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LONG-TERM LIABILITY LEGISLATION--
AN APPROPRIATE PREREQUISITE TO METAL MINING IN WISCONSIN

MR. CHAIRMAN, thank you for inviting the Public Intervenor to make a statement on the subject of long-term liability legislation before the Legislative Council Special Committee on Mining. My remarks will be divided into two parts: 1) a historical overview of events which bring us together today; and, 2) the justification of long-term liability legislation.

A HISTORICAL OVERVIEW

In November of 1976, Kennecott Copper Corporation sought state permits to mine its copper ore body in the Town of Grant, Rusk County, Wisconsin. The citizens of the Town of Grant stated their unified collective belief that it was premature to approve the permit applications.

There were three very valid reasons for the citizens' conclusions that Wisconsin was not yet ready to issue any new permits authorizing the mining of copper and zinc. First, Wisconsin did not, and still does not, have in place a regulatory scheme to protect the environment from the dangers of waste containment areas and tailings ponds associated with copper and zinc mines. Wisconsin's rules will not be in place until, at least, the last

quarter of 1980. Neither does the federal government have such regulations. It will not have such rules until at least 1984. In the absence of a well-recognized and well thought out comprehensive regulatory process, it would have been inappropriate for the State of Wisconsin to grant permits for new zinc and copper mines.

Second, DNR was not, and still is not, staffed or financed today at a level to warrant public confidence that it can effectively regulate the new mining industry. However, substantial progress has been made in this area, and there is every reason to be optimistic that this problem can be overcome.

Third, Wisconsin did not, and still does not, have a long-term liability protection program for the Towns and Indian Tribes that will be impacted by the new mining activity.

Wisconsin will have one of the three conceptual prerequisites necessary to consider prospecting or mining permit applications from metal mining companies **if** the consensus long-term liability legislation before you today should pass during this floor session of the Legislature.

JUSTIFICATION FOR LEGISLATION

The citizens and environment of Northern Wisconsin need the proposed long-term liability legislation for four reasons: (1) the possibility of future injury from mining related activities is real; (2) Wisconsin's traditional tort law does not provide an adequate level of assurance of recovery for such mining related injury; (3) the right to an effective recovery system should be a prerequisite to metal mining prospecting and mining; and (4) the legislation provides the Northern Wisconsin citizens with a flexible and multiple option approached to recovery.

Not only does the proposal meet legitimate needs for Northern Wisconsin, it is also good public policy for five reasons: (1) the proposed legislation is a cautious approach to needed progressive social legislation; (2) the draft bill does not attempt to establish new principles of law or public policy in tort or insurance law when such effort might delay the legislation for years; (3) the legislation does permit the growth of tort law by judicial mandate; (4) the legislation is consistent with other environmental protection programs for mining; and (5) the draft bill has the support of mining companies, local citizens and environmentalists. It is important that the ground rules Wisconsin sets up to regulate metal mining have such consensus support.

CONCLUSION

Senator Cullen and the Subcommittee which drafted the long-term liability legislation are to be congratulated. It is sound, cautious, creative legislation for the citizens and environment of Northern Wisconsin.

Peter A. Peshek
Wisconsin Public Intervenor

February 4, 1980

SUMMARY OF MAJOR MINING RELATED

LEGISLATIVE/ADMINISTRATIVE ACTIVITIES — 1977/80

Chapter 377, Laws of 1977

Chapter 377 constituted a complete revision of Wisconsin's existing solid waste laws — bringing them into compliance with the federal Resource Conservation and Recovery Act (RCRA). Chapter 377 also created a hazardous waste disposal program in Wisconsin for the first time — likewise to bring it into compliance with RCRA. It regulates the proper siting, construction and operation of disposal sites (including those for mining wates) and provides requirements for site reclamation and long term care (20-30 years after closure). Among other unique provisions, Chapter 377 established the Waste Management Fund (financed by tippage fees) which insures against catastrophic events and failures to perform long term care requirements. As was the case with RCRA, mining wastes were included within the definition of "solid waste". Best indications at this time are that the EPA, charged with responsibility over RCRA, is yet two years away from proposing a regulatory program pursuant to RCRA for mining wastes. In Wisconsin, the need for comprehensive mining waste disposal regulations is more urgent because the Public Intervenor has stated that he will attempt to block the issuance of any mining permit prior to the issuance of such regulations. To aid in this process, Chapter 377 established the Metallic Mining Council (MMC) advisory to the Wisconsin Department of Natural Resources (DNR). A list of MMC members is attached. The MMC was given 24 months (until May 20, 1980) to help the DNR prepare rules relating to the siting of tailings ponds and their construction, operation and reclamation. One goal of the MMC is to create a comprehensive code which inter-relates mining, reclamation, solid waste, drinking water, surface water and air quality laws and regulations. It is expected that these rules [NR 131 (Prospecting); NR 132 (Mining); and NR 182 (Mining Waste)] will go out to hearing in January or February, 1981. These rules have been drafted as the result of a "consensus" effort involving the Town of Grant (Rusk County), the Town of Lincoln (Forest County), the Town of Nashville (Forest County), the Public Intervenor, Wisconsin's Environmental Decade, the Sokaogon-Chippewa Community (Forest County), the Potawatomi Community (Forest County), Kennecott Corporation, Inland Steel, Exxon Minerals Company and the DNR. These rules, drafted throughout late 1979 and 1980, represent the most comprehensive rules on mining in the country.

Chapter 421, Laws of 1977

Chapter 421 totally revised Wisconsin law relating to the reclamation of mining sites and the application for and obtaining of prospecting and

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mining permits. It established separate provisions for exploration, prospecting and mining. It provides for a limited environmental impact statement (EIS) should one be necessary for prospecting activities. It provides for a single hearing on the adequacy of the department prepared EIS as well as all department authorized prospecting or mining permits, approvals, licenses or orders. Finally, in addition to many other changes in prior existing law, it also provides the following socio-economic criterion which must be found by the DNR prior to the granting of a mining permit: "The proposed mine will not result in a net substantial adverse economic impact in the area reasonably expected to be most impacted by the activity." In terms of administrative rules, the department has issued interim rules relating to the subjects of Chapter 421: namely, NR 130 relating to exploration; NR 131 relating to prospecting; and NR 132 relating to mining. As indicated above, the final version of these rules will be sent out to hearing in January or February, 1981. Chapter 421 and the indicated rules resulted from the consensus process.

Chapter 420, Laws of 1977

Chapter 420 completely revised Wisconsin law relating to the contamination of private water supplies by mining operations and the ability of mining companies to condemn private lands for purposes of carrying water to or from mining operations. Chapter 420 resulted from the consensus process.

Chapter 422, Laws of 1977

Chapter 422 completely revised Wisconsin law relating to the providing to the State Geologist geological information gathered during exploration, prospecting and mining activities. This law greatly broadens the ability of the State Geologist to obtain such information. Chapter 422 resulted from the consensus process.

Chapter 253, Laws of 1977

Chapter 253 completely revised Wisconsin law relating to the leasing of rights for exploration, prospecting and mining. Among other things, it established cooling off periods for such leases and specific, absolute time periods within which such activities must be concluded. Chapter 253 did not result from the consensus process.

Chapter 353, Laws of 1979

Chapter 353 provides strict liability for damages arising from certain mining activities. It created a "mining damage appropriation", financed by the net proceeds law, against which claims can be made for damages arising from certain mining activities. Chapter 353 resulted from the consensus process.

