In May, 1976 people of the Town of Grant realized that something was wrong when the hearing examiner would not let them ask any questions at the hearing on the adequacy of the Environmental Impact Statement. So they attempted a pro se appeal which, not surprisingly, was dismissed on procedural grounds. Months went by and they then sought help from the Public Intervenor, an Assistant Attorney General who represents the public in Wisconsin in all environmental matters. Although he could and did intervene in this case, he could not represent the Town individually, so he gave the people a list of private lawyers who might take the case. My name was on that list.

Late in October, 1976, I received a telephone call from a man who identified himself as the Town Clerk of the Town of Grant. I agreed to meet with a delegation of five town officials, and did so that same afternoon. They told me what had happened and what their many environmental concerns were. Having heard their story, I advised them that they had little chance of stopping this project because they had lost their best opportunity at the time that the Environmental Impact Statement had been ruled adequate. To further discourage them I quoted a high fee on the ground that I would have to put everything aside to take this case and prepare for hearings some three weeks away. Instead of being discouraged, the people agreed at once and asked me to try to get them some time--even if the project would ultimately go ahead--so they could seek relief from the Wisconsin Legislature. I agreed and took on what I thought was the weakest case I had ever seen.

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The first thing I did was to call the Kennecott lawyer to try to negotiate a settlement of the case. He refused to discuss negotiations, let alone negotiate, a posture he maintained for more than two years. With negotiation out of the question, the only remaining choice was to litigate. I started to prepare my case the way I would any other case, except that I tried to do everything much faster since I had only three weeks before the mine permit hearings were to begin.

First I traveled to the Department of Natural Resources to review its file on the project. There I was confronted with file cabinets full of information ranging from economic analyses to fish and wildlife studies to environmental protection reports. Seeing this large mass of material, which had been accumulated over a period of years, I realized that it would be impossible to master all of the elements of the substance of the case. So I selected what seemed to me to be the most important documents and reviewed those carefully, while simply skimming many others and ignoring some altogether. I concluded that my best opportunity for obtaining the time which my clients wanted was to mount a procedural attack designed to delay the proceedings. I discussed this strategy with the Public Intervenor and with a lawyer for the National Environmental Defense Council, a group which had intervened in this case earlier. We agreed on the strategy and divided the work among us as evenly as we could.

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The next order of business was a thorough review of the many statutes and administrative rules which clearly did or arguably could be made to relate to the proposed mining project. To my chagrin I found that the administrative law of procedure which would govern this case did not contain provisions for discovery, so I decided to proceed to request discovery and to file motions as though the Wisconsin Civil Procedure Code, a code almost identical to the Federal Civil Procedure Code, applied to this case. I filed approximately twenty-seven written pre-hearing motions seeking an adjournment of the hearing, discovery, and dismissal of the mine permit application on the grounds ranging from inadequate time to prepare, to deprivation of due process of law (on the ground that Wisconsin administrative law did not provide for procedural safeguards insuring a fair hearing process), to lack of evidentiary standards. For example I argued that the Environmental Impact Statement, earlier ruled adequate at the Spring, 1976 hearing, should be excluded from evidence at the mine permit hearing on the ground that it constituted hearsay. To my surprise and to the dismay of the Kennecott lawyer, the hearing examiner agreed to admit the Environmental Impact Statement, but not for the truth of any allegation it contained. Rather he admitted it only for the limited purpose of showing that the Department of Natural Resources had complied with the law and prepared an Environmental Impact Statement.

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This ruling alone would have obtained for my clients many months, and perhaps years, of additional time since Kennecott was not prepared to call as witnesses all of the people who had been involved in preparing the Environmental Impact Report which became the Department of Natural Resources Environmental Impact Statement. Over 100 people had been involved in the preparation of the document, and Kennecott had brought no more than about eight of those people to testify at the mine permit hearings.

This ruling significant as it was, was not the one which eventually stopped the Kennecott project. In our legal researches, the Public Intervenor and I had discovered that there was a statute requiring that a mining company obtain local zoning approval prior to receiving a mine permit from the Department of Natural Resources. Not only had Kennecott failed to obtain local zoning approvals, it had not even mentioned this subject in its Environmental Impact Report, as required by state law. I raised this issue by motion, but the hearing examiner took the motion under advisement and refused to dismiss Kennecott's application on this basis. While this looked to be a good issue, and a potential winner, the issue was frought with political problems. There was no reason to think that the County Zoning Committee would change, since many of the people in the County and on the County Zoning Committee favored mining. Although the people of the Town of Grant had only one citizen on the 21-person County Board, they managed to obtain a resolution, passed

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by the County Board unanimously sitting as a zoning committee of the whole at the same time the mine permit hearings were proceeding, which said that the County would give no mining company any zoning permits or approvals or changes unless and until the Wisconsin Legislature acted to give local communities tax relief. With this extraordinary resolution in hand, I orally renewed my motion to dismiss Kennecott's application for failure to comply with all applicable state laws. The hearing examiner--an examiner different from the one who had ruled on the adequacy of the Environmental Impact Statement--denied the motion for a dismissal, but granted a request for an indefinite adjournment of the hearings. Although the adjournment had been granted in order to give Kennecott a chance to comply with state law, the adjournment infuriated Kennecott management people and the Kennecott lawyer and Kennecott continued to refuse even to discuss negotiations until approximately December, 1978.

At this point the lawyer for the National Environmental Defense Fund dropped out of the proceedings because he had ostensibly gained what he wanted on his principal issue. For Kennecott had, through its lawyer, agreed on the record to proceed from that point forward in its own name, rather than in the name of Flambeau Mining Corporation. This issue was of great significance to all of us because we were concerned that, if there were some damage resulting from the mining project, the only defendant we would have

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in any lawsuit would be a shell corporation that would not have assets. Despite this representation on the record, Kennecott refused to amend the caption of the case to substitute Kennecott Copper Corporation for Flambeau Mining Corporation. (Eventually, in early 1979, Kennecott resisted discovery on the ground that the subpoenas were for officers of Kennecott Copper Corporation, people who were not employees of Flambeau Mining Corporation.)

