held in January 1981. As early as 1974, Kennecott was asking DNR whether Wisconsin's solid waste laws were applicable to its proposed 156-acre tailings dump. The department's decision was not clearly articulated until March 1979. In another case, Exxon has had to struggle with the question of wetlands and the regulatory standard Wisconsin will apply to those invaluable resources as it applied to mining in Northern Wisconsin.

Wisconsin has come a long way towards providing the kind of certainty, direction and regulatory staff resources necessary so that mining may occur. If we do not complete the job, two results

will occur. First, mining companies will be frustrated with Wisconsin and may not choose to locate here. Second, even if the companies choose to locate here, Wisconsin will not be in a position to provide permits for mining because they cannot, and should not, be granted in the absence of a comprehensive and complete regulatory scheme. The goal of the consensus group is to put such a regulatory scheme in place.

The Remaining Environmental Issues

The Towns of Grant, Nashville and Lincoln, the Wisconsin's Environmental Decade, Inc., the Wisconsin Public Intervenor and, on specific occasions, the Sakaogon-Chippewa and Forest County Potowatomi Tribal Communities have all said that it would be inappropriate for either Kennecott or Exxon to seek mining permits in the absence of a comprehensive and complete environmental regulatory program. There are three reasons why the current regulatory framework is incomplete.

First, the DNR proposed administrative rules to regulate the metallic mining industry are inadequate. Most notably, the administrative rules: 1) fail to provide for a comprehensive program to insure marketing of mining wastes in lieu of perpetual storage; 2) fail to provide an acceptable monitoring and verification program; and 3) fail to provide for multiple regulatory schemes. Fortunately, mining companies and an environmental-local government coalition have agreed on alternative administrative rules which overcome the shortcomings in the DNR rules draft. In addition, DNR staff has been quietly signaling that improvements may still be possible in their version of the draft rules before they go to public hearing in February, 1981.

Second, the State of Wisconsin does not have a groundwater quantity and quality protection program in place. In the absence of such a comprehensive program, it would be inappropriate to permit metal mining to begin.

Third, Wisconsin has established a Waste Management Fund to protect its environment from improperly abandoned solid waste sites. This insurance fund is scheduled to have $15 million in it, with solid waste operators paying premiums on a tonnage basis. However, the fund will never get to $15 million based on current premium rates. The premium rate that waste producers pay into the fund must be adjusted upwards before new mining can begin. A viable waste management fund is an absolute precondition to mining.

We have come a long way towards meeting the environmental prerequisites to mining. Much of our success is owed to Exxon, Kennecott and Inland Steel. They have helped make the legal and political process possible. Ultimately, Wisconsin will have the toughest environmental regulatory program for mining in the nation. In the Spring of 1980, we had 134 unresolved environmental issues involving mining. Today, the number of unresolved mining issues is less than ten. I believe local communities, environmental groups, DNR and the mining companies can resolve these remaining issues if a spirit of cooperation continues. Failure to resolve these issues could lead to protracted litigation and, perhaps, no metal mining.

The Mining Investment And Local Impact Fund Board

The Wisconsin Legislature appropriately established a Mining Investment and Local Impact Fund Board to provide monies to local communities to offset the special impact mining will have on Northern Wisconsin. I am not convinced that the current funding system has worked all that well.

The only Northern Wisconsin groups who have actively worked the mining environmental issues have been the Towns of Grant, Nashville and Lincoln, the Sakaogon-Chippewa and the Forest County Potowatomi Tribal Communities. Currently, none of these groups have any direct representation on that funding board. This is most ironic since the Kennecott ore body is in the Town of Grant (Rusk County), and the Exxon ore body is in the Towns of Lincoln and Nashville (Forest County).

There has been an insensitivity and resultant polarization coming from the failure of the funding process to recognize the unique role those groups, most directly impacted, must play in the adoption of state and local public policy on mining. This insensitivity will only breed anti-mining attitudes on the part of local community participants. The revised taxing program should probably include a block grant program, in advance of actual mining, for those local communities who will receive the most environmental impact from the new mining. In addition, new appointments to the Mining Investment And Local Impact Fund Board should include representatives of the impacted towns and tribal communities.

Mining Wastes and Mining Taxes

The mining industry will generate substantial wastes. As a matter of public policy, Wisconsin should encourage companies to turn this waste into useful by-products, such as fertilizer, sulphur and sulphuric acid.

