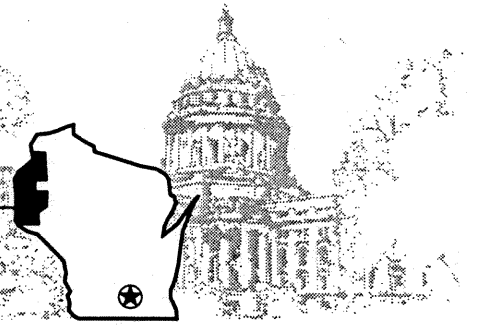


# Alice Clausing

WISCONSIN STATE SENATOR



July 26, 1999

Hon. Fred Risser, President  
Wisconsin State Senate  
220 South - Capitol  
P.O. Box 7882  
Madison, WI 53707-7882


Re: Partial Objection: Clearinghouse Rule 97-136

Dear Senator Risser:

Pursuant to sec. 227.19(5)(a), Stats., the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform reports that a Partial Objection to the above-referenced Clearinghouse Rule was entered during Executive Session on July 22, 1999. Attached you will find the letter from Department of Natural Resources Secretary, George E. Meyer, dated July 12, 1999 notifying the Committee of proposed revisions to CR 97-136 (*Exhibit 1*). The Motion for the Partial Objection is attached as *Exhibit 2*. Also attached is the Committee Report and Record of Committee Proceedings.

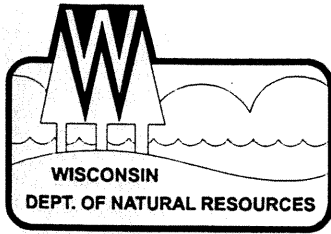
If you have any questions, please feel free to call my Committee Clerk, Bill Wenzel, at 266-7745.

Sincerely,

  
Senator Alice Clausing  
10<sup>th</sup> District

cc: Senate Chief Clerk  
DNR Secretary Meyer  
Senator Robson, JCRAR co-chair  
Rep. Grothman, JCRAR co-chair





State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Tommy G. Thompson, Governor  
George E. Meyer, Secretary

101 S. Webster St.  
Box 7921  
Madison, Wisconsin 53707-7921  
Telephone 608-266-2621  
FAX 608-267-3579  
TDD 608-267-6897

JUL 13 1999

July 12, 1999

Honorable Alice Clausing, Chair  
Senate Committee on Agriculture, Environmental  
Resources and Campaign Finance Reform  
State Capitol

Honorable Neal Kedzie, Chair  
Assembly Committee on Environment  
State Capitol

Re: Clearinghouse Rule No. 97-136  
Metallic mineral mining

*Alice & Neal*

Dear Committee Chairs:

On February 22, 1999 the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform requested the Department of Natural Resources to make further modifications to Clearinghouse Rule No. 97-136 relating to metallic mineral mining. The Committee requested that the fund be adequate to fund all worst case remedial and preventive measures that are "possible". Second, the Committee recommended that the fund be fully capitalized very early in the life of a mining project, potentially prior to construction.

The Natural Resources Board has modified the rule to clarify the intent, but with the requirement that the occurrence must have a "reasonable possibility" of occurring. In response to the second recommendation, a provision has been added requiring the permittee to post a secondary form of financial surety to supplement the trust fund during the operational phase of a mining project. The performance bond or insurance must be posted prior to construction and must be in the full trust fund amount. That will ensure that adequate funds are available throughout the life of a project, including the very early stages of project development. A sentence was also added to remove any doubt regarding the opportunity for parties to the hearing to make a case that worst case preventive or remedial measures are those for which funding should be provided.

Under s. 227.19(4)(b)2., Stats., the Department of Natural Resources refers this rule to your Committees for an additional 10 working day review on the modifications. If the Department does not hear from you within 10 working days of the receipt of this notification, the Department will continue processing this rule.