After the adjournment was granted, the hearing examiner took it upon himself to engage in an ex-parte communication with the Kennecott lawyer in which he urged the Kennecott lawyer to amend its application as soon as possible. Instead of amending its application, the Kennecott lawyer called the Secretary of the Department of Natural Resources, a cabinet-level officer appointed by the governor in Wisconsin. In this ex-parte communication, the Kennecott lawyer urged the Secretary to reverse the action of the hearing examiner and direct the hearing examiner to resume hearings on the Kennecott application. About two days after this ex-parte communication, I received a copy of a letter from the Secretary to the hearing examiner in which the Secretary directed the hearing examiner to resume the hearings. I and the Public Intervenor promptly sent letters to the Secretary, with copies to all parties, in which we pointed out that ex-parte communications of the kind had between the Secretary and the Kennecott lawyer were forbidden by state law and that a reversal of that kind, in our view, violated our clients'

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rights to due process of law. Two or three days later, the Secretary wrote another letter to all parties in which he withdrew his direction to resume the hearings. He stated that the hearing examiner's decision would stand as the decision of the Department. From my client's standpoint, the decision to adjourn the hearings indefinitely was a great victory because it got the Town the time it wanted. From Kennecott's standpoint, the decision was abhorrent and Kennecott promptly filed the first of a number of appeals it was to file in this case.

After this issue had been resolved, I and the Public Intervenor filed a series of petitions for declaratory rulings in which we asked the Department of Natural Resources to declare, among other things, that mining wastes were subject to regulation under the State's solid waste rules and further to declare that certain other rules concerning point sources of pollution applied to metallic mining. Keep in mind that, with the exception of two small mines, Wisconsin had experienced no significant metallic mining since the nineteenth century. Although the statutes and rules regarding metallic mining in Wisconsin were either nonexistant or primitive at best, it was most important to my client to obtain whatever environmental protection it could through these declaratory rulings, the pendency of which would also give my client time to seek relief from the Wisconsin Legislature. My client did receive relief from the Wisconsin Legislature in the form of bills passed in

the 1977 legislative session. (A summary of these bills constitutes Appendix A.)

About six months went by and Kennecott still did not amend its mine permit application to show compliance with county zoning law. I and the Public Intervenor then filed motions to dismiss the Kennecott application for failure to comply with applicable zoning law and for failure to prosecute the application in that Kennecott had not amended it to show compliance with the zoning law. After a few more months, the hearing examiner granted that motion and dismissed the Kennecott application. This dismissal was a major victory for my clients because it guaranteed that they would have a matter of years in which to seek help from the Legislature and other sources, rather than the months which they had gained earlier. For its part Kennecott promptly appealed this decision. There was then scheduled a pre-hearing conference on the petitions for declaratory ruling, and Kennecott used these to start additional legal battles. At the pre-hearing conference, Kennecott served me in an untimely fashion with motions seeking a dismissal of the petitions for declaratory rulings. The hearing examiner summarily denied these motions. Kennecott asked for, and received, a written decision denying these motions, and it promptly appealed that decision. Eventually the Town of Grant found itself a party to eight different legal proceedings, including three separate legal appeals

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and a number of administrative actions. As these cases wound their way through administrative agencies and the courts, the Town of Grant never lost a single decision. Thus around December, 1978 the Kennecott lawyers concluded that negotiation was in order, and negotiations did in fact begin.

Negotiations, however, did not involve any of the environmental or economic and social issues which the Town had attempted to raise with Kennecott long before it hired me, and which I attempted to raise with Kennecott in my efforts at negotiation. Instead they dealt with ways in which Kennecott could extract itself from the morass of litigation resulting from the eight separate legal proceedings then pending. Negotiations proceeded fitfully and haltingly from the beginning. During one of the halts in about January or February, 1979, the Public Intervenor and I decided to subpoena employees of Kennecott Copper Corporation for discovery. Kennecott filed a motion seeking to quash these subpoenas on the ground that the persons subpoenaed were employees of Kennecott Copper Corporation and not Flambeau Mining Corporation, and maintained that it was Flambeau Mining Corporation that sought the mining permit and not Kennecott Copper Corporation. We filed counter-affidavits pointing out that the Kennecott lawyer had stated in November of 1976 that from then on Kennecott would do everything in its own name rather than in the name of Flambeau Mining

Corporation. Kennecott appeared at the hearing on the motion to quash but did not give the examiner a chance to rule. Instead it indicated that it would open all of its files to us if we would inspect them in Salt Lake City. We agreed, and the Public Intervenor traveled to Salt Lake City and examined the Kennecott files at great length. He photocopied many documents which have proved to be most helpful to our case. For example, he discovered a letter by a corporate vice-president in which he referred to Wisconsin as "the People's Republic of Wisconsin." He also discovered a document which indicated that, contrary to all public statements made by Kennecott, it could avoid using a wetland in the Town of Grant for its mine tailings pond. We have since used these documents to great advantage not only in the Kennecott case itself, but also in persuading administrative agencies and legislative committees of the need for rules and statutes which will enable towns to deal effectively with large mining companies.

After obtaining these documents, the negotiations began again. Kennecott took the position that it would voluntarily dismiss all of its appeals and become a "passive participant." I refused to agree to the voluntary dismissals of the appeals, and indicated that I wanted to recover attorneys' fees and costs under the Wisconsin Frivolous Claims Statute (1977 Wis. Stats. §814.025). Eventually my town client did agree to the voluntary dismissals of all appeals, but only if Kennecott paid the Town

a sum of money to help defray legal expenses incurred in responding to these appeals. Kennecott did make a payment to the Town, a payment which it characterized as a donation to the Town Park Fund.