Wisconsin Environmental Policy Act

The Wisconsin Environmental Policy Act (WEPA) was created by Wis. Stat. 1.11. Although it patterns itself after the National Environmental Policy Act (NEPA), there are several basic differences in that: 1) it specifically provides for a hearing; and 2) it specifically requires the consideration of economic as well as environmental issues. A long line of both circuit and supreme court decisions in Wisconsin have defined the requirements of WEPA. These requirements are severe, particularly for a complex project. Among other things, a consideration of alternatives is required along with an explanation of the environmental, social, cultural and economic impacts of each. Pursuant to DNR policies, an applicant prepares an environmental impact report (EIR) which the department then turns into a preliminary environmental report (PER) which is then turned into an environmental impact statement (EIS). The specific procedure for this sequence of events for mining is set forth in Chapter 421 (identified above). The procedures for the preparation of the EIR, PER and EIS are set forth in NR 150. Recently NR 150 underwent significant changes including changes to NR 150.09 which provides the procedure for the holding of a contested case hearing in certain cases (such as those relating to mining permits) to determine the adequacy of an EIS. Hearings on impact statements have traditionally been "legislative" in nature — i.e., interested parties would submit oral or written testimony, but no cross examination or discovery has been allowed. In cases involving mining permits, those parties responsible for the preparation of data found in an impact statement will be required to give testimony validating such information and judgments and will be subject to cross examination. Likewise, pursuant to Chapter 421, the contested case hearing on the adequacy of an EIS for mining will be held jointly with the proceedings on DNR issued orders, approvals, permits and licenses necessary for a mining project. These were major concessions demanded by environmental interests involved in the negotiation of mining related legislation and rules.

Clean Air Act Amendments

As a result of the passage of the federal Clean Air Act Amendments in 1977, Wisconsin completely rewrote its air laws in both 1979 and 1980. Because the Wisconsin Clean Air Act has general applicability, it applies to prospecting and mining. These amendments resulted from the consensus process.

Clean Water Act Amendments

As a result of the passage of the federal Clean Water Act Amendments in 1977, Wisconsin completely rewrote its water laws in 1980. Because the Wisconsin Clean Water Act has general applicability, it applies to prospecting and mining. These amendments resulted from the consensus process.

MEMBERS OF THE METALLIC MINING COUNCIL

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January 14, 1980

The Honorable Timothy F. Cullen
State Senator
Chairman, Legislative Council
Special Committee on Mining
14 South, State Capitol
Madison, Wisconsin 53702

Dear Chairman Cullen:

You have previously asked local communities, environmentalists and metallic mining companies to come together to discuss the concept of "long-term liability" for metallic mining operations in Wisconsin. You asked whether we could develop consensus legislation for consideration by your committee at the earliest possible date.

We are pleased to report that we have succeeded. Enclosed is our long-term liability legislation proposal which is offered in the spirit of consensus policy development. We believe it is a reasonable balancing of objectives and meets the concerns expressed by citizens living near the vicinity of the proposed mining.

Because Wisconsin is soon approaching that time when it first utilizes its new metallic mining laws, it is important to give early consideration to the proposed legislation. We stand prepared to assist you and your committee.

Thank you for your encouragement.

Sincerely,

WISCONSIN'S ENVIRONMENTAL DECADE, INC.
By:

Kathleen M. Falk, p.a.
Kathleen M. Falk

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TOWN OF NASHVILLE
By:

COOK & FRANKE, S.C.

Kevin J. Lyons

TOWN OF LINCOLN
By:

COHEN, GRANT, ZUIDMULDER, NAZE & GAZELEY

Donald R. Zuidmulder

TOWN OF GRANT
By:

COOK & FRANKE, S.C.

Kevin J. Lyons

EXXON MINERALS COMPANY, U.S.A.
By:

MURPHY, STOLPER, BREWSTER & DESMOND, S.C.

Michael R. Vaughan

KENNECOTT COPPER CORPORATION
By:

BOARDMAN, SUHR, CURRY & FIELD

Richard L. Olson

JACKSON COUNTY IRON COMPANY
By:

MICHAEL, BEST & FRIEDRICH

Guy F. Guinn

Guy F. Guinn

WISCONSIN PUBLIC INTERVENOR
By:

Peter A. Peshek

Peter A. Peshek

DEPARTMENT OF BUSINESS DEVELOPMENT
By:

Robert C. Brunner

Robert C. Brunner, Secretary

Dated: _____

MEMORANDUM

TO: Interested Parties

FROM: Kris Visser
Wisconsin Department of Natural Resources

Peter Peshek
Public Intervenor

James Derouin
Exxon Minerals Company

RE: Budget Amendment LRB 11794/4

DATE: March 5, 1980

This memo is to inform interested parties that the attached amendment to Wisconsin solid waste laws has the united support of the Department of Natural Resources, a variety of environmental groups [Public Intervenor, Wisconsin's Environmental Decade, the Town of Grant (Rusk County), the Town of Nashville (Forest County), and the Town of Lincoln (Forest County)] and the three principle mining companies currently associated with Wisconsin (Inland, Kennecott and Exxon).

The attached amendment has no fiscal impact; rather, it clarifies and specifies what the tippage fee payments into the Wisconsin Waste Management Fund will be for prospecting and mining wastes. (Chapter 377, Laws of 1977, resulting from a study committee chaired by Mary Lou Munts and Jim Wahner, implemented the federal Resource Conservation and Recovery Act in Wisconsin. It established the Wisconsin Waste Management Fund and requires payments on a per ton basis for all solid waste disposed of in Wisconsin -- municipal garbage as well as industrial wastes. High volume industrial wastes such as paper mill sludges and utility fly ashes are handled in a special way. Because Chapter 421, Laws of 1977 (resulting from a study committee chaired by Mary Lou Munts and Michele Radosevich and relating to mining reclamation) was also being considered at the same time, and because the bonding features of that chapter duplicate some of the responsibilities of the Wisconsin Waste Fund, special language was inserted in Chapter 377 mandating the department to "reduce or waive" tippage fees for prospecting or mining wastes to the extent that a duplication existed. The purpose of LRB 11794/4 is to establish by statute, as is the situation with all other solid waste disposers in Wisconsin, what the tippage fees are for prospecting and mining wastes -- and to delete the "reduce or waive" language in the statute.)

From the department's point of view, this amendment will establish appropriate fees on an industry-wide basis and eliminate the necessity of setting fees on a case by case basis. From the viewpoint of environmental groups, it will eliminate the possibility that there can be a total waiver of such fees for prospecting or mining wastes — and, therefore, no coverage from the Waste Management Fund. From the viewpoint of the mining companies (Inland, Kennecott and Exxon), although the total amount of fees to be paid into the Waste Management Fund will be higher than those for other high volume industrial contributors, the agreed fee schedule provides certainty as to what the fees will be and specifies fees that are considered appropriate for the high volume of wastes involved.

The essence of this amendment has been approved by the Metallic Mining Council, created by Chapter 377, which includes representatives of the mining industry, Wisconsin's Environmental Decade, various rural towns impacted by mining, various University representatives, and former State Representative Harvey Dueholm. Your positive reaction to this proposed amendment would be greatly appreciated.

~~department shall reduce or waive the fees for solid waste resulting from mining if it determines that the reclamation bonding and other requirements of ss. 144.81 to 144.94 are sufficient to accomplish the purposes of this subsection.~~ The fees shall be paid into the waste management fund to be used for the purposes specified in par. ~~(d)~~ (g). Whenever the investment board certifies to the department that the balance in the waste management fund exceeds $15,000,000, this paragraph shall not apply to any site which is operating under its 6th or subsequent annual license until the investment board certifies to the department that the balance in the waste management fund is less than $12,000,000.

SECTION 630p. 144.441 (3) (d) of the statutes is renumbered 144.441 (3) (g).