On October 20, 1980, the Wisconsin Metallic Mining Council voted to recommend just this. The Council asked the legislative committee considering the mining tax issues to study tax incentives to mining companies, to market mining wastes, rather than to perpetually store them on surface lands in Northern Wisconsin. I strongly support such a discussion. A significant amount of money will be generated by whatever taxing policy is established. Consideration should be given to the use of some of that revenue to encourage the development of satellite industries and additional employment through the processing and marketing of mining wastes in lieu of perpetual storage.

Conclusion

The Citizens Advisory Committee to the Wisconsin Public Intervenor and the Public Intervenor are pleased with the direction Wisconsin public policy has taken on mining in the last four years. Whether one is pro mining, anti-mining, or simply neutral on the issue, one should be encouraged by the tremendous progress that has been made. The consensus approach to policy development has played a significant rolein that policy growth.

December 15, 1980

Post Office Address:
Wisconsin Department of Justice
114 East, State Capitol
Madison, Wisconsin 53702
608-266-7338

MINING TAXES IN WISCONSIN
An Environmentalist's View

Introduction

Every week the Wisconsin Public Intervenor is asked when will copper and zinc mining come to Northern Wisconsin. It is impossible to give a specific date. It is possible, however, to state the two preconditions that are necessary before metal mining will occur. First the environmental movement and local units of government most immediately impacted by metal mining have said that mining cannot occur until the state's environmental protection package is complete. Second, Exxon and Kennecott have said that metal mining will not occur until Wisconsin has a realistic taxing policy. The purpose of this paper is to briefly discuss each of these two preconditions.

Environmental Preconditions

The townships of Grant, Nashville and Lincoln, Wisconsin's Environmental Decade, Inc., the Wisconsin Public Intervenor, and, on specific occasions, the Sokoagan-Chippewa and Forest County Potowatomi tribal communities have all said that it would be inappropriate for either Kennecott or Exxon to seek mining permits in the absence of a comprehensive and complete environmental regulatory program. There are three reasons why the current regulatory framework is incomplete.

First, the Wisconsin Department of Natural Resources (DNR) proposed administrative rules to regulate the metallic mining industry are inadequate. Most notably, the administrative rules: 1) fail to provide for a comprehensive program to insure marketing of mining wastes in lieu of perpetual storage; 2) fail to provide an acceptable monitoring and verification program; and 3) fail to provide for multiple regulatory schemes. Fortunately, mining companies and an environmental-local government coalition have agreed on alternative administrative rules which overcome the shortcomings in the DNR rules draft. In addition, DNR staff has been quietly signaling that improvements may still be possible in their version of the draft rules before they go to public hearing in February, 1981.

Second, the State of Wisconsin does not have a groundwater quantity and quality protection program in place. In the absence of such a comprehensive program, it would be inappropriate to permit metal mining to begin.

Third, Wisconsin has established a Waste Management Fund to protect its environment from improperly abandoned solid waste sites. This insurance fund is scheduled to have $15 million in it, with solid waste operators paying insurance premiums on a tonnage basis. However, the fund will never get to $15 million based on current premium rates. The premium rate that waste producers pay into the fund must be adjusted upwards before new mining can begin. A viable waste management fund is an absolute precondition to mining.

We have come a long way towards meeting the environmental prerequisites to mining. Much of our success is owed to Exxon, Kennecott and Inland Steel. They have helped make the legal and political process possible. Ultimately, Wisconsin will have the toughest environmental regulatory program for mining in the nation. In the Spring of 1980, we had 134 unresolved environmental issues involving mining. Today, the number of unresolved mining issues is less than ten. I believe local communities, environmental groups, DNR, and the mining companies can resolve these remaining issues if a spirit of cooperation continues. Failure to resolve these issues could lead to protracted litigation and, perhaps, no metal mining.

A Look At Taxes

The second precondition that has been established before metallic mining can be considered for Northern Wisconsin has been laid down by the mining companies. They have said that they cannot mine the copper and zinc in the absence of a reasonable taxing policy by the State of Wisconsin. It is not the role of the Wisconsin Public Intervenor to become involved in the issue of what constitutes a reasonable taxing policy as it relates to revenue generation. However, I do have four observations about the tax fight that would be appropriate for the Public Intervenor to discuss.