Even this settlement did not go smoothly. On the day on which all the lawyers were to sign the settlement documents, and after all the documents had been approved, the new president of Kennecott Copper Corporation received a letter from an employee at the Wisconsin Office of Business Development, a cabinet-level agency. This employee suggested that Kennecott should not settle on the terms agreed to, and indicated that more favorable terms could be obtained. At long last Kennecott and I and the Public Intervenor agreed on something; namely, that this letter was an extraordinary intrusion on the rights of the parties, and that it constituted a most serious threat to the prospect of settlement. I and others then contacted the Secretary of the Office of Business Development and described for him the action taken by his employee and its potentially disastrous consequences. He promptly called the president of Kennecott Copper and told him to ignore the letter, and the case was finally settled on the terms to which we had agreed. As of today Kennecott has negotiated with two potential buyers, but now seems to want to hold on to the property. It has not, however, either amended its old application or filed a new mine permit application, which it would probably have to file since its old application is now outdated and since the many

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litigation hearings held reveal that much of its content was insufficient. In my view it will probably take about three years for Kennecott to be able to start mining from the date on which it files a new mine permit application, so my clients have received all the time they wanted and then some.

I believe that the Kennecott Copper case includes illustrations of all the subjects which come up typically in environmental cases. At least in my subsequent cases,--including representing a town and county in its dealings with Exxon U.S.A. and representing various private clients on environmental matters--I have found these same subjects or issues recurring. In my view the Kennecott Copper case provides a list of suggestions for a trial lawyer handling his first environmental case:

1. Don't be afraid to take on a case because the subject matter is foreign to you. Trial lawyers regularly take on cases where they have to learn quickly a new subject area. In short, treat the case the way you would any other large piece of litigation involving a new subject. Study the subject as completely and thoroughly as you possibly can.

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2. Find, read, and study all of the law applicable to your environmental case and then extend your study to all the law that you can imagine might apply to your case, and include both procedural and substantive law. Read federal, state, and local law, and keep possible interrelationships in mind.

3. Find out who the parties are. You will need to know the relationship of your client to federal and state agencies, environmental groups, indian tribes, and the like. Accurate knowledge of these relationships is important to understand the motives of the parties and to be able to estimate what a given party is likely to do in a given legal situation.

4. In a large environmental case, do not be surprised to find political considerations entering into decision making. Thus it is most important for you to be sensitive to the politics involved in your case.

5. Be prepared to litigate both procedural and substantive questions. In my view no party can hope for a fair result if, for example, the administrative process does

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not guarantee due process of law to all citizens, individual and corporate alike. For example, there should be, in my view, a right to cross examine witnesses in administrative hearings, a right to counsel at these hearings, and other due process safeguards.

6. Learn and understand the interconnectedness of the environment. For example, wetlands can provide flood control, prevention of siltation, prevention of over-fertilization of nearby lakes, control of erosion of shoreline wildlife habitat, a part of the food chain, etc.

7. Don't be content with labeling or categorizing. For example functional analysis of wetlands will lead to better laws than will a mere typing. Protect what a wetland does, not a class of wetlands.

8. Beware of parties attempting to isolate parts of the environment as tradeoffs in negotiation. For example, a party might suggest a particularly strict surface water protection rule in

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exchange for a lax wetlands rule. But this tradeoff shows a lack of understanding of the interrelatedness of the parts of the environment, specifically surface water and wetland.

9. Use the print and electronic news media to enlist public support for your cause and to bring political pressure to bear, wherever public support and political pressure are necessary to components of your case. In dealing with the media be scrupulously honest and fair. You may offer stories, but do not demand them. Be accessible. If you treat the media fairly, it will treat you fairly.

10. Large companies typically have plenty of money to spend on experts and other support people. As you may well not have the money for experts and other support people, there are ways that you can get this help. You can find legal research help through law schools, many of which have environmental law societies which may be willing to provide legal research to you. Universities are a good source of expert witnesses for the whole range of

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environmental questions. In addition, you can organize interested citizens into support groups to perform tasks as researchers, media monitors, legislative monitors, and company watchers. These citizens can provide invaluable intelligence to you which you can use in the organization and preparation of your case.

11. Do not overlook the fact that the United States Army Corps of Engineers may well play a role in your case if your case involves the possibility of water pollution. The Corps has the authority to require environmental impact statements where it has jurisdiction under the Water Pollution Act.

In summary my experience is that the keys to successful environmental litigation are the same as the keys to successful litigation in any other field: thorough and detailed knowledge of the substance of your case, mastery of the procedural law, a constant insistence on due process of law, and a mastery of the usual courtroom and negotiation skills of a trial lawyer. The ultimate lesson of the story of the Kennecott Copper case is that it is only the law which will protect the people in an otherwise unequal contest between a large and powerful corporation and a poor and powerless town or

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individual. The law can be the equalizer if skilled trial lawyers are prepared to use it.

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MINING LEGISLATION IN WISCONSIN, 1977 - 1979

1. In the 1977-78 period, seven mining bills were passed:

Ch. 31 of the Laws of 1977 (Senate Bill 111) established a net proceeds tax on metalliferous mining, exempting the first $100,000 of annual net proceeds and taxing the balance with a progressive scale reaching a maximum of 20% on that part of net proceeds which exceeds $30 million in each year.

The tax is in force; Inland Steel (Jackson County Iron Co.) has declared that it had no taxable net proceeds for mining in 1977. The company also claims that mining the previous year "falls through the crack" between a previous 1.5% tax on gross output and the new tax; Inland has refused to pay any tax at all on output for the previous year. The result was a critical financial impact on local governments and school districts.

Ch. 185 attempted to assist those local entities by guaranteeing a fraction of the previous level of payments to them for several years; it also introduced an annual index number adjustment to raise the maximum payments to counties according to price index changes from year to year.

Ch. 423 (Assembly Bill 1260) modified the membership in the Investment and Local Impact Fund Board, which administers the distribution of the local share of the net proceeds tax revenues. An additional county official was appointed, making the membership two county officials, one city official, one town official, one school district official, two state officials and two public members. The revenue split was changed from 50/50 to 60/40, in favor of the Fund; audits were required for the use of fund payments, and the maximum amount which counties could receive without having to justify their need as mining-impact related, was raised to $750,000 in one year, out of 20% of the net proceeds taxes generated in the county.