Sincerely,

*George*

George E. Meyer  
Secretary

*Thankyou*

Attach.

cc: Carol Turner - LS/5  
Larry Lynch - WA/3  
Charles Hammer - LS/5

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD  
AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board proposes an order to amend NR 132.09(3) and to create NR 132.085 relating to regulation of metallic mineral mining

SW-21-97(A)

Analysis Prepared by Department of Natural Resources

Statutory authority: ss. 293.13, 293.51 and 227.11(2), Stats.  
Statutes interpreted: ss. 293.13 and 293.51, Stats.

The proposed changes in ch. NR 132 would require a mining permit holder to establish an irrevocable trust agreement prior to commencing mining and maintain the trust agreement for an indefinite time after operations cease. The trust fund is intended to assure the availability of funds to cover costs associated with certain reasonably anticipated preventive measures, as well as remedial actions related to unanticipated spills, releases from mining and mining waste facilities and replacement of damaged water supplies. The fund will be structured such that, after the period of scheduled deposits by the permittee, it will be self-sustaining and adequate to finance necessary preventive and remedial actions well into the future. The proposed rule also includes mechanisms by which the adequacy of the fund is reviewed and adjusted, if necessary.

---

SECTION 1. NR 132.085 is created to read:

**NR 132.085 Irrevocable trust agreement.** (1) This section applies to a mining permit application for which the permit has not been issued on the effective date of this subsection ... [revisor insert date]. Notwithstanding s. NR 132.19, no exemption may be granted to the provisions of this section.

(2) An applicant for a mining permit, as part of the permit application, shall propose an irrevocable trust agreement or arrangement which shall include a description of the investment strategy and detailed information concerning the level of funding and proposed payment schedule necessary to comply with this section.

(3)(a) The purpose of the trust fund shall be to assure adequate funds to undertake the preventive and remedial activities listed in sub. (4). The trust documentation shall designate the department as sole beneficiary. The trustee shall be a public entity, bank or other financial institution located within the state of Wisconsin which has the authority to act as a trustee, or in the case of a public entity has equivalent powers. The trust documentation shall specify the manner of payment into the fund and the trustee's powers to invest the trust corpus and income. The trustee shall exercise prudent investment strategies consistent with the purpose of the trust fund. All income shall accumulate in the account and be reinvested. No withdrawal may be made from the trust fund except as authorized in writing by the department.

(b) Following issuance of a certificate of completion of reclamation for the entire mining site or upon permit revocation, the trust corpus shall consist of cash, certificates of deposit, or U.S. government securities. A total of no more than \$100,000 in cash and certificates of deposit may be placed in the trust account; U.S. government securities shall be used for amounts in excess of \$100,000.



(4) The trust fund shall be created and maintained in perpetuity with funds adequate for the following activities:

(a) Remedial action required as the result of spills of hazardous substances, as defined in s. 292.01(5), Stats., at the mining site.

(b) Remedial action to mitigate any hazardous substances that escape from the mine workings into the surrounding environment after the mining operation has ceased.

(c) Remedial action required as the result of failure of a mining waste facility to contain the waste.

(d) Provision of a replacement waste supply as required under s. 293.65(4)(d), Stats.

(e) Preventive measures taken to avoid adverse environmental consequences, including measures such as replacement of components of waste disposal facilities. However, if the measures relate to closure or long-term care, financial responsibility for the associated costs shall be covered in accordance with ss. NR 182.16 and 182.17, respectively.

(5) Funding of the trust fund shall be determined at the hearing conducted under s. 293.43, Stats., and shall be incorporated into the mining permit issued under s. 293.49, Stats., as follows:

(a) A schedule of payment into the trust fund, during mining operations, shall be established which takes into account a reasonable projection of exposure. Preventive or remedial measures which could be needed early in the mining operation shall be fully funded prior to the commencement of mining. Those preventive or remedial measures which could be needed only later in the operation, or after mining has ceased, may rely on income from the trust and periodic payments into the principal by the permittee.

(b) In establishing the level of funding, the department shall evaluate the likelihood of the need for preventive or remedial measures based on reasonable and conservative risk considerations. In addition to the risk considerations, the department shall evaluate the range of costs of the preventive and remedial measures that might be necessary in response to the risks. The level of funding shall be sufficient to cover the costs of all preventive and remedial measures ~~that have a reasonable possibility of being necessary~~ needed to correct all reasonably possible occurrences. Costs for worst case preventive or remedial measures shall be used when the measures are shown to have a reasonable possibility of being necessary. Opportunity shall be provided at the hearing conducted under s. 293.43, Stats., for testimony that the worst case preventative or remedial measures have a reasonable possibility of being necessary.