SECTION 630t. 144.441 (3) (d) to (f) of the statutes are created to read:

144.441 (3) (d) With respect to a site under sub. (2) (c), the fee imposed under par. (a) is 3.5 cents per ton for solid waste and for any hazardous wastes which are excluded from the fee specified under par. (e)

(e) With respect to a site under sub. (2) (c), the fee imposed under par. (a) is 35 cents per ton for hazardous wastes other than ashes and sludges from electric and process steam generating facilities, sludges produced by waste treatment or manufacturing processes at pulp or paper mills, manufacturing process solid wastes from foundries, or sludges produced by municipal wastewater treatment facilities.

(f) Notwithstanding pars. (b) to (e), with respect to prospecting or mining waste, the fee imposed under par. (a) is:

1. For hazardous tailing solids, 1.5 cent per ton.

2. For nonhazardous tailing solids or for nonacid producing taconite tailing solids, .2 cent per ton.

ASSEMBLY AMENDMENT

TO 1979 ASSEMBLY BILL 1180

Amend the bill as follows:

1. On page 211, after line 19, insert:

"SECTION 630d. 144.441 (2) (c) of the statutes is amended to read:

144.441 (2) (c) If the approved plan of operation for a site so indicates, or if the owner of a site so requests and the department approves, the owner's responsibility for long-term care of the site shall terminate 20 years after closing of the site unless the owner's responsibility is terminated sooner under par. (d). ~~With respect to such sites, the fees imposed under sub. (3) (b) shall be 3.5 cents per ton and the fees imposed under sub. (3) (c) shall be 35 cents per ton.~~

SECTION 630n. 144.441 (3) (a) of the statutes, as affected by chapter .... (Assembly Bill 561), laws of 1979, is amended to read:

144.441 (3) (a) Each owner or operator of a licensed site for the land disposal of solid waste or the disposal of hazardous waste shall periodically pay to the department a fee for each ton, or equivalent volume as determined by rule of the department, of solid waste received and disposed of at the site during the preceding reporting period. Solid waste materials approved by the department for lining or capping or for constructing berms, dikes or roads within a site for the land disposal of solid waste are not subject to the fee imposed under this paragraph. The

3. For hazardous sludge, one cent per ton.

4. For nonhazardous sludge, .5 cent per ton.

5. For hazardous waste rock, .3 cent per ton.

6. For nonhazardous waste rock or for nonacid producing taconite waste rock, .1 cent per ton.

7. For any prospecting or mining waste not specified under subds. 1 to 6, .5 cent per ton.".

2. On page 357, after line 28, insert:

"(b) Waste management fund revisions.

A	B	C
15.251 (intro.)	144.441 (3)(d) 2	144.441 (3)(g) 2
25.45	144.441 (2)(c) and (3)	144.441 (3)
25.45	144.441 (3)(d)	144.441 (3)(g)
144.44 (4)(a)	144.441 (2)(c) or (3)	144.441 (3)
144.441 (3)(b)	sub. (2)(c)	pars. (d) to (f)
144.441 (3)(c)	sub. (2)(c)	pars. (d) to (f)".

(End)

The Honorable Lee Sherman Dreyfus
Governor of Wisconsin
State Capitol
Madison, Wisconsin 53702

Dear Governor Dreyfus:

Wisconsin is approaching the first time when it will be utilizing its new metallic mining law. See, ch. 421, Laws of 1977. As we approach that date, a determined group of local communities, environmentalists and industry representatives are completing Wisconsin's regulatory framework in consultation with the Wisconsin Department of Natural Resources. We have discovered a small number of problems in our enabling legislation which need fine tuning during the forthcoming floor session of the 1979 Legislature. The purpose of this letter is to request your help in fine tuning one aspect of ch. 421, Laws of 1977.

Public Policy Objective

Full public participation in metallic mining permit application proceedings is desirable. At the same time, unlimited public access to all mining company files without any exceptions is not reasonable. The purpose of any legislation is to balance these two objectives. Chapter 421, Laws of 1977, inadvertently failed to accomplish its stated purpose.

Statutory Dilemma

On July 3, 1974, Wisconsin created its first Metallic Mining Reclamation Act. Section 144.925(1) of the Act provided, in part, as follows: "All data submitted by an applicant for a prospecting permit . . . shall be considered confidential, unless the prospector expressly agrees to its publication."

Section 144.925(2) of the Act provided in part: "All data relating to prospecting permits held by the operator shall be considered confidential." In the first Metallic Mining Reclamation Act, prospecting was narrowly defined to cover that activity necessary to determine the possible existence of an ore body, i.e. "exploration."

On June 3, 1978, the Wisconsin Legislature substantially modified the Metallic Mining Reclamation Act when it adopted ch. 421, Laws of 1977. The provisions quoted above remain in the new law. However, the Legislature expanded the definition of prospecting without considering the secrecy provisions of sec. 144.925, Stats. In ch. 421, for the first time, the Legislature distinguished between exploration and prospecting. Originally in 1973, secs. 144.925(1) and (2), Stats., were meant to regulate exploration. These provisions were not intended to cover prospecting activities.

Exploration activities have a limited scope. On the other hand, the size of prospecting activities can be, relatively, very substantial. Yet a literal reading of sec. 144.925, Stats., would suggest that the public has no right to that data, which exists either in the Department of Natural Resources files or in mining company files on such prospecting activities. Such a narrow interpretation of this statute is not the best public policy. We believe a clear policy should be written into our statutes which eliminates ambiguity and potential lawsuits.

Consensus Remedial Legislation

Attached is draft language to correct the current problems associated with sec. 144.925, Stats. Because the current dilemma was unintentional and because time is critical, we urge you to place our proposed remedial language in your mini-budget bill.

The proposal is offered in the spirit of further consensus policy development. We believe it is a reasonable balancing of objectives. Your consideration of our ideas to fine tune Wisconsin mining regulatory framework is appreciated.

Sincerely,

TOWN OF GRANT
By:

Peter Kostka
Chairman

TOWN OF NASHVILLE
By:

John Schallock
Chairman

TOWN OF LINCOLN
By:

Robert Netzel
Chairman

SOKAOGAN CHIPPEWA COMMUNITY
By:

STAFFORD, ROSENBAUM, RIESER
& HANSEN

Susan Steingas
Susan Steingas

WISCONSIN'S ENVIRONMENTAL DECADE,
INCORPORATED
By:

Kathleen M. Falk
Kathleen M. Falk

EXXON MINERALS COMPANY, U.S.A.
By:

Robert J. Russell
Robert J. Russell

KENNECOTT COPPER CORPORATION
By:

BOARDMAN, SUHR, CURRY & FIELD

Richard L. Olson

JACKSON COUNTY IRON COMPANY
By:

MICHAEL, BEST & FRIEDRICH

Guy F. Guinn

WISCONSIN PUBLIC INTERVENOR
By:

Peter A. Peshek

DEPARTMENT OF BUSINESS DEVELOPMENT
By:

Robert C. Brunner, Secretary

Dated: _____

By
R. L. RUSSELL
Manager, Crandon Project

Thank you for inviting me here today. I'm pleased to have this opportunity to discuss the subject of Exxon's response to the legislative and regulatory developments in Wisconsin following recent minerals discoveries there.

As you all know, Wisconsin is called the Badger State. The nickname "badger" was applied to the early lead miners of southwestern Wisconsin. They acquired this name by living in natural limestone caves near their diggings and in some cases in abandoned sections of mines they had worked. Oddly enough, if the nickname in the recent years were confined to those who mine or even hope to mine for metals in Wisconsin, in terms of numbers of people and relative economic importance, the nickname would have long since been forced into obscurity.