Ch. 421 (Assembly Bill 1045) made major changes in the Metallic Mine Reclamation Act, to increase environmental protection, improve the process for acting on applications for prospecting or mining permits, protect public interests that might be harmed by mining, and mitigate adverse community impacts.

Ch. 420 (Assembly Bill 1044), repeals earlier law allowing mining companies almost unlimited power to convey water over lands owned by others. It also regulates the withdrawal of both surface and underground water by mining operations.

Ch. 253 (Senate Bill 568) reformed the laws governing exploration leases and mineral conveyances in general. Leases, options and conveyances must be recorded with relevant financial details, and owners may cancel within 10 days (90 days for public lands), owners may also cancel if companies have not applied for a prospecting permit within 10 years, or have not obtained a mining permit in 20 years. No lease may extend for more than 50 years without renegotiation.

Ch. 422 (Assembly Bill 1147) requires submission of geological information and samples obtained from exploration, prospecting and mining activities, to the State Geological Survey, and attempts to increase the information available to the public and to agencies preparing environmental impact statements, while protecting company proprietary confidentiality for reasonable periods.

Ch. 377 (Assembly Bill 1024) on Solid Waste Disposal contains highly relevant provisions for deciding pending issues on the treatment of mining wastes in relation to wetlands and other state and federal legislation. A new Metallic Mining Council was created, with broad public, environmental and company participation, to thrash out these issues and recommend definitive rules to the DNR.

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MINING IN NORTHERN WISCONSIN

"Consensus or Conflict"
October 11, 1979

James Derouin
Retained Wisconsin Counsel
Exxon Minerals Company, U.S.A.

It is my pleasure to be here this evening to talk about a topic which I believe has only of late begun to draw the attention it deserves — the rather unique political-legal process of "consensus" developed in Wisconsin to resolve major policy issues of statewide concern. This process is not, as I am going to point out, unique to mining is Wisconsin, but, because the issue of mining is much publicized, the process by which diverse parties relate to and communicate with each other toward obtaining common goals has drawn considerable attention — and, I think, deservedly so particularly because of the complex and often times emotional nature of the issues involved.

Before talking about mining issues, however, I might point out that the process we gather together this evening to discuss, consensus, is not a revolutionary idea. In Wisconsin, in fact, it is rather traditional — even if not always diligently followed. For example, since unemployment compensation was enacted in Wisconsin, and we were the first state to so enact such a law more than four decades ago, only once has there been an amendment to that law that was not an "agreed" bill between business and labor. Business and labor, of course, are typically perceived to have

about the same relationship as industry and environmental groups have. Another example of consensus is the charge of the University of Wisconsin to "sift and winnow" from among competing and alternative options to arrive at a best solution to a given problem. In the environmental era, there has been no environmental law since 1973 that has not been the result of negotiations between diverse groups and which has not been "agreed" legislation between business, environmental groups and the Department of Natural Resources. The results of this process include:

1. the creation of the Wisconsin Pollutant Discharge Elimination System water permit program in 1973;

2. the creation of the Wisconsin Solid Waste Recycling Authority in 1975;

3. the enactment of the Polychlorinated Biphenyl Act in 1976;

4. the rewriting of the Metallic Mining Reclamation Act and companion environmental legislation in 1978;

5. the rewriting of the Solid Waste Act in 1978; and

6. the rewriting of the Clean Air Act in 1979.

The significant fact with respect to the above legislation is that it is excellent environmental legislation, but it is also balanced, generally understandable (by lawyers' standards) and liveable legislation. Additional environmental legislation under review this year include amendments to the Clean Air Act and the water permit program — and, perhaps, a wetlands protection program. The significant fact with respect to this legislation is that none of it will pass unless the various parties to the process — business, agriculture, the environmental movement and the Department of Natural Resources -- can reach a common understanding.

Where did the impetus for the consensus movement with respect to environmental legislation in the 1970's come from. I can only speak for the business community because, when I worked on all of this legislation, I was under instructions from two clients — the Wisconsin Association of Manufacturers and Commerce (the trade association for business and industry in Wisconsin) and the Wisconsin Paper Council (the trade association for the pulp and paper industry in Wisconsin) — to seek liveable legislation. The mandate was not to block legislation unless balanced and fair legislation could not be obtained. Lest one think that this legislation was inconsequential to Wisconsin industry, I should note that the investment required for the pulp and paper industry alone in Wisconsin as a result of this legislation exceeded $400 million. This

$400 million, as most of you are well aware, however, has significantly improved the air and water quality throughout "paper country", particularly in the upper Wisconsin and lower Fox River valleys. As a result of this attitude on the part of the business community in Wisconsin, however, I have perceived a general reciprocity from the Legislature and from the environmental movement toward a reasoned approach to environmental issues.

This brings us to mining. If we were talking about garbage or sludge tonight, both of which are important environmental issues, we wouldn't have ten people here. Mention mining or tailings and we have a crowd. My point is this -- mining and the companies which it involves attract attention and, as a consequence, we all find ourselves in a fishbowl.

Exxon Company U.S.A., of which Exxon Minerals Company, U.S.A. is an operating division, is, as you know or have heard mentioned, a fair sized company involved in a variety of ventures related to natural resource development. Its involvement in mining has been fairly recent, but it has brought immense pride and confidence in its technological accomplishments in the oil industry along with it into the metal mining field. It has great confidence that, with the commitment from management which it has to do things right and to calculate into the cost of the Crandon project the full cost of all reasonable environmental regulations, it either has or will develop the technology to bring into operation a new generation mine in Wisconsin -- politics and economics permitting.