First, the mining companies must share with the public, the press, and the legislative decision-making machinery, detailed information justifying their position on the tax issues. The companies appear to be headed in that direction. They must be prepared to think in creative, flexible and open terms on mine taxes, just as they have on the environmental issues. For example, one mining company has fought any efforts to have the secondary safe-drinking water standards made applicable to their industry, nationally. In Wisconsin, this same company has endorsed secondary safe-drinking water standards being made applicable to them. They recognize the unique nature of the relationship between Wisconsin's environment and its industry.

In environmental regulation, companies and the environmentalists have reached many agreements to expand the public's ability to gather information which, otherwise, might be kept in the company's hands. This same kind of openness must exist as the mining companies argue the tax issues. Better public policy decisions will result.

Second, the mining industry will generate substantial wastes. As a matter of public policy, Wisconsin should encourage companies to turn this waste into useful by-products, such as fertilizer, sulphur and sulphuric acid.

On October 20, 1980, the Wisconsin Metallic Mining Council voted to recommend just this. The Council asked the legislative committee considering the mining tax issues to study tax incentives to mining companies, to market mining wastes, rather than to perpetually store them on surface lands in Northern Wisconsin. I strongly support such a discussion. A significant amount of money will be generated by whatever taxing policy is established. Consideration should be given to the use of some of that revenue to encourage the development of satellite industries and additional employment through the processing and marketing of mining wastes in lieu of perpetual storage.

Third, the Wisconsin Legislature has appropriately established a Mining Investment and Local Impact Fund Board to provide monies to local communities to offset the special impact mining will have on Northern Wisconsin. I am not convinced that the current funding system has worked all that well.

The only Northern Wisconsin groups who have actively worked the mining environmental issues have been the towns of Grant, Nashville and Lincoln, the Sokoagon-Chippewa and the Forest County Potowatomi Tribal Communities. Currently, none of these groups have any direct representation on that funding board. This is most ironic since the Kennecott ore body is in the town of Grant, and the Exxon ore body is in the towns of Lincoln and Nashville.

There has been an insensitivity and resultant polarization coming from the failure of the funding process to recognize the unique role those groups most directly impacted must play in the adoption of state and local public policy on mining. This insensitivity will only breed anti-mining attitudes on the part of local community participants. The revised taxing program should probably include a block grant program, in advance of actual mining, for those local communities who will receive the most environmental impact from the new mining. In addition, new appointments to the Mining Investment And Local Impact Fund Board should include representatives of the impacted towns and tribal communities.

Fourth, DNR staffing patterns on mining continue to merit review. The time may well come when a small portion of the tax revenues from mining should be given to DNR to support appropriate staffing patterns.

Conclusion

I would like to thank the Langlade County Taxpayers Association for this opportunity to be present today. Formal comprehensive papers on mining issues need to be delivered to groups, such as yours, in order to insure the fullest public discussion of the policy alternatives available to Wisconsin. I encourage everyone to recognize the unique roles so many have played in the decision- making process. The system will work best when everyone has access to it. This will require

extra patience and sometimes a small amount of taxpayer's dollars. The end result should be, however, that Wisconsin can begin processing mining permit applications on a site-specific basis, with everyone having agreed on common ground rules.

Peter A. Peshek
Wisconsin Public Intervenor

December 3, 1980

October 22, 1980

Daniel T. Flaherty, Chairman
Natural Resources Board
Wisconsin Department of Natural Resources
101 South Webster Street
Madison, Wisconsin 53702

Re: Chapters NR 131, 132 and 182 Wis. Adm. Code

Dear Chairman Flaherty:

On Monday, October 20, 1980, the Metallic Mining Council voted 8-1 to recommend that you send to Public Hearing the DNR staff rules for NR 131, 132 and 182, as amended by Council action. All eight citizen members of the Council favored this approach. The extensive testimony was overwhelming in favor of the action.

We recommend that you adopt the following resolution at your Board meeting this week:

> BE IT RESOLVED that the Natural Resources Board adopt the recommendation of the Metallic Mining Council and authorizes Public Hearings on NR 131, 132 and 182 as amended by the Council.

Sincerely,

TOWN OF NASHVILLE

John Schallock, Chairman

TOWN OF GRANT

Peter Kostka, Chairman

WISCONSIN PUBLIC INTERVENOR

Peter A. Peshek

INLAND STEEL

Jeffrey Bartell, Attorney

WISCONSIN'S ENVIRONMENTAL DECADE, INC.

Kathleen M. Falk, Attorney

KENNECOTT ~~COPPER~~ CORPORATION

James Wimmer

EXXON MINERALS COMPANY, U.S.A.