Lead mining in southwestern Wisconsin, once a prominent industry in the area, now consists of one producer, Eagle-Pitcher, near Schullsburg. It employs about 125 people when metal economics permit. The other producer of metals in Wisconsin is Inland Steel which employs about 220 people at its Black River Falls taconite operation in the central part of the state. It is true that in the Milwaukee-Racine area there prospers what is probably the largest mine equipment manufacturing center in the U.S., or perhaps the world. An important kindred of "mining badgers" exists there, but that does not, in itself, explain why the affairs of so few miners and prospective miners are so very prominent in the news of Wisconsin. To the

"NON-BADGER" IT WOULD APPEAR THAT BOTH AN INORDINANT AMOUNT OF PRESS SPACE AND AN INORDINANT AMOUNT OF STATE LEGISLATIVE AND REGULATORY EFFORT IS BEING DEVOTED TO THE ISSUES OF A PRACTICALLY NONEXISTENT INDUSTRY.

ONE REASON FOR THE CURRENT PROMINENCE OF MINING ISSUES IS THE DISCOVERY OF THREE NEW METAL DEPOSITS IN THE STATE OVER THE LAST DECADE. IN THE LATE 1950'S KENNECOTT COPPER'S EXPLORATION SUBSIDIARY, BEAR CREEK MINING COMPANY, BEGAN EXPLORING A SOUTHERN LOBE OF CANADIAN SHIELD PRE-CAMBRIAN ROCKS BENEATH WISCONSIN'S GLACIAL GRAVEL OVERBURDEN. AFTER NEARLY A DECADE OF PERSISTENCE, THE HYPOTHESIS THAT COPPER-ZINC MASSIVE SULFIDE DEPOSITS MIGHT EXIST PROVED CORRECT. ALTHOUGH KENNECOTT'S FLAMBEAU DEPOSIT TURNED OUT TO BE OF MODERATE SIZE (4-6 MILLION TONS), THE MINERAL GRADE WAS FAVORABLE, ABOUT 4% COPPER. THIS WAS TRULY A WILDCAT DISCOVERY, A CREDIT TO THE PERSISTENCE OF THE BEAR CREEK MINING COMPANY, WHICH CONDUCTED AN AGGRESSIVE "FRESH" APPROACH TO METALS EXPLORATION IN THE 1950'S AND 1960'S. THIS DISCOVERY ATTRACTED OTHER MINING COMPANIES, BUT DESPITE A RELATIVELY CONSISTENT HIGH LEVEL OF EXPLORATION EFFORT, A SECOND DEPOSIT WAS NOT FOUND UNTIL 1974 WHEN AN EXTENSIVE PROGRAM BY NORANDA MINES LTD. RESULTED IN FINDING A MODEST 2.2 MILLION TON DEPOSIT WITH A GRADE OF 4.5% ZINC AND 1% COPPER. FINALLY IN 1975, A 5-YEAR AERIAL GEOPHYSICAL SURVEY SEARCH AND THE SUBSEQUENT DRILLING OF 25 ELECTROMAGNETIC ANOMALIES BY EXXON RESULTED IN THE DISCOVERY OF THE CRANDON DEPOSIT. THE DRILLING OF ABOUT 200 DIAMOND DRILL HOLES AT CRANDON OVER THE LAST 3 YEARS HAS ESSENTIALLY SUBSTANTIATED THE RESERVE OF 70 MILLION TONS OF A MINERAL RESERVE WITH A GRADE OF 5% ZINC AND 1% COPPER.

In mid-1976 the announcement by Exxon of this major discovery and the subsequent wide press coverage which it received provided momentum that propelled the modest profile of mining in Wisconsin to one of political prominence. True orbit was achieved a year later, May, 1977, when a major state paper carried a front page banner headline, "Ore Lode Called World's Richest". Those of us in mining know that 70 M tons is not the world's largest and 5% zinc is not the world's richest sulfide deposit, but reality played no part in that article or in the rhetoric that followed.

This sensational headline appeared just several weeks prior to the introduction of the net proceeds tax bill on metallic minerals in the state legislature. Once the bill got to the floor, the Senate promptly passed it. The Assembly took an already onerous progressive tax rate contained in the tax bill and escalated it upward another 25% and passed the measure. The bill's supporters, with only the flimsy information of one news story, had arrived at the false premise that such a rich find as the Crandon deposit obviously would be mined at any rate of taxation.

If the situation were not so grave, it would be humorous to note that the zoological name for the badger, the state animal, is "taxidea taxus," with the word "tax" appearing twice. So, it was perhaps prophetic that the new badgers would be subjected to a compounding and excessive tax.

Another explanation for the prominence of the mining issues in Wisconsin was the issue of environmental protection. In late 1975, the Kennecott mining permit hearings attracted considerable attention across the state because of the intervention in the proceedings by the state's Public Intervenor. He is an appointed official

DESIGNATED BY LAW TO INTERVENE IN ENVIRONMENTAL AND OTHER PUBLIC ISSUES ON BEHALF OF THE CITIZENS OF THE STATE. THE TOWN OF GRANT, THE JURISDICTION IN WHICH THE KENNECOTT LADYSMITH DEPOSIT IS LOCATED, THROUGH ITS ATTORNEY, ALSO OBJECTED TO THE GRANTING OF PERMITS. THIS LATE 1976 OPPOSITION WAS VOCAL AND WELL PREPARED. BOTH IN HEARINGS AND WITHOUT, THE PUBLIC INTERVENOR ARGUED THAT THE STATE WAS NOT READY TO GRANT PERMITS TO MINE UNTIL ALL AREAS OF ENVIRONMENTAL PROTECTION WERE COVERED BY LAW. TO ACCOMMODATE THIS CONCERN, EXISTING LEGISLATIVE STUDY COMMITTEES ESTABLISHED THE METALLIC MINING RECLAMATION ACT REVISION SUB-COMMITTEE. THIS SUB-COMMITTEE WAS MANDATED TO STUDY ENVIRONMENTAL QUESTIONS AND TO REPORT BACK TO THE FULL STUDY COMMITTEES. THESE STUDY COMMITTEES WERE THE STATE SENATE SELECT COMMITTEE ON MINING AND THE SPECIAL STUDY COMMITTEE OF THE WISCONSIN LEGISLATIVE COUNCIL ON MINERAL TAXATION.

WHILE LEAVING THE MINE RECLAMATION ACT REVISIONS TO THE PREVIOUSLY MENTIONED SUB-COMMITTEE, THESE TWO STUDY COMMITTEES, WORKING TOGETHER, PLOWED AHEAD ON OTHER MINING LEGISLATION.

AN ONEROUS PRODUCT OF THEIR EFFORT WAS A BILL WHICH CREATED THE IMPOSITION OF UNNECESSARY AND BURDENSOME REQUIREMENTS ON NEGOTIATING METALLIC MINERALS LEASES. FOR EXAMPLE, INDIVIDUALS MAY CANCEL A METALLIC MINERAL LEASE WITHIN 10 DAYS AFTER SIGNING, INDIVIDUALS MAY CANCEL A METALLIC MINERAL LEASE IN 10 YEARS IF A PROSPECTING PERMIT HAS NOT BEEN APPLIED FOR, AND IF A MINING PERMIT HAS NOT BEEN OBTAINED IN 20 YEARS, THEY CAN CANCEL. THE MAXIMUM DURATION OF A MINING LEASE IS SET ARBITRARILY AT 50 YEARS. INCIDENTALLY, THIS BILL WAS VOTED OUT OF COMMITTEE AFTER EXXON WAS GRANTED ONLY A FEW MINUTES TO TESTIFY. OUR ORAL TESTIMONY, STATING OUR OBJECTIONS TO SUCH AN INCREDIBLE LAW, WERE SUMMARILY DISMISSED.