(c) In determining costs associated with the preventive or remedial measures identified in sub. (4), consideration shall be given to the risk assessment submitted pursuant to s. NR 132.07 (3)(l), the contingency plan submitted pursuant to ch. NR 182, risks and impacts identified in the environmental impact statement and the measures reasonably anticipated necessary to address those risks and impacts.

(d) To the extent the trust fund relies on accrued income to pay for future preventive or remedial measures, the conservative projection of earnings above inflation shall be used.

(e) The funding of the trust fund for activities identified in sub. (4) shall consider the existence of other binding, guaranteed sources of funds from the permittee which address the same preventive and remedial measures and the financial ability of the permittee to comply with legal

obligations for necessary remedial activities during the operation. It is the intent of this section that the trust fund not duplicate similar financial obligations under other applicable provisions of law or administrative codes.

(6) Principal and income accrued from the trust fund may be used to pay for activities identified in sub. (4), only if:

(a) The mine permittee is not obligated by law or conditions of other obligations, such as the provision of a bond under s. 293.51, Stats., to pay for the activities, or

(b) The mine permittee is financially incapable of paying for the costs of the activities regardless of legal obligations to do so.

(7) Notwithstanding sub. (6), principal and income from the trust fund may be used to pay for activities identified in sub. (4), which require immediate attention while issues of financial responsibility are resolved. Should the permittee, a successor in interest to the permittee or another party be determined to be financially responsible for the costs of the activities, the reimbursement monies obtained from those entities shall be deposited in the trust account.

(8) Activities identified under sub. (4) shall be undertaken by private entities under contract with the department and the trustee. The department shall determine when preventive or remedial activities to be funded by the trust fund need to be undertaken. It shall identify the scope of work, choose the entity to perform the work, and monitor compliance with the contract. The contract shall state that, upon satisfactory performance of work as determined by the department, the trustee shall pay to the contracting entity the amounts provided for by the contract. The contract may allow for interim payments.

(9) Periodic reevaluation of the funding the trust account shall be undertaken as follows:

(a) The department shall review the funding of the trust account, once every 5 years after issuance of the mining permit, or when the department determines there has been a significant event or changed circumstances. The review shall include the propriety of the assumptions made in the initial determination of funding, findings from previous reviews, as well as the adequacy of the funding in the trust account. The determination may include a requirement for additional payment of principal by the permittee, or, in the case of a determination of over-funding, reimbursement to the permittee of a portion of the funds in the trust account.

(b) The permittee, any municipality within whose boundaries the mining site is located, any Native American community that has tribal lands within such municipality, or 5 or more interested parties may request a review independent from the review provided for in par. (a). The department shall grant the request upon a showing by the proponent for the review that there has been a significant event or changed circumstances since the last review, and that these changed circumstances warrant reevaluation prior to the next 5-year review.

(c) The department shall provide a notice of its determination under pars. (a) and (b) in the same manner as specified under s. 293.43(3)(b)1. and 2., Stats. If the determination involves any modifications to the funding of the trust fund, the notice shall include a detailed summary of the proposed changes and provide for provision of the complete proposed set of changes upon written request.

(d) If the department determines a modification to the funding of the trust is warranted, and if the permittee, any municipality within whose boundaries the mining site is located, any Native

American community that has tribal lands within such municipality, or 5 or more interested parties requests a hearing with 30 days of notice, a contested case hearing shall be conducted under ch. 227, Stats.

(10)(a) During the period of scheduled payments into the trust fund, the permittee shall establish and maintain a separate performance bond or satisfactory insurance coverage in an amount adequate to cover all risks and associated remedial and preventive measures identified under par. (5)(b).

(b) The performance bond or insurance shall remain in effect until issuance of a certificate of completion of reclamation for the entire mining site.