Perhaps most importantly from the viewpoint of the issues we are here this evening to discuss, Exxon has a philosophical commitment from management throughout the company that is not only compatible with, but supportive of, the approach to conflict resolution which I discussed earlier. Exxon had this philosophy and attitude when it came to Wisconsin. It had this philosophy and attitude when it came to me. I take no credit for Exxon having exhibited the willingness it has to have entered into the traditional Wisconsin consensus process to develop mining related environmental legislation and rules in Wisconsin. I have assisted and contributed along the way because, first, I am Exxon's retained counsel and, secondly, because this approach is fully consistent with my legal and philosophic approach to these issues. The client, however, has, at all times, led the way.

Now, one may ask, what is consensus? I define it as the process by which reasonable people communicate with each other to reach reasonable solutions to impossibly complex mutual problems. One then may further ask, is it worth it to be involved in this process and, if so, why? As a lawyer, if I acted only in my self interest, I would say that I didn't care. Like the ad says on TV — "you can pay me now or pay me later." You can pay me now to practice preventive law and attempt to resolve conflicts ahead of time or you can pay me later when the case gets litigated because there was no communication or willingness to listen to interested people of good faith during the project development.

I personally can think of no set of circumstances under which any party involved with a project such as Exxon is developing in Crandon benefits by not participating in dialogue. Whereas I am aware that in some quarters, particularly in Madison, this dialogue is looked upon with suspicion, I point out again that this process in entirely compatible with the traditions of this state as I have referred to previously — and, in fact, the process has a precedent on the international level where they call it "detente". Simply put, he who thinks that litigation is cheaper and quicker and will produce a better result is badly misleading himself. He who thinks that the only role that an attorney should play is to demean, befuddle, confuse and confound the person sitting on the opposite side of the table is not serving his client well whether he represents a company, a local unit of government, an environmental group or some other third party. You should note that an attorney, by education and training, is taught to be an advocate for a position rather than a mediator. I submit that militant advocacy, except where confronted by bad faith on the part of others, is not conducive to the consensus process nor in the best interests of the client — no matter who the client may be.

Let me say that I well realize that there may be those issues that are irresolvable -- or that may appear to be so. There are also always some who find solving problems harder than creating them. It, therefore, is important to note that we reserve our right to disagree with others just

as we acknowledge the right of others to disagree with us. We reserve the right, if we feel that we have been treated unfairly or in bad faith, to defend our rights and our position forcefully and fully just as we acknowledge the right of others, who may feel they have been dealt with unfairly or in bad faith, to pursue whatever legal course they feel will best protect themselves. The right to reasonably and responsibly disagree over legitimate differences of opinion is not altered or waived by being involved in the process of consensus. It hopefully means, however, that the number of times that the right to disagree needs to be exercised will be reduced -- and, who knows, may be eliminated.

Given the above, what does Exxon want:

1. It wants to know more about its ore body and what it will cost to develop the ore body.

2. If economics and politics permit, it would like some day in the future to develop the Crandon ore body.

3. It would like, at worst, at least the acceptance of the towns of Nashville and Lincoln, the Mole Lake Indian Reservation, Forest County and the surrounding area. At best, it would like their support. In this respect, it wants its project to have the greatest possible

positive local economic impact in all respects including employment.

With respect to the above, what does Exxon feel about some current mining related isses:

1. Does Exxon feel that any or all of the groups involved with its project have the right to have an attorney? The answer is yes.

2. Does Exxon view negatively the fact that these other groups have attorneys? The answer is no.

3. Does Exxon resent any of these groups participating in the legislative, rule making or permit process? The answer is no.

4. Does Exxon view with suspicion local groups who exhibit concern about their environment and the area within which they live and who seek legitimate information about them? The answer is no.

In closing, let me say that the environmental baseline and engineering development programs in which Exxon is involved are ongoing. Nothing is static. The data base that exists today is different than that which

existed yesterday; and the data base tomorrow will be different than the one that exists today. As is perhaps apparent by now, a mining project plan is developed on the scene — it is not something which exists at the time that the discovery of an ore body is announced nor, for that matter, for years following the discovery. This development process is improved by public interest and involvement like that which has been exhibited to date with respect to the Crandon project. As final information has been developed and become available on a variety of subjects, it has been handled and processed by all of the parties to whom it has been provided with great maturity, discretion and professionalism and meaningful comments have been provided by a variety of groups including the Department of Natural Resources and various third parties. The traditional way, of course, of applying for permits from the DNR has been for the applicant to do all of its homework with respect to a project in private and to submit it to the department en masse without prior involvement of either the department or local interests. The Crandon project has not, and will not, run that way. Exxon has a firm and ongoing commitment to work its planning process with the same philosophy that it has applied to its environmental legal and regulatory program -- to work in good faith with all interested parties who want to, in good faith, work with it.

In conclusion, I am reminded this evening of the comment to the effect that success has many parents, but that failure is an orphan. It is

personally satisfying to me this evening to observe that "sifting and winnowing", detente, sweet reasonableness or whatever words you want to apply to the term "consensus" is not, in this room, at this time, an orphan.

MINING IN NORTHERN WISCONSIN

Consensus Or Conflict

NOV - 8 1979

The Public Intervenor's Perspective

Nicolet College and the University of Wisconsin Extension Department are to be congratulated for co-sponsoring this most timely panel discussion, "Mining in Northern Wisconsin - Consensus Or Conflict." The subject matter of this panel is timely for two reasons. First, since so very much of the current activity involving metal mining in Northern Wisconsin is actually taking place in Wisconsin's capital city, it is important that residents of Northern Wisconsin have a frequent opportunity to be brought up to date. Second, a panel discussion of this nature requires participants to analyze their current role-playing and its relationship to the other key players. Such analysis should improve the entire process as we mold and shape the social, political and legal framework for mining in Northern Wisconsin.

THE ENVIRONMENT NEEDS CONSENSUS

Attorney Kevin J. Lyons of Milwaukee has outlined the long and bloody struggle the Town of Grant in Rusk County went through in its efforts to cause the people of the State of Wisconsin to take a hard look at the regulation of metallic mining. The approach employed by the Town of Grant was one of conflict, both legal and political. The Town was able to

succeed in each of the legal proceedings that have been culminated.