Robert L. Russell

WISCONSIN MANUFACTURERS AND COMMERCE

Pat Blankenburg

TOWN OF LINCOLN

Robert Netzel, Chairman

TESTIMONY OF GERALD D. ORTLOFF
BEFORE THE WISCONSIN METALLIC MINING COUNCIL

OCTOBER 20, 1980

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TESTIMONY OF GERALD D. ORTLOFF
BEFORE THE WISCONSIN METALLIC MINING COUNCIL
OCTOBER 20, 1980

I AM GERALD ORTLOFF, MANAGER OF ENVIRONMENTAL AND REGULATORY AFFAIRS FOR EXXON MINERALS COMPANY. I APPRECIATE THE OPPORTUNITY TO PRESENT THIS STATEMENT ON BEHALF OF EXXON.

MY DEPARTMENT IN EXXON MINERALS IS A GROUP OF SCIENTISTS, ENGINEERS AND LAWYERS WHO SPECIALIZE IN ENVIRONMENTAL CONSERVATION. WE WORK WITH REGULATORS AND REGULATIONS AT THE FEDERAL LEVEL AND IN SEVERAL STATES. WE HAVE PARTICIPATED INTENSIVELY IN THE DEVELOPMENT OF THE PROPOSED MINING WASTE CODE WHICH IS THE SUBJECT OF TODAY'S HEARING. IN THIS EFFORT, WE HAVE WORKED WITH THE CONSENSUS DRAFTING GROUP COMPOSED OF THE PUBLIC INTERVENOR AND HIS ADVISORS, THE WISCONSIN ENVIRONMENTAL DECADE, THE ATTORNEYS FOR THE TOWNS OF LINCOLN, NASHVILLE AND GRANT, AND REPRESENTATIVES OF TWO OTHER MINING COMPANIES -- KENNECOTT MINERALS AND INLAND STEEL. THE DNR ALSO WORKED CLOSELY WITH THIS GROUP ON MOST ISSUES. OUR REASON FOR PARTICIPATION IN THE DRAFTING OF THE MINING WASTE CODE IS OBVIOUS. WE HOPE ONE DAY TO DEVELOP A METAL MINING OPERATION AT CRANDON. IF THAT HOPE MATERIALIZES, WE WANT EXXON TO BE ABLE TO DEVELOP THE MINE AND OPERATE IT

UNDER A SENSIBLE REGULATORY CODE THAT NOT ONLY ADEQUATELY PROTECTS THE ENVIRONMENT, BUT WHICH ALSO MAKES CLEAR TO EVERYONE WHAT OUR OBLIGATIONS ARE.

EXXON MINERALS COMPANY ENDORSES THE DNR'S CURRENT DRAFT VERSION OF NR 182, PROVIDED THAT THE AMENDMENTS WHICH HAVE BEEN PROPOSED BY THE CONSENSUS DRAFTING GROUP, BUT NOT YET ACCEPTED BY THE DNR, ARE INCORPORATED. IF THOSE PROPOSED AMENDMENTS ARE ADOPTED, NR 182, IN MY OPINION, WILL PROVE TO BE THE MOST COMPREHENSIVE, WELL THOUGHT OUT REGULATORY PROGRAM FOR THE MANAGEMENT OF MINING WASTE THAT HAS YET BEEN DEVELOPED ANYWHERE. ON THE FIRST OF THE TWO SHEETS THAT I HAVE HANDED OUT, I HAVE LISTED SOME OF THE IMPORTANT CONCEPTS AND PROVISIONS IN THE PROPOSED NR 182 WHICH, IF AMENDED AS WE SUGGEST, ENSURE THAT THE TOTAL ENVIRONMENT IS PROTECTED IN A MANNER WHICH IS SCIENTIFICALLY SENSIBLE, AND, AT THE SAME TIME, WORKABLE FROM THE VIEWPOINTS OF THE OPERATOR, THE REGULATOR, AND THE PUBLIC.