(c) The performance bond or insurance shall be issued by a company licensed to do business in the state of Wisconsin and shall be subject to the termination and replacement requirements specified in s. NR 132.09(2)(a)2. and 3.

(d) If implementation of remedial or preventive measures under sub. (4) is needed prior to issuance of a certificate of completion of reclamation for the entire mining site, the performance bond or insurance shall only be used to fund the necessary actions in the event the trust fund is not sufficient to cover the entire costs of remediation or prevention.

SECTION 2. NR 132.09(3) is amended to read:

NR 132.09(3) Upon receipt of a satisfactory reclamation bond, ~~and~~ the certificate of insurance and evidence of the establishment of the necessary trust fund and associated performance bond or insurance in accordance with s. NR 132.085, the department shall give written authorization to the operator to commence mining in accordance with the mining and reclamation plans.

The foregoing rule was approved and adopted by the State of Wisconsin Natural Resources Board on September 14, 1997 and June 30, 1999.

The rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro.), Stats.

Dated at Madison, Wisconsin \_\_\_\_\_

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By \_\_\_\_\_  
George E. Meyer, Secretary

(SEAL)

July 22, 1999

Senate Committee on Agriculture, Environmental Resources and  
Campaign Finance Reform

**MOTION ON CLEARINGHOUSE RULE 97-136, RELATING TO  
REGULATION OF METALLIC MINERAL MINING**

Moved that the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform:

Objects under s. 227.19 (4) (d) 3. and 6., Stats., to the following parts of Clearinghouse Rule 97-136, as set forth in the version of Clearinghouse Rule 97-136 attached to the July 12, 1999 letter to Senator Alice Clausing and Representative Neal Kedzie from George Meyer, Secretary, Department of Natural Resources, on the grounds that they do not comply with legislative intent and are arbitrary:

- a. In proposed s. NR 132.085 (5) (a), all of the following:
  - (1) The first sentence.
  - (2) The phrase "early in the mining operation" in the second sentence.
  - (3) The third sentence.
- b. In proposed s. NR 132.085 (5) (b), all of the following:
  - (1) In the first sentence, the text beginning with "the department" and ending with the period.
  - (2) The second sentence.
  - (3) The third sentence.
  - (4) In the fourth sentence, the text beginning with "when" and ending with "necessary."
  - (5) The fifth sentence.

State of Wisconsin  
Department of Natural Resources

**NOTICE TO PRESIDING OFFICERS  
OF PROPOSED RULEMAKING**

Pursuant to s. 227.19, Stats., notice is hereby given that final draft rules are being submitted to the presiding officer of each house of the legislature. The rules being submitted are:

Natural Resources Board Order No. SW-21-97(A)

Legislative Council Rules Clearinghouse Number \_\_\_\_\_

Subject of Rules Metallurgical mineral mining

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date of Transmittal to Presiding Officers October 30, 1997

Send a copy of any correspondence or notices pertaining to this rule to:

Carol Turner, Rules Coordinator  
DNR Bureau of Legal Services  
LC/5, 101 South Webster

266-1959

## REPORT TO LEGISLATURE

NR 132.085, Wis. Adm. Code  
Metallic mining

Board Order No. SW-21-97(A)

### Statement of Need

In July, 1996, the Department received a petition from a group of state legislators requesting that certain revisions be made to the state's mining regulations. The petition requested that rules be adopted to require mining permit holders to carry insurance adequate to fund appropriate remedial measures in the event that the mining operation caused environmental contamination and also to evaluate the manner in which groundwater quality is regulated at mining sites.

The proposed rule will require a mining permit holder to establish an irrevocable trust fund to guarantee the availability of funds for necessary remedial actions. The proposed rule specifies appropriate uses of the fund and the mechanisms by which the fund is established, reviewed and adjusted.

The issue of groundwater quality will be considered at a later time by the Natural Resources Board.

### Modifications as a Result of Public Hearing

Language has been added to explicitly state that the amount of the trust fund and the payment schedule approved during the master hearing are part of the mining permit and associated approvals. The rule has been modified to indicate that the trust fund is intended to be maintained in an adequate amount in perpetuity. An option to provide that a duly authorized public entity, such as the Investment Board, could act as trustee for the trust fund has been added. The department has added specific wording to s. NR 132.085(1) to specify that variances may not be obtained from the requirement to establish and maintain an appropriate trust fund.