THUS, IN MID-1977, THINGS LOOKED UNIVERSALLY DISMAL FOR ANYONE WHO WAS MINING OR WHO CONTEMPLATED MINING IN WISCONSIN. EVEN SPECIAL TAX PROVISIONS, SUCH AS THE DEPLETION ALLOWANCE CREATED TO ALLOW TACONITE MINING TO PROCEED, WERE DISCARDED. THE COPPER TAX PASSED IN 1974 IN RESPONSE TO KENNECOTT COPPER'S LADYSMITH PROJECT WAS SIMILARLY DISCARDED.

THE NEW NET PROCEEDS TAX LAW ESTABLISHED THE HIGHEST NON-FERROUS METAL TAX BURDEN OF ANY MAJOR MINING STATE IN THE UNITED STATES. FOR A CRANDON PROJECT, THE PROGRESSIVE NATURE OF THE TAX, WHEN COUPLED WITH THE EXCESSIVELY HIGH RATE FOR LARGE OPERATIONS, MADE ECONOMIC VIABILITY SERIOUSLY QUESTIONABLE. AND, BECAUSE EXXON IS ONLY MIDWAY THROUGH ITS FEASIBILITY STUDIES, THAT QUESTION STILL REMAINS UNANSWERED.

A BASIC PRECEPT OF IMPOSING A TAX BASED UPON INDUSTRY PAYING ITS FAIR SHARE OF THE COST OF GOVERNMENT WAS IGNORED AND MINING WAS SINGLED OUT FOR WHAT EXXON FELT IS EXCESSIVE TAX TREATMENT BY ANY REASONABLE MEASURE.

THE HIGH TAX BURDEN WAS AN ACCOMPLISHED FACT <u>EVEN BEFORE</u> EXXON HAD ESTABLISHED THE TEAM IN CRANDON WHICH WOULD EVALUATE THE DEPOSIT TO DETERMINE ITS TECHNICAL, ENVIRONMENTAL, AND ECONOMIC VIABILITY -- EVEN BEFORE EXXON HAD COMPILED THE FIRST CRUDE PROJECT CAPITAL COSTS, WHICH DEMONSTRATED THAT AN INITIAL CAPITAL OUTLAY OF OVER $300 MILLION WOULD BE REQUIRED. THIS CAPITAL INVESTMENT FIGURE IS A FAR CRY FROM THE HIGHLY PRELIMINARY $100 MILLION INVESTMENT ESTIMATED BEFORE OUR STUDIES BEGAN AND WERE USED BY PROPONENTS OF THE HIGH TAX LAW. WE AT EXXON MADE PUBLIC THE $300 MILLION INVESTMENT FIGURE WHEN IT WAS AVAILABLE TO US IN AUGUST, 1977. UNFORTUNATELY, THIS WAS SOME TWO MONTHS <u>AFTER</u> PASSAGE OF THE ONEROUS TAX BILL.

THINGS INDEED WERE BLEAK IN MID-1977. THOSE OF US WHO COULD BE CLASSIFIED AS MODERN-DAY BADGERS WERE REBUFFED IN OUR EFFORTS TO GIVE OUR POINT OF VIEW AS THE STATE CREATED ONE CLEAR SIGNAL AFTER ANOTHER THAT IT DIDN'T PARTICULARLY WANT MINING -- ESPECIALLY LARGE SCALE MINING. THE EXPLORER'S GLIMMER OF HOPE AND THE PROSPECTOR'S PROMISE OF A MINE WERE BEING EXTINGUISHED BY A SHOWER OF BILLS CREATED IN A CLIMATE OF MYTH AND MISUNDERSTANDING.

BUT, THERE WAS SOME HOPE, SOME ENCOURAGEMENT, SOME ENLIGHTENMENT; AND IT IS THIS POSITIVE AND ENLIGHTENED APPROACH TO SOLVING ENVIRONMENTAL ISSUES, THAT I WOULD LIKE TO ADDRESS THE BALANCE OF MY REMARKS.

A SUB-COMMITTEE WAS FORMED, WHICH I REFERRED TO EARLIER, TO RE-WRITE THE STATE'S MINING RECLAMATION ACT WITH INPUTS FROM A WIDE RANGE OF SOURCES. THIS METALLIC MINING RECLAMATION ACT REVISION SUB-COMMITTEE WERE A GROUP OF FRESH FACES, NOT ONE FROM THE TWO STUDY COMMITTEES WAS NAMED TO IT. THE SUB-COMMITTEE CONSISTED OF FOUR LEGISLATORS, INCLUDING REP. MARY LOU MUNTS; THREE ENVIRONMENTALISTS; THE STATE GEOLOGIST; TWO PRIVATE CITIZENS; TWO BUSINESS REPRESENTATIVES; AND ONE PERSON FROM THE DEPARTMENT OF NATURAL RESOURCES.

THE SUB-COMMITTEE BEGAN MEETING IN MID-1977 TO ADDRESS MINING RELATED ISSUES AND TO REPORT ITS RECOMMENDATIONS.

MEETING IN AN ATMOSPHERE OF COOPERATION, NOT CONFRONTATION, THE SUB-COMMITTEE INITIALLY TACKLED SOME VERY BASIC ISSUES: FOR EXAMPLE, SINCE DIFFERENT REGULATIONS ARE NEEDED FOR EACH, THE QUESTIONS OF WHAT ARE EXPLORATION, PROSPECTING, AND MINING HAD TO BE FACED.

WITH AGREED-UPON DEFINITIONS, THE SUB-COMMITTEE MEMBERS BEGAN SEEKING COMMON GOALS, EXCHANGING CONCERNS, PROPOSING SOLUTIONS, OFFERING LANGUAGE FOR A NEW RECLAMATION LAW. THE ENTIRE PROCESS

RESULTED IN AN AIRING OF PROPOSED SOLUTIONS WHICH WERE OFTEN IN CONFLICT, BUT JUST AS OFTEN, WERE BASED UPON MEETING COMMON GOALS.

INDUSTRY REPRESENTATIVES BEGAN TO DEVELOP AN APPRECIATION FOR THE POSITION OF THE ENVIRONMENTALISTS WHO, IN TURN, BECAME MORE AWARE OF BUSINESS NEEDS AND CONSTRAINTS. PERHAPS ONE OF THE MOST SURPRISING RESULTS OF THIS CONSENSUS APPROACH TO SOLVING ENVIRONMENTAL PROBLEMS WAS THE EVENTUAL REALIZATION THAT ALL SIDES WERE REALLY CLOSER TOGETHER IN TERMS OF ATTITUDE AND POSITION THAN THEY HAD EVER CARED TO ADMIT.

LATER IN 1977, THE SUB-COMMITTEE TURNED OUT A DRAFT BILL REVISING THE STATE'S RECLAMATION ACT. THE RESULTING BILL WAS SUPPORTED BY THE TWO STUDY COMMITTEES, INDUSTRY INTERESTS, ENVIRONMENTALISTS, AND STATE AGENCIES. WHEN THE BILL GOT TO THE LEGISLATURE, THERE WERE FEW DISSENTING VOTES IN THE ASSEMBLY, AND ONLY ONE IN THE SENATE. SIGNED INTO LAW IN MAY 1978 BY ACTING GOVERNOR SCHREIBER, THE RECLAMATION ACT REVISIONS GAVE THE STATE THE LEGISLATIVE PROTECTION IT WANTED AND ESTABLISHED TOUGH, BUT REASONABLE, RECLAMATION CONDITIONS FOR EXPLORING, PROSPECTING, AND MINING IN WISCONSIN.