THE PROPOSED NR 182:

- COVERS ALL MINING WASTES
- COMPLIES WITH STATUTORY MANDATES
- MESHES WITH AIR, WATER, MINING AND RECLAMATION CODES FOR INTEGRATED ENVIRONMENTAL PROTECTION
- MEETS OR EXCEED EPA REQUIREMENTS FOR STATE SOLID WASTE MANAGEMENT PLANS

- ENCOURAGES PUBLIC PARTICIPATION IN DECISION-MAKING OF SITING, FACILITY DESIGN, AND METHODS OF OPERATION
- ALLOWS TAILORING OF ENVIRONMENTAL PROTECTION REQUIREMENTS TO FIT LOCAL CONDITIONS AND TYPES OF WASTES
- ENCOURAGES DEVELOPMENT AND APPLICATION OF NEW TECHNOLOGY
- REQUIRES EXTENSIVE ENVIRONMENTAL MONITORING BEFORE, DURING, AND AFTER WASTE DISPOSAL TO EVALUATE PERFORMANCE AND PROVIDE PROPER BASES FOR ENFORCEMENT

THERE IS, UNFORTUNATELY, ONE VERY IMPORTANT TECHNICAL AREA IN WHICH THE DNR DOES NOT AGREE WITH THE COLLECTIVE JUDGMENT OF THE REST OF THE CONSENSUS GROUP. THAT AREA RELATES TO THE MANAGEMENT AND PROTECTION OF GROUNDWATER RESOURCES.

THE WISCONSIN LEGISLATURE RECOGNIZED THAT MINING WASTE MATERIALS -- TYPICALLY, BROKEN ROCK, SAND, GRAVEL, AND MILL TAILINGS -- ARE ENTIRELY DIFFERENT IN CHARACTER FROM THE SOLID WASTES HANDLED AT MUNICIPAL, INDUSTRIAL, AND PRIVATE LANDFILLS. BECAUSE OF THAT RECOGNITION, THE LEGISLATURE MANDATED IN CHAPTER 377 OF THE LAWS OF 1977 THAT MINING

WASTE RULES PROMULGATED BY THE DNR TAKE INTO CONSIDERATION THE SPECIAL REQUIREMENTS OF METALLIC MINING OPERATIONS, AS WELL AS SPECIAL ENVIRONMENTAL CONCERNS THAT ARISE AS A RESULT OF THE DISPOSAL OF METALLIC MINING WASTES. A SECOND PART OF THAT MANDATE REQUIRES THE CONSIDERATION OF RESEARCH, STUDIES, DATA AND RECOMMENDATIONS OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY IN THAT AGENCY'S EFFORTS TO IMPLEMENT THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976.

IN LIGHT OF THESE REQUIREMENTS, THE CONSENSUS GROUP DRAFTED A STANDARD WHICH RECOGNIZES THE SPECIAL NEEDS AND ENVIRONMENTAL CONCERNS RELATED TO METALS MINING AND GROUNDWATER. THE GROUP CONSULTED EXPERT ADVISORS IN BIOLOGY, GEOLOGY, GROUNDWATER HYDROLOGY, CHEMISTRY, METALLURGY, SOILS SCIENCE, CIVIL ENGINEERING, WASTE MANAGEMENT, AND ENVIRONMENTAL LAW. THESE EXPERTS CAME FROM UNIVERSITIES, INDUSTRY, AND INDEPENDENT CONSULTING FIRMS. THE GROUP CONSIDERED NOT ONLY THE RESULTS OF THE LATEST EPA STUDIES AND OTHER SCIENTIFIC RESEARCH, BUT ALSO THE SPECIAL NEEDS AND CONCERNS OF THE LOCAL COMMUNITIES NEAR WHICH POTENTIAL MINING OPERATIONS HAVE BEEN IDENTIFIED. AS A RESULT OF THE SUBSTANTIAL EFFORT, THE GROUNDWATER PROTECTION PROVISIONS DEVELOPED BY THE CONSENSUS DRAFTING GROUP AND PROPOSED IN THE AMENDMENTS SUBMITTED BY THE PUBLIC INTERVENOR PROVIDE NOT ONLY COMPLETE PROTECTION OF THE QUALITY AND QUANTITY OF UNDERGROUND DRINKING WATER SUPPLIES,

BUT ALSO THE COMPLETE PROTECTION OF ALL OTHER BENEFICIAL USES OF THE GROUNDWATER. IT MEETS OR EXCEEDS THE PROMULGATED REQUIREMENTS OF EPA FOR GROUNDWATER PROTECTION IN STATE SOLID WASTE MANAGEMENT PROGRAMS, AS THE CHART ON THE SECOND SHEET OF THE HANDOUT SHOWS.