Clearinghouse Rule No. 97-057 contained changes to both ch. NR 132 and ch. NR 182. The Department and the Natural Resources Board has separated these proposals into two separate orders, one relating to changes to ch. NR 132 and the other relating to changes to ch. NR 182. The changes to ch. NR 182 were not considered by the Natural Resources Board at this time.

### Appearances at the Public Hearing and Their Position

#### **May 19, 1997 - Eau Claire**

In support - none

In opposition:

Thomas A. Nelson, 1102 5<sup>th</sup> Avenue, #1, Eau Claire, WI 54703

Betty Wolcott, OSF, Sisters of St. Francis of Assisi, N47475 Woodland Lane, Osseo, WI 54758

Marie Anderson, N13108 Hill Road, Fairchild, WI

Kurt Buetow, N9215 130<sup>th</sup> Street, Downing, WI 54734

Jody Slocum, N9215 130<sup>th</sup> Street, Downing, WI 54734

John Thomas, P.O. Box 94, Downsville, WI

Kermit Benson, Muskies, Inc., 947 W. Willow Street, Chippewa Falls, WI 54729  
Tom Wilson, Headwaters Group of Northern Thunder, P.O. Box 124, Fairchild, WI 54741  
Margaret A. Hebbring, 7361 Inwood Drive, Chippewa Falls, WI 54729  
Roscoe Churchill, Rusk Co. Citizens Action Group, N3386 CTR, Ladysmith, WI 54848  
Al Gedicks, Wis. Resources Protection Council, 210 Avon Street, #4, La Crosse, WI 54603

As interest may appear:

Teddy G. Styczinski, N1496 CTH G, Conrath, WI 54731  
Lavern Pampuch, Independence, WI

### **May 20, 1997 - Rhinelander**

In support:

Marjory Ochs, 2853 Bay Drive, Rhinelander, WI  
Vernon Reimann, 208 Harmony Hills, Rhinelander, WI 54501  
June Schmaal, 1163 Hwy. 47 West, Arbor Vitae, WI 54568  
Llona Ney Clausen, 3504 Ike Walton Trail, Lac du Flambeau, WI 54538  
Wallace Cooper, 3995 Shepard Lake Road, Rhinelander, WI 54501  
Norm Poulton, 3287 N. County Road L, Tomahawk, WI 54487

In opposition

Gill Knapp, Star Route 2, Rhinelander, WI 54501  
Edward Mouw, P.O. Box 757, Rhinelander, WI 54501  
Andrew P. Smith, 545 Spring Lake Road, Rhinelander, WI 54501  
Jerome Hagen, 2661 Highway 17 South, Rhinelander, WI 54501  
John Schwarzmann, 8149 Deneyer Drive, Minocqua, WI 54548  
Sonny Wreczycki, Town of Ainsworth Mining Impact committee, N10912 East Shore Road,  
Pearson, WI 54462-8223  
Carl R. Hilstrom, P.O. Box 3, McNaughton, WI 54543  
Tom Ward, Box 795, Route 1, Crandon, WI  
Bill J. Sherer, Trout Unlimited, P.O. Box 5116, Boulder Junction, WI 54512

As interest may appear:

Mary Kay Grasmick, Crandon Mining Co., 7 N. Brown St., Rhinelander, WI 54501  
Robert J. Rossi, 4197 Birch Lane, Rhinelander, WI 54501  
Victor Koenig, 748 Lake Shore Drive, Rhinelander, WI 54501  
Karl A. Fate, 6824 Highway 8 West, Rhinelander, WI 54501  
Chuck Sleeter, 9347 Pickerel Lake Road, Pickerel, WI  
Melanie Kirsch, Northwoods Alliance, 218 Elm Court, Rhinelander, WI 54501  
Clarence P. Schrameyer, P.O. Box 432, Hazelhurst, WI 54531  
Don Moe, Crandon Mining Company, 7 N. Brown Street, Rhinelander, WI 54501  
Sylvester Poler, Route 1, Box 549, Crandon, WI 54520  
Dave Anderson, Route 1, Box 556, Crandon, WI 54520  
Mark Patulski, 6730 Prune, Rhinelander, WI 54501  
Jane Schrameyer, P.O. Box 432, Hazelhurst, WI 54531  
Bill Keller, 5269 Forest Lane, Rhinelander, WI 54501  
Robert S. Estabrook, 4531 Highway 47, Rhinelander, WI 54501  
Barbara Estabrook, 4531 Highway 47, Rhinelander, WI 54501  
Lola Strong, 740 Lake Shore Drive, Rhinelander, WI 54501

**May 21, 1997 - Shawano**

In support:

James L. Kalkofen, W4782 Swan Acres Drive, Cecil, WI 54111-9412  
Joe Reinhard, 3034 Sandalwood Road, Abrams, WI 54101  
Steve Gehm, P.O. Box 435, Bonduel, WI 54107  
Anthony Janecek, 206 Wallrich Road, Cecil, WI 54111  
Genevieve Buettner, Wolf River Conservation Club, N4297 Buettner Road, White Lake, WI 54491  
Herbert Buettner, N4297 Buettner Road, White Lake, WI 54491

In opposition:

Judy Pubanz, N6725 Balsam Road, Shawano, WI 54166  
Cal Brockman, 218 Humphrey Circle, Shawano, WI  
Fred Ponschak, 1136 Lincoln, Shawano, WI 54166  
Audrey Waldo, 13545 Lower Dam Road, Mountain, WI 54149-9408  
Ralph LaBrosse, P. O. Box 161, Krakow, WI 54137  
Siro Marchetti, N7914 Big Lake Road, Gresham, WI 541228  
Thomas K. Sydow, 3600 S. Clay Street, Green Bay, WI 54301-1202  
Alois Schiessl, N6635 Ash Road, Shawano, WI  
George Rock, Wolf River Watershed Alliance, N2610 Log Cabin Drive, White Lake, WI 54491  
Len Pubanz, N6725 Balsam Row Road, Shawano, WI 54166  
John Bettinger, 839 S. Quincy, Green Bay, WI 54301  
Dori Jerger, 14709 Upham Lane, Mountain, WI 54149  
Carol Hoffman, 1236 S. Franklin Street, Shawano, WI 54166  
Ronald VanderLoop, 2121 Orrie Lane, Green Bay, WI 54304  
Marilyn Rock, Wolf River Watershed Alliance, N2610 Log Cabin Drive, White Lake, WI 54491  
Charmaine Olson, W6363 Townline Road, Shawano, WI 54166  
Verlyn Olson, W6363 Townline Road, Shawano, WI 54166  
John Mutter, N2787 McDonald Road, Shawano, WI 54166  
Al Leisten, 415 Fairview Way, Shawano, WI 54166

As interest may appear:

Patricia Derks, 936 DuChateau, Green Bay, WI 54304  
Madeline J. Retzlaff, W7422 River Bend Road, Shawano, WI 54166  
Karil Van Boxel, P.O. Box 19430, Green Bay, WI 54307-9430  
Stephen C. Hannot, 416 Jones Avenue, Oconto, WI 54153-1424  
Jean Olsen, N5956 Wolf River Road, Shawano, WI 54166  
Mike Boucher, P.O. Box 179, Shawano, WI 54166  
Don Olsen, N5956 Wolf River Road, Shawano, WI 54166  
Bill Spalding, 310 Alpine Drive, #9, Shawano, WI 54166  
George F. Reif, W13206 Hwy D, Bowler, WI 54416  
Mitchell G. Bent, Wisconsin Trout Unlimited, 935 S. Union Street, Shawano, WI 54166  
Merrill Burmeister, W4778 Swan Acre Drive, Cecil, WI  
Pat Dugan, N6826 S. Forest Haven, Shawano, WI 54166  
Pete Petrouske, 1998 Ponderosa Avenue, Green Bay, WI 54313  
Francis J. Kugel, W5986 Porter Road, Shawano, WI 54166  
Judith A. Gosz, RR W12998 River Road, Bowler, WI 54416  
Milt Schmitt, N6967 Balsam Row Road, Shawano, WI  
Jim Lutz, 908 Lutz Street, Shawano, WI 54166  
Eileen G. Spittlemeister, W8846 Butternut Road, Shawano, WI 54166