Given this high rate of success, 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? I would like to provide you with a list of at least six of the reasons why consensus makes sense for the environmental movement.

First, the results or work product of a consensus approach tends to be very logical. The ideas which have survived an intense scrutiny in the arena of competing ideas are those which have proven to be very sensible. The work product is not that which has had the most votes in a legislative-type setting, but that which has been scientifically, legally, and policy-wise proven to be the soundest.

Second, the end results of the political and legal process can often be less certain than in a consensus process. Particularly in the legal process, one cannot always predict the outcome with the kind of certainty that a good advocate is interested in providing for his/her client. 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 not allocated either the personnel or the financial resources necessary to do the tremendous job necessary in order for Northern Wisconsin to feel comfortable with new mining operations. It is necessary that the mining companies, who wish to develop major mining enterprises in Northern Wisconsin, provide major personnel and

cash contribution to the process. For example, I estimate that Exxon has spent well in excess of Two Hundred Thousand Dollars participating in the development of "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 of writing appropriate regulations are not available to the State of Wisconsin. The consensus approach infers 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 such determination will wear down the environmental group or the 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, so as to save energy and resources for those times and places when conflict is necessary.

Fifth, one of the significant reasons why the consensus approach to the development of mining regulations was selected by the environmental movement and Towns was that the Towns and the environmental movement needed allies to overcome Department of Natural Resources' inattention to 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 and an appropriate role in the development of Wisconsin's mining policy. The appointment of Scott Drane, as Mining Policy Coordinator to the Secretary of the Department of Natural Resources, is to be applauded. For the next several years, the position of the Mining Policy Coordinator is a job which should be attached to the DNR Secretary's office.

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

RISK OF PARTICIPATION IN CONSENSUS POLITICS

The environmental movement is exposed to two inherent risks when participating in consensus politics for the development of public policy for metal mining in Northern Wisconsin. First, an outside observer looking at the process, may likely conclude that the environmental movement is being soft on the mining companies. That observation would be based in large measure 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 expressed in the media about each other. While that perception may be developed, 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.

Second, consensus policy involvement is to a large measure dependent upon the personalities responsible for representing various parties to the proceedings. 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.

CONSENSUS POLITICS DOES WORK

Exxon attorney, James Derouin, has provided you with a historical oversight into how consensus has worked in a variety of environmental fields in Wisconsin since 1973. Since this process was initiated in early 1977 by State Representat Mary Lou Munts and State Senator Michele Radosevich, consensus has provided great dividends to the environment and to the towns in the field of mining. I would like to list several examples of 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 Federal level to regulate metal mining. Exxon's excellent role in the development of such legislation should be recognized.

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 of 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 Department 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 at DNR of geotechnical personnel in the field of metal mining. 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 such improvements to be made.

There are probably several hundred specific policy battles which have been won through the consensus approach. This paper is not intended to provide a complete listing. But it should be recognized that everyday policy decisions are being made about the value systems we apply in deciding whether metal mining will be permitted in Northern Wisconsin, and under what circumstances.

Two specific examples come to mind. First, on November 1, 1976, the Public Intervenor petitioned the Department of Natural Resources for a declaratory ruling that Wisconsin's solid waste laws be applied to mining wastes. For a long period of time, the Department opposed such a declaratory ruling. But today, I am glad to report that solid waste laws will play a significant role in regulating mining in Northern Wisconsin.

The second example of progress we have made involves a declaratory ruling petition filed with DNR by the Town of Grant on December 27, 1976. The Town of Grant, in that declaratory ruling petition, asked the Department to declare that tailings ponds and tailings pond pipes were point sources of pollution that required a WPDES discharge permit. Again, there has been signficant staff reluctance to apply this regulatory theory to mining wastes. It is now clear that this regulatory scheme also has a role to play in protecting Wisconsin's environment, and the Department's staff is expected to shortly develop a policy paper and draft administrative rules in this regard. Three years is a long time for a town to sustain one legal issue.

By now it should be clear, that not only do the towns in the environmental movement benefit from the progress that has been made, but so do the mining companies. Wisconsin has not done well in providing the mining companies the kind of certainty, direction, and regulatory assistance necessary to give corporate cooperate management the kind of security necessary to make wise go or no-go mining development decisions in Wisconsin. For

example, 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. DNR'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 real 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 insure 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 have to be taken by the towns because of lack of a

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 Wisconsin finds itself in during its 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 on 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 such as Noranda will have a negative impact on the consensus approach to policy development if it continues to any appreciable degree.

CONCLUSION

The Citizens 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 or 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
Peter A. Peshek, Public Intervenor

NOV - 8 1979

Good Evening Ladies and Gentlemen. My name is Scott Drane. I am the recently appointed Mining Coordinator for the Wisconsin Department of Natural Resources. I am pleased to have the opportunity to share comments with you here tonight. I would like to thank Dr. Gage and Nicolet College for making this opportunity available to all of us.

I would like to point out for you this evening a few of the things the Department is presently doing in order to respond to the upcoming mining issues. Under current statutory authority, the Department of Natural Resources has the legal responsibility to regulate any metallic mining development within the state's boundaries. Obviously a demanding task in view of what present and anticipated exploration in the state is likely to reveal. At the present time the Metallic Mining Council and other interested parties are assisting the Department in the review of existing rules and formulation of new rules regarding metallic mining in what has been called the concensus approach to rule making. The Department has a very unique relationship with members of this ad hoc or "concensus" group. Please keep in mind that mining is only one type of industrial development which the Department has regulatory responsibility over. The Department will have the ultimate task of implementing any new rules that are drafted, as well as remaining thorough and objective in dealing with the mining industry as with any other. The Department of Natural Resources is neither pro nor anti-mining. But if mining in the State expands, as it appears it will, it is the Department's legislative mandate to see that it does so in the most environmentally sound manner. Now, allow me to list some of the things we are currently doing to insure that environmental protection:

1. For several months now the Department has been engaged in an extensive review and analysis of its current statutory obligations, attempting to define and rectify conflicts, oversites and redundancies in those laws, i.e., the conflict identified between initiation of the WEPA process and the exclusion of solid waste facilities to the WEPA process. Obviously, the solid waste question is paramount to most mining proposals. It is critical to any development that all of the appropriate rules and permits governing it be identified early and their relationship to specific projects as well as one another be clearly understood.