THE MOST SIGNIFICANT ASPECT OF THE LAW IS THE FACT THAT IT WAS CONCEIVED, DEBATED, AND DRAFTED IN A CONSTRUCTIVE ENVIRONMENT.

WE HAVE OFTEN ASKED OURSELVES WHY THIS WAS SO -- WHY WERE WE ABLE TO PARTICIPATE IN A CONSENSUS DRAFTING OF ENVIRONMENTAL LEGISLATION WHEN THAT PROCESS WAS DENIED TO INDUSTRY IN THE AREA OF MINERALS TAXATION?

SURELY, PART OF THE ANSWER TO THAT QUESTION LIES IN THE LEADERSHIP DISPLAYED BY REP. MARY LOU MUNTS WHO GUIDED THE PROGRESS OF THE SUB-COMMITTEE; WHO SOUGHT RELEVANT AND RESPONSIBLE INPUT, NOT JUST RHETORIC; WHO LABORED LONG AND HARD TO PRODUCE A BILL THAT WOULD

PROTECT HER STATE WHILE NOT PRECLUDING MINING. REP. MUNTS SHOULD BE JUSTIFIABLY PROUD OF HER CONTRIBUTION.

PERHAPS ANOTHER ANSWER TO THE QUESTION OF WHY THE CONSENSUS APPROACH WORKED LIES IN THE ENVIRONMENTAL HERITAGE OF WISCONSIN. ENVIRONMENTAL PROTECTION IN WISCONSIN IS NOT NEW. WILDLIFE ECOLOGY HAD ITS ROOTS IN THE WRITINGS OF ALDO LEOPOLD, A BELOVED WISCONSIN CONSERVATIONIST; AND THE PEOPLE THERE RESPECT THEIR LAND AS MUCH AS ANY IN THE NATION. I GUESS WHAT I AM SAYING IS THAT WISCONSIN HAS MATURED IN ITS GROWTH AS A LEADER IN ENVIRONMENTAL PROTECTION, AND ALONG WITH THIS MATURING OF THINKING CAME A REALIZATION THAT RESULTS ARE BEST ACHIEVED WHEN ALL SIDES OF AN ISSUE WORK TOGETHER IN A SPIRIT OF COOPERATION.

NOW, LET'S LOOK CLOSER AT WHAT ELSE HAS BEEN GOING ON IN THE ENVIRONMENTAL AREA IN WISCONSIN.

IN 1977 AND 1978 WISCONSIN UNDERTOOK A REVAMPING AND UPDATING OF SOLID WASTE DISPOSAL LAWS. THE RESULTING BILL, WHICH WAS ENACTED ON MAY 19, 1978, AGAIN A TRIBUTE TO THE CONSENSUS APPROACH AND TO REP. MARY LOU MUNTS, DID NOT ADDRESS MINING IN DETAIL BUT DID CREATE A COMMITTEE OF NINE PERSONS TO: (QUOTE) "SERVE AS AN ADVISORY, PROBLEM-SOLVING BODY TO WORK WITH AND ADVISE THE DEPARTMENT OF NATURAL RESOURCES ON MATTERS RELATING TO THE RECLAMATION OF MINED LAND IN WISCONSIN, AND ON METHODS OF CRITERIA FOR THE LOCATION, DESIGN, CONSTRUCTION, AND OPERATION AND MAINTENANCE OF SITES AND FACILITIES FOR THE DISPOSAL OF METALLIC MINE RELATED WASTES." (END QUOTE)

THIS ADVISORY COMMITTEE OF NINE AT THIS TIME IS BALANCED AS TO THE RANGE OF VIEWPOINTS ON ENVIRONMENTAL ISSUES. TO DATE, IT HAS DEVELOPED THE REGULATIONS RELATIVE TO EXPLORATION, PROSPECTING, AND MINING PERMITTING PROCEDURES. CURRENTLY, THEY ARE CONCENTRATING ON

GAINING A DETAILED PERSPECTIVE OF THE ENVIRONMENTAL AND TECHNICAL ISSUES RELATED TO MINE WASTE DISPOSAL. FOLLOWING THIS LEARNING PROCESS, THE NEXT STEP PLANNED BY THE ADVISORY COMMITTEE IS TO BEGIN TO DRAFT MINING WASTE DISPOSAL GUIDELINES WHICH MIGHT LEAD EITHER TO DNR RULES OR, MORE PROBABLY, TO DRAFT LEGISLATION. THERE IS THE EXPECTATION ON THE PART OF THE ENVIRONMENTAL GROUPS, INDUSTRY, AND STATE GOVERNMENT THAT THE RESULTS WILL BE REFLECTIVE OF A TRULY CONSTRUCTIVE CONSENSUS APPROACH SIMILAR TO THAT EXPERIENCED IN THE DEVELOPMENT OF THE MINE RECLAMATION LAW IN 1977.

WITH THE ENACTMENT OF THE NEW RECLAMATION LAW AND THE PROSPECTS OF A NEW SOLID WASTE LAW, THE LEGISLATIVE FRAMEWORK FOR ENVIRONMENTAL PROTECTION WILL HAVE BEEN ESTABLISHED. IT IS OUR HOPE THAT THE SAME CONSENSUS SPIRIT WILL PERSIST AND WILL RESULT IN THE WRITING OF REALISTIC REGULATIONS AND REASONABLE STANDARDS.

EXXON'S GOAL IN THIS ENTIRE PROCESS IS TO WORK IN AN ATMOSPHERE OF OPEN PLANNING WHILE DEVELOPING AN ECONOMICALLY ATTRACTIVE PROJECT. IN DOING THIS, WE INTEND TO REMAIN SENSITIVE TO THE WANTS AND THE NEEDS OF OUR NEIGHBORS IN THE NORTHWOODS OF WISCONSIN, AS WELL AS GAIN THE GOODWILL AND RESPECT OF ALL WISCONSINITES. WE HAVE PLEDGED TO SEEK THE COUNSEL OF THOSE COMMITTED TO PROTECT THE ENVIRONMENT, AND TO COMMUNICATE THE PROGRESS OF OUR STUDIES TO ALL CONCERNED. THIS IS A COMMITMENT THAT CAN AND WILL BE MET.

SINCE THE ESTABLISHMENT OF THE CRANDON PROJECT OFFICE IN MID-1977, THE EVALUATION TEAM HAS GROWN TO 14 PROFESSIONALS CONDUCTING FEASIBILITY STUDIES, DESIGNING PRELIMINARY SURFACE AND UNDERGROUND FACILITIES, AND CONTINUING THE ENVIRONMENTAL ASSESSMENT. EVEN THOUGH OVER $20 M HAS BEEN SPENT TO DATE ON DIAMOND DRILLING AND FEASIBILITY STUDIES, ALL OF THE ANSWERS ARE NOT IN. CONSIDERABLY MORE PROFESSIONAL WORK WILL BE REQUIRED TO EVALUATE THE VIABILITY OF A CRANDON MINE/MILL PROJECT, AS WE WORK TOWARD KEY DECISION POINTS.

BUT, THROUGHOUT THE FEASIBILITY STUDY PHASE, WE ARE CLEAR ON OUR COMMITMENT TO SEEK INPUTS FROM RESPONSIBLE SOURCES AND TO MAKE PUBLIC IMPORTANT PROJECT INFORMATION.