**May 23, 1997 - Milwaukee**

In support:

Christopher J. Jaekels, 660 E. Mason, Milwaukee, WI 53202

In opposition:

Kenneth H. Fish, Menominee Nation, P.O. Box 910, Keshena, WI  
Phillip Seem, 8353 Portland Avenue, Wauwatosa, WI 53213  
Claire Vanderslice, 2276 Highway I, Grafton, WI 53024  
Moreau J. Parsons, 3277 N. Summit Avenue, Milwaukee, WI 53211  
Robert F. Wolter, W149 N8488 Norman Drive, Menomonee Falls, WI 53051  
Katherine O. Zens, 4468 N. Newhall, Shorewood, WI 53211  
Sam Gieryn, Wis. Environmental Decade, 1001 E. Keefe Avenue, Milwaukee, WI 53211

As interest may appear:

Walter J. Freed, Milwaukee Co. Conservation Alliance, 2125 N. 49<sup>th</sup> Street, Milwaukee, WI 53208

**May 30, 1997 - Madison**

In support - none

In opposition:

Carolyn Herb, 1317 Milton Street, Madison, WI 53715  
Anne Herr, 644 N. Frances Street, Madison, WI 53703  
Harold Jordahl, 1814 Helena Street, Madison, WI 53704  
Representative Spencer Black, State Capitol  
Marney Irish, Sierra Club, 116 E. Gilman, Apt. 1D, Madison, WI 53703

As interest may appear:

Kathy Wolf, Mining Impact Coalition, 4931 Hickory Trail, Middleton, WI  
Caryl Terrell, Sierra Club, 222 S. Hamilton, Madison, WI 53703  
Keith Reopelle, Wisconsin's Environmental Decade, 122 State Street, #200, Madison, WI 53703  
Carl Zichella, Sierra Club, 4105 Paunack Avenue, Madison, WI 53711

Response to Legislative Council Rules Clearinghouse Report

The recommendations were accepted.

Final Regulatory Flexibility Analysis

Typically, companies involved in metallic mineral mining projects in Wisconsin have been large corporations. While some small companies have engaged in preliminary exploration activities, they have generally done so with the intent of entering into a partnership with a large company if a mineral deposit were to be discovered. Given the cost intensive nature of mineral exploration and development activities, permitting and regulatory compliance, and project construction it is unlikely that any small business would be capable of successfully developing a mining project in Wisconsin. Thus, the proposed rule revisions should not have an impact on small business activity in the state.

1995 Session

LRB or Bill No./Adm. Rule No.  
NR 132 and NR 182 Revisions  
Amendment No. if Applicable

FISCAL ESTIMATE

DOA-2048 (R 11/90)

- ORIGINAL
- CORRECTED
- UPDATED
- SUPPLEMENTAL

Subject

Revision of Metallic Mineral Mining Administrative Rules, NR 132 and NR 182

Fiscal Effect

State:  No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation

- Increase Existing Appropriation
- Decrease Existing Appropriation
- Create New Appropriation
- Increase Existing Revenues
- Decrease Existing Revenues

- Increase Costs - May be possible to Absorb Within Agency's Budget  Yes  No
- Decrease Costs

Local:  No local government costs

- 1.  Increase Costs
  - Permissive  Mandatory
- 2.  Decrease Costs
  - Permissive  Mandatory

- 3.  Increase Revenues
  - Permissive  Mandatory
- 4.  Decrease Revenues
  - Permissive  Mandatory

- 5. Types of Local Governmental Units Affected
  - Towns  Villages  Cities
  - Counties  Others
  - School Districts  VTAE Districts

Fund Sources Affected

- GPR  FED  PRO  PRS  SEG  SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The proposed rule changes would modify the manner in which