2. Mining is in some ways different and perhaps more interdisciplinary than other industrial developments. These differences include the inflexibility of the mine location, the long-term nature of the operation, and the social and economic questions and opportunities surrounding a mine development. Recognizing this, the Department has anticipated future needs by creating a Mine Reclamation Section within the Bureau of Solid Waste Management, a district mining specialist in order to oversee exploratory work and data collection at the currently active proposed mine site, and the position which I fill attempting to deal with the various diverse groups both internal and external, who have interests in mining policy decisions.

3. The Department is also currently analyzing what it needs regarding data collection and analysis to do our job. We are attempting to provide the mining companies with a clear-cut idea of the information which we feel will be necessary in order to proceed through the WEPA process and to process necessary permits. We are attempting to refine those data requests to be balanced, objective, and only what is needed, no more, certainly no less. We want to remain flexible enough so that as additional information is analyzed we have the ability to insure that the studies are not only appropriate but do not become prematurely outdated. We will strive to see that the environmental

data needs are balanced with the social and economic sides of the issue. Please remember Department staff and time are limited and we must plan carefully.

For the reasons that I have just mentioned and others, it no doubt is apparent to most of the people here tonight what a complex and intricate issue mining represent to the people of the state. Not only do the state's rules need to cover new mining but also be fair to existing facilities. Based on the efforts that I have described to you, and the magnitude of the challenge, it should come as no surprise when I take this opportunity to compliment the interested groups which we have been referring to this evening as the "concensus" group. This open rule making process or concensus is not new, but has been used in the past five years in over half of the administrative rules the Department of Natural Resources has drafted. This ad hoc mining group has been instrumental in identifying and researching many of these difficult problems I alluded to earlier. I believe the history on this issue will show that these people have been instrumental in the drafting and implementation of these very important environmental regulations. In the short time that I have been working with these people I am amazed at their energy, environmental ethic and problem solving ability. Many of whom work at great personal sacrifice.

I look forward to continued involvement with these dedicated people. The ad hoc group offers a structured, articulate and meaningful framework to input to the Department's rule making process. My only fear is that perhaps all the interests are not represented, not because the ad hoc group does not want more interests involved, but we have not been able to reach all those who should be concerned. If we are to meet others needs and interests, communication is essential. The ad hoc group has established a framework for that communication to occur, I encourage anyone interested to assume their responsibility to speak up and state their opinions, problems or needs regarding mining issues. I hope I have given you some background in the basic philosophy in the Department regarding mining development and also provided you with some insight as to what the Department is doing internally to deal with these issues.

I would like to close my comments on a note I think all of us can take pride in. Wisconsin is well on the way to being the first state in the nation to approach mining in this comprehensive manner. Indeed, the work done here will be well in advance of the Federal effort headed by the Environmental Protection Agency. This leadership role speaks well of all the participants, let us insure that it will continue.

Thank you for the opportunity to share these thoughts with you tonight.

SD:kb

PRESENTED BY
DAN POLAR, JR

NOV - 8 1979

At the present time a process is being followed in the State of Wisconsin called the Consensus Approach to Mining. The idea behind this process is to get as many interested parties involved in the drafting of proposed rules and regulations for mining in the State of Wisconsin. We believe that the underlying principle of this approach is the assumption that mining is going to take place in Wisconsin. When given the premise that mining is going to take place in Wisconsin, it makes sense that because the rules and regulations were made by consensus opinion that the result will be fewer cases that might have to be litigated. The consensus approach seems to be the path of least resistance to facilitate mining in the State of Wisconsin. The greatest danger of this approach is that it gives the impression that the decision to mine in Northern Wisconsin has already been made by those parties involved.

There are issues involved for the Sokaogon Chippewa Community that by their very nature transcend consensus opinion. Some of these issues are: Self Determination, Treaty Rights and the unique trust relationship that the tribe has with the federal government.

Perhaps self determination is the issue that residents of Northern Wisconsin can most easily identify with. In the recent past I can remember a movement to form the State of Superior. This happened because the residents of Northern Wisconsin thought that they weren't getting their fair share of tax monies from the State Government in Madison. Now a valuable resource has been discovered in Northern Wisconsin and it behooves the residents of Northern Wisconsin to make the best possible use of this resource. This resource is not like the timber that once existed in Northern Wisconsin- It is a non-replenisnable resource and once used it will

be gone forever. It is in the Public Interest that the people of Northern Wisconsin have a voice in any decision to mine or not to mine. I believe that the decision to mine or not to mine should come from the people who will be directly effected by the mining ; not made in some distant boardroom in Huston or Madison.

The Sokaogon Chippewa Community Tribal Council was charged with the responsibility to promote the welfare not only of its Tribal Members but also that of future generations. It is with this in mind that many issues must be considered before any decision by the Tribe can be made. Yet time is relentless and the date for the Exxon application for a prospecting permit is getting near. Because we must live with the consequences, we feel our need to properly gather information to make an informed decision takes precedent over any time table of Exxons. Questions that have to be answered by the Tribe include: Will mining actually be beneficial to the Sokaogon Chippewa Community; What are the long term consequences of Mining; Will there be any environmental damage to our Wild Rice Bed. Will the quality of life for Tribal Members actually be better and if so for how long. When you only have 1900 acres of land to live on, Great care must be taken to preserve this land not only for this generation but also for the future generations. I remember attending a meeting on mining where one of the speakers stated that if you don't like the effects of mining you can move. Historically we fought for the land which we presently reside on and consider this land our home. Advice as was given at that particular mining meeting cannot be taken seriously. We as a people who will be directly effected feel that only through self determination can our interests be protected.