NOW, TO LOOK FORWARD A BIT, THE LEGISLATURE IS CONSIDERING ACTION ON OTHER FRONTS, TOO:

- LONG-TERM LIABILITY OF MINING COMPANIES IS BEING DEBATED. AT ISSUE IS THE INTEREST OF SOME IN CREATING LIABILITY, IN PERPETUITY, FOR MINING COMPANIES, REGARDLESS OF THE OWNERSHIP OF THE POST-MINING PROPERTY.
- THE STATE IS CONSIDERING LEGISLATION TO REQUIRE REGISTRATION OF ALL SEVERED MINERAL RIGHTS -- FOR A FEE. ALTHOUGH SUCH REGISTRATION COULD NOT BE USED TO PROVE OWNERSHIP, FAILURE TO REGISTER SEVERED MINERAL RIGHTS WOULD RESULT IN FORFEITURE OF THESE RIGHTS TO THE STATE.

OTHER ISSUES AND ADDITIONAL LEGISLATION CREATING YET MORE UNCERTAINTIES LIKELY WILL DEVELOP WHICH COULD SERIOUSLY IMPACT UPON THE ABILITY OF THE MINING INDUSTRY TO ESTABLISH A COMPETITIVE OPERATION IN WISCONSIN.

IT IS TIME FOR ALL OF US IN WISCONSIN -- LEGISLATORS, STATE AGENCIES, ENVIRONMENTALISTS, AND THE NEW PROSPECTIVE BADGERS -- TO PAUSE AND SEE WHERE WE'VE BEEN AND WHERE WE'RE HEADED. THAT EXERCISE, I AM CONVINCED, WILL CLEARLY DEMONSTRATE TO ALL CONCERNED A VERY BASIC PRINCIPLE:

- WHERE THE CONSENSUS APPROACH IS USED IN PROBLEM SOLVING, THE RESULTS ARE POSITIVE; BUT WHERE CONSENSUS IS DENIED, THE SOLUTIONS LIKELY WILL BE UNWORKABLE.

OUR HOPE IS THAT THE LESSONS LEARNED IN WISCONSIN IN SOLVING ENVIRONMENTAL PROBLEMS CAN BE APPLIED ELSEWHERE -- AT THE FEDERAL LEVEL AND IN OTHER STATES, BUT MOST IMPORTANT, TO ADDRESS THE YET-UNRESOLVED ISSUES IN WISCONSIN.

IT IS TO THIS LAST POINT, ADDRESSING THE YET UNRESOLVED ISSUES IN WISCONSIN, THAT I WOULD LIKE TO OFFER A CHALLENGE TO WISCONSIN'S LEGISLATIVE LEADERSHIP -- A CHALLENGE TO ADDRESS ALL MINING ISSUES IN A CONSENSUS ENVIRONMENT AND TO DEVELOP A CONSTRUCTIVE AND POSITIVE MINING POLICY.

THROUGH THE PROCESS OF CONSENSUS, ALL WILL BENEFIT IN THE DEVELOPMENT OF A HEALTHY, COMPETITIVE, RESPONSIBLE DOMESTIC MINING INDUSTRY -- AN IMPORTANT INGREDIENT TO THE ECONOMIC AND SOCIAL WELL-BEING OF OUR NATION.

MEMORANDUM

TO: Members
Joint Finance Committee

FROM: Peter Peshek
Public Intervenor

James Derouin
Exxon Minerals Company

RE: Budget Amendment Relating to Mining "Super Hearing"

DATE: March 4, 1980

We support the amendment recommended to the Joint Finance Committee which would implement the mining "super hearing" created by Chapter 421, Laws of 1977.

In 1978, a special committee chaired by State Representative Mary Lou Munts and State Senator Michele Radosevich drafted what became Chapter 421, Laws of 1977 — completely rewriting Wisconsin's mining reclamation laws. One critical part of Chapter 421 was the provision in Wis. Stat. 144.836 that the hearing for all permits and licenses relating to a mining operation be heard in a single hearing along with the environmental impact statement for the proposed operation. It was subsequently discovered that many of the permits and licenses which will relate to a mining operation have their own notice and hearing requirements. As a practical matter, therefore, in order to achieve the goal of holding a single, combined hearing on all permits and licenses, it is necessary to cross-reference the various notice and hearing provisions and to specifically provide which of those provisions supersede the others. The proposed amendment to the Joint Finance Committee, therefore, implements the "super hearing" goal of Chapter 421, Laws of 1977.

The proposed amendment has the support of the Department of Natural Resources, the Public Intervenor, Wisconsin's Environmental Decade, Attorneys representing the Town of Grant (Rusk County), the Town of Nashville (Forest County), the Town of Lincoln (Forest County), Inland Steel, Kennecott Copper Corporation and Exxon Minerals Company. It is procedural only — no substantive changes with respect to the requirements of any permit or license are made. Further, the statutory requirements with respect to the "super hearing" mean that greater notice, and notice further in advance of the hearing, is given than that provided under the individual statutes relating to individual permits or licenses relating to mining.

In conclusion, we highly recommend and endorse this amendment to implement a goal set forth in Chapter 421, Laws of 1977. It will allow an expeditious conclusion to the drafting process by the Department of Natural Resources on rules relating to mining reclamation and waste disposal. In this respect, positive action on this amendment is highly desirable and very necessary.

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1970's

WISCONSIN'S STRATEGY FOR PREPARING FOR A NEW MINING INDUSTRY-- CONSENSUS OR CONFLICT

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.

Minnesota is preparing itself for a new era of copper-nickel mining. A four year, $4.3 million, study has been completed about the mining of this resource in Northern Minnesota. Political and government agency review of this study is now taking place.

Wisconsin is also 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) an overview of the Public Intervenor's role in Wisconsin mining issues; 2) a historical overview of new mining opportunities; and 3) political consensus, the roots of consensus on mining issues in Wisconsin, the environmental need for consensus, the risks of participating in consensus politics, accomplishments already achieved from consensus politics and potential problems of the consensus approach.

AN OVERVIEW OF THE PUBLIC INTERVENOR.

The Public Intervenor is an Assistant Attorney General in the Wisconsin Department of Justice. The office was authorized by the 1967 Wisconsin Legislature when the Wisconsin Department of Natural Resources (DNR) was created. The office was authorized at the request of the Wisconsin Wildlife Federation and other traditional conservation forces.

The Public Intervenor is charged by the Wisconsin Statutes with the responsibility of advocating and seeking protection of public rights in the environment. Because the public has so much to gain or lose from appropriate or inappropriate copper and zinc mining in Wisconsin, the Citizen Advisory Committee to the Public Intervenor has directed that metallic mining be the number one program priority of the Public Intervenor's office.

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.

Kennecott was the first and only 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.

There were three very valid reasons for the citizens' conclusions that Wisconsin was not yet ready to issue any new permits authorizing the mining of copper and zinc. First, Wisconsin did not, and still does not, have in place a regulatory scheme to protect the environment from the dangers of waste containment areas and tailings ponds associated with copper and zinc mines. Neither does the federal government have such regulations. It will not have such rules until at least 1984. In the absence of a well-recognized and well thought out comprehensive regulatory process, it would have been inappropriate for the State of Wisconsin to grant permits for new zinc and copper mines.

Second, DNR was not, and still is not, staffed or financed today at a level to warrant public confidence that it can effectively regulate the new mining industry. However, substantial progress has been made in this area, and there is every reason to be optimistic that this problem can be overcome.

Third, Wisconsin did not, and still does not, have a long-term liability protection program for the Towns and Indian Tribes that will be impacted by the new mining activity. However, representatives of industry, local units of government and environmentalists are meeting weekly to develop appropriate legislation. It is my hope that such legislation will be enacted during the Spring, 1980, session of the Legislature.

For these reasons and others, in October 1976, the Town of Grant hired Attorney Kevin Lyons, a well respected trial attorney to protect its interests. It spent $24,000 of Town money over the ensuing two and one-half years. The Town of Grant solicited and received the support of the Natural Resources Defense Council and the Public Intervenor. Together, these three groups embarked on an effort to protect Wisconsin's human and natural environment from inadequately regulated mining.