THE GENERAL SUBJECT OF THE PROTECTION OF GROUNDWATER FROM THE ADVERSE IMPACTS OF IMPROPER DISPOSAL OF SOLID WASTE AND HAZARDOUS WASTES HAS BEEN RECEIVING A LOT OF ATTENTION NOT ONLY IN WISCONSIN, BUT THROUGHOUT THE COUNTRY IN RECENT MONTHS -- AND APPROPRIATELY SO. GROUNDWATER IS AN IMPORTANT RESOURCE, AND ITS PROTECTION AND MANAGEMENT FOR ALL BENEFICIAL USES PRESENTS A COMPLEX CHALLENGE.

EPA, FOR EXAMPLE, HAS BEEN STUDYING VARIOUS BASIC APPROACHES TO GROUNDWATER PROTECTION, PARTICULARLY AS RELATED TO DISPOSAL OF HAZARDOUS WASTES. THE CONCEPTS THEY HAVE EXAMINED INCLUDE: (1) CONTAINMENT STRATEGIES; (2) FACILITY DESIGN REQUIREMENTS; (3) SPECIFIC AMBIENT HEALTH AND ENVIRONMENTAL HEALTH REQUIREMENTS; AND (4) NONNUMERICAL HEALTH AND ENVIRONMENTAL, OR "USE" STANDARDS.

THE UNDERSTANDING SEEMS TO BE EVOLVING WITHIN EPA THAT NO SINGLE APPROACH IS THE CORRECT ANSWER, BUT THAT A COMBINATION OF THESE APPROACHES IS BEST. THIS SAME CONCLUSION WAS REACHED SOMEWHAT EARLIER BY THE CONSENSUS DRAFTING GROUP, AND THE CONSENSUS GROUNDWATER STANDARD REQUIRES AN OPTIMUM COMBINATION OF THESE APPROACHES TO PROTECT GROUNDWATER ADEQUATELY.

WHILE THE CONSENSUS GROUP'S GROUNDWATER STANDARD UNEQUIVOCALLY PROTECTS ALL USERS OF GROUNDWATER AND STRICTLY LIMITS THE CHANGES IN WATER QUALITY WHICH WOULD BE PERMITTED, IT ALSO SETS PERFORMANCE STANDARDS FOR MINE WASTES FACILITIES WHICH A MINE OPERATOR CAN, BY USING BEST AVAILABLE TECHNOLOGY, BE REASONABLY ASSURED THAT HE CAN MEET. WE MUST ALL RECOGNIZE THAT, UNLESS A MINE OPERATOR CAN BE CONFIDENT, BASED ON PRACTICAL ENGINEERING CONSIDERATIONS, THAT HE CAN OPERATE HIS FACILITY IN FULL COMPLIANCE WITH GROUNDWATER PROTECTION REQUIREMENTS, HE WOULD BE FOOLHARDY IN PROCEEDING WITH THE CONSTRUCTION OF MINING FACILITIES.

IN CONCLUSION, I WOULD LIKE TO RE-EMPHASIZE THAT THE BROADLY-BASED CONSENSUS GROUP HAS PROPOSED A GROUNDWATER STANDARD WHICH:

FIRST -- PROTECTS THE QUALITY AND AVAILABILITY OF GROUNDWATER AT ALL POINTS OF CURRENT USE OR PROBABLY FUTURE USE FOR ALL USES AND USERS.

SECOND -- IS MORE STRINGENT THAN THE U.S. EPA REQUIRES.

THIRD -- RECOGNIZES THE SPECIFIC NEEDS AND THE SPECIAL ENVIRONMENTAL CONCERNS OF MINING AS REQUIRED BY THE LEGISLATURE.

In contrast to the combination approach in the consensus groundwater proposal, draft NR 105 would require absolute containment; it would apply with equal rigidity to all solid waste disposal facilities throughout the state, without any consideration of local conditions, of types of waste, or quantities of waste. It does NOT draw from research, studies, data and recommendations of the EPA. Therefore, it does not respond to the mandates of the Legislature in Chapter 377 for the regulation of mining wastes.

For mining wastes, draft NR 105's requirement of no change from baseline groundwater quality would be impossible to meet. While I'm here to speak only to mining issues, I strongly believe that the same conclusion would hold for virtually any solid waste disposal facility.

Dave Nichols, who will speak next, will explain in some detail the consensus group's proposed groundwater protection standard, and compare it with the proposed NR 105.

Thank you for the opportunity to present Exxon Minerals Company's views on these very important rules.