Our tribe has been participants in various treaties with the United States Government but perhaps the treaty that we cannot forget is the one in which we were promised a 12 mile squared reservation. We believe that the Exxon

deposit is located within the boundaries of the reservation that was promised to us. We cannot through the consensus process give th impression that we have changed our belief. If nothing else we do have the truth on our side.

There exists a unique relationship between the Federal Government and Indian Tribes. One of its foundations was enunciated by Chief Justice John Marshall in the Cherokee Nation vs Georgia case. It was in this case that Indian Tribes were first declared to be domestic dependent nations whose relationship to the Federal Government resembled that of a ward to his guardian. In later decisions, the supreme court described the basis of this relationship by saying that it rested on the duty of the United States to Protect Indian Tribes. This duty was held to give the United States the power to act as a trustee of Indian Tribes. Our tribe using this trust relationship has asked for technical assistance from the Federal Government to do a hydrological study of ground waters on the Reservation. We are also getting an independent study of the possible impacts of mining upon the Tribe. These studies are not yet completed. If these studies indicate that the adverse effects from mining will be greater than the Tribe can tolerate it will be in our interest to oppose mining development adjacent to the reservation. If this were the case we feel that it would be the duty of the United States Government and the obligation of the State of Wisconsin to protect our rights.

Thank You

September 17, 1979

Linda R. Reivitz, Chairperson
Metallic Mining Council
Department of Natural Resources
Post Office Box 7921
Madison, Wisconsin 53707

Dear Ms. Reivitz:

Re: Mining and NR 1.95

In March of 1978, the Natural Resources Board adopted a statement of policy to establish necessary guidelines for conservation and restoration of Wisconsin wetlands. This policy statement is found in Wis. Admin. Code NR 1.95.

At the request of the Board, Department staff has prepared amendments to NR 1.95. Such amendments were prepared after close consultation with representatives of local units of government, mining companies, and environmental groups.

The recreated NR 1.95 represents a comprehensive and unified policy for wetland protections. The specialized and more detailed wetland rules for regulating the mining industry as required by ch. 421, Laws of 1977, are found in the proposed NR 135.

We believe the Metallic Mining Council will find that these rules will reaffirm Wisconsin's tradition of protecting its environment, as well as providing a sound vehicle for effectively processing exploration, prospecting or mining permit applications involving wetlands.

The consensus approach to policy development that was born in the environmental bills associated with mining, passed in the last session of the Wisconsin Legislature, continues to be represented by the proposal we are submitting. All of us have worked hard to meet each other's legitimate interests. We have worked hard to come forward in a single voice. We have worked hard to provide this piece of the total regulatory process, so that the Department of Natural Resources can meet the legislatively directed goal of establishing metallic mining waste rules no later than May 20, 1980.

We urge the Metallic Mining Council to favorably consider this rules packages for mining and wetlands of its September 19, 1979 meeting.

Sincerely,

DEPARTMENT OF NATURAL RESOURCES

By: _____
SCOTT J. DRANE
Mining Policy Coordinator

WISCONSIN'S ENVIRONMENTAL DECADE, INC.

By: _____
KATHLEEN M. FALK

TOWN OF NASHVILLE
COOK & FRANKE, S.C.

By: _____
KEVIN J. LYONS, Attorney

TOWN OF LINCOLN
COHEN, GRANT, ZUIDMULDER, NAZE & GAZELEY

By: _____
DONALD R. ZUIDMULDER, Attorney

TOWN OF GRANT
COOK & FRANKE, S.C.

By: _____
KEVIN J. LYONS, Attorney

EXXON MINERALS COMPANY, U.S.A.

By: Robert J. Russell
ROBERT J. RUSSELL

JACKSON COUNTY IRON COMPANY

By: /s/ Frank J. Pelisek
FRANK J. PELISEK of
MICHAEL, BEST & FRIEDERICH

KENNECOTT COPPER CORPORATION

By: James W. Wimmer
JAMES W. WIMMER

PUBLIC INTERVENOR

By: Peter A. Peshek
PETER A. PESHEK

PAP:ead

Enclosures

BEFORE THE

STATE OF WISCONSIN

DEPARTMENT OF NATURAL RESOURCES

METALLIC MINING COUNCIL

May 29, 1979

The Adoption Of Administrative Rules
To Regulate Metallic Mining Wastes

The Metallic Mining Council is to be congratulated for providing this opportunity to discuss the public policy questions surrounding the regulation of waste generated by copper-zinc mining projects. Three hundred and fifty-seven days from today, this Council, the Department of Natural Resources staff, the Natural Resources Board, and legislative oversight committees will need to have completed the work of establishing administrative rules to regulate metal mining waste if the legislatively directed target date of May 20, 1980 is to be met. Given that no other state or the United States Environmental Protection Agency has such a regulatory framework in place, all of us, industry, environmentalists, and government regulators, have a most momentous task in front of us.

The purpose of this paper is to provide you with information and ideas relevant to your role in the creation of administrative rules to control metal mining waste. By August, you will begin processing draft administrative rules that will certainly exceed 100 pages if not 200 pages in length. A clearly established set of public policy objectives will need to be defined as you begin the project of considering and refining draft rules.

This paper will draw heavily upon my conclusions reached upon an examination of the contents of the Kennecott Copper Corporation files. To the best of my knowledge, I am the only person in the State of Wisconsin outside of the Kennecott family, who has had an opportunity to review nearly ten years of company files dealing with the efforts of Kennecott to mine in the Ladysmith area. The new Kennecott management has told me to share those portions of their files and my observations about them, which will enhance public policy debate and understanding. All of us owe a debt of gratitude to Kennecott for such willingness to be open and to examine areas where all of us could improve.

OBJECTIVES OF RULES

Our new mining laws detail at some length the purposes of the administrative rules you are about to adopt. Rather than paraphrase the legislative directives, I would like to state the objectives of the rules in a slightly different fashion.

The first objective is to provide 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... .

Two examples of Kennecott's frustration reinforce the need for industry to have certainty of regulation. On April 15, 1975,