Within a short period of time, all three lawyers and their clients came to recognize that Wisconsin was not then in any position to intelligently determine whether, or under what conditions, Kennecott should be permitted to mine its Ladysmith ore body. It was even more evident that the State of Wisconsin did not have a comprehensive and integrated regulatory scheme for copper and zinc mining.

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 Kennecott was one of conflict, both legal and political. The Town succeeded in all of the legal proceedings that have been completed. Kennecott even paid the Town of Grant money towards legal fees as part of the final settlement in March of 1979. No mining permit was ever issued.

THE ROOTS OF CONSENSUS ON MINING ISSUES IN WISCONSIN.

Immediately upon the adjournment of the Kennecott mining permit application hearings in November of 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 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."

A comprehensive new regulatory scheme for metallic mining was developed. The new legislation was developed, thanks in very large measure to a commitment of industry, Legislators, town governments and environmentalists to develop a consensus bill. All legitimate needs and interests were dealt with fairly and openly. This legislation was adopted by a nearly unanimous vote of the Wisconsin Legislature. Since that time, final administrative rules for the Metallic Mining Reclamation Act have been put in place by the Department of Natural Resources.

However, because of the lack of federal direction and the complexity of the problem, the Wisconsin Legislature did not make any final decisions about the location and regulation of waste containment areas associated with copper and zinc mines. That decision was delegated to the Department of Natural Resources and the Metallic Mining Reclamation Council. The Council will recommend rules which DNR is to adopt. The Department and the Council are to complete their work by May 21, 1980.

THE ENVIRONMENT NEEDS CONSENSUS.

Given the high rate of success in litigation, why is it then that the Towns of Grant, Nashville and Lincoln, Wisconsin's Environmental Decade, the 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 $200,000 participating in the development of the Wisconsin Administrative Code "super rule" NR 135, for the protection of the environment from metallic mining waste. 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 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 that the Towns and the environmentalists needed allies to overcome Department of Natural Resources' 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 is beginning to play a major role in the development of Wisconsin's mining policy.

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 particular parties' legitimate needs can be protected.

RISKS OF PARTICIPATION IN CONSENSUS PROCESS.

The environmental movement is exposed to three risks when participating in the consensus process for the development of public policy for metal mining in Northern Wisconsin.

First, an outside observer looking at the process may conclude that the environmental movement is being soft on the mining companies. That 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 in consensus policy involvement 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 from Kennecott, Jim Derouin from Exxon, or Guy Quinn 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 this consensus process was initiated in early 1977 by State Representative Mary Lou Munts and State Senator Michele Radosevich, consensus 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 county. 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 deal with the specific problem of how to protect Northern Wisconsin from mining wastes. When these rules are completed, Wisconsin will have administrative rules establishing basic statements of public policy about the need for protecting our environment, 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 Department of Natural Resources 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 the DNR, on the issue of regulating metal mining, are beginning to be corrected. There remain significant manpower problems at DNR to effectively regulate metal mining. There is almost no socio-economic analysis staffing at DNR. There is a shortage of geo-technical personnel in the field of metal mining in the Department of Natural Resources. 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.

Fifth, 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 of 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 five and one-half years after the law began to require such permits. 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 of 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 by the end of Spring, 1980.

POTENTIAL PROBLEMS FOR THE CONSENSUS APPROACH.

There remain two significant potential problems with the continued use of the consensus approach to policy development for mining in Northern Wisconsin. First, the maintenance of a feeling of mutual trust and effective exchange of ideas depends

upon the ability of every party to bring necessary skills, resources, and power to the bargaining table. For town governments this means, in part, the ability to retain experts and lawyers to assist the local citizens. Mining companies will retain a large number of the best lawyers from the Wisconsin and national legal market. The towns need to draw on the same pool of skilled legal talent. Such talent is expensive, even if the lawyers are donating part of their time as part of their service to the Wisconsin community. It is imperative, in order to ensure fundamental fairness to the towns, that Wisconsin's Mining Investment Impact Fund Board allocate sufficient monies to the local communities so that they can effectively participate in the consensus approach to mining policy development for Northern Wisconsin. Moreover, it is just as important to the mining companies that the towns have sufficient legal representation to assist their local communities and articulate their views in the legal process. If the towns do not have these resources, the policy-making process can be slowed down. If negative stances must be taken by the towns, because of a lack of fair process, mining companies will also suffer. Given the large volume of requests for monies allocated by the Mining Impact Board, careful consideration must be given to the current historical setting in which Wisconsin finds itself during this effort to develop mining policy for Northern Wisconsin.

Second, the towns in the environmental movement must be concerned about those "outside" mining companies which are trying to torpedo the work of the mainstream mining companies who are

participating in the consensus approach. For example, Exxon's representatives had a great deal to do with the ultimate compromise legislative package requiring geological data to be turned over to the state geologist. The package was a compromise bill between the mining industry and others. Despite this compromise, Noranda has seen fit to challenge the constitutionality of the statute and to secure an injunction against the enforcement of this valuable public information tool. Such activity on the part of companies, like Noranda, will have a negative impact on the consensus approach to policy development if it continues to any appreciable degree.

CONCLUSION.

The Citizen Advisory Committee to the Public Intervenor and the Public Intervenor are pleased with the direction Wisconsin public policy has taken on mining in the last three 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 role in that policy growth.

Prepared by

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A FIRST ENVIRONMENTAL CASE

By

Kevin J. Lyons

In the late 1960's, while I was still in law school, Kennecott Copper Corporation discovered a small but rich deposit of copper in the Town of Grant, Rusk County, Wisconsin. Operating as either Bear Creek Mining Corporation, or Flambeau Mining Corporation, Kennecott then proceeded to buy land and to plan the construction and development of a copper mine in the Town of Grant. In the spring of 1976, the Wisconsin Department of Natural Resources held a hearing on the adequacy of an Environmental Impact Statement (EIS) for the Kennecott project, an EIS required by the Wisconsin Environmental Protection Act (WEPA), the state equivalent of the National Environmental Protection Act (NEPA). Before testimony began, the Wisconsin Department of Natural Resources (DNR) hearing examiner ruled that the only lawyer allowed to ask questions would be the Kennecott lawyer, who would be questioning his own witnesses. The examiner also ruled that there would be no cross examination of the Kennecott witnesses by anyone. The Kennecott lawyer then called and examined his witnesses, all of whom supported the EIS. This unanimous support was not too surprising, since the DNR's

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EIS was nothing more than the Kennecott Environmental Impact Report (EIR) with a new title page. At the end of the hearing, the examiner ruled that the EIS was adequate. This ruling removed the second last and apparently largest barrier to mining by Kennecott. The last barrier, a public hearing on Kennecott's mining permit application, was scheduled for mid-November, 1976. Kennecott thought it would obtain its mine permit then, and begin digging its open pit mine in February, 1977. Kennecott has yet to dig so much as a teaspoonful of earth in Wisconsin.

What happened is secondarily an illustration of what a trial lawyer did when confronted with his first environmental case. Primarily it is the story of how a rural town of 926 people fought a large, multinational, multibillion dollar corporation and won. But we are here as lawyers to discuss our role in environmental cases, especially the first case, so I will emphasize the secondary aspect of the story. In my remarks I will treat broadly a range of subjects, each of which could easily take up all of my time. These include client relations, parties, discovery, supporting resources, the press, politics, the law, environmental impact statements, typical issues, legal creativity, and business aspects of environmental lawyering. These disparate subjects all form a coherent whole, all come together in the Kennecott story, my first environmental law case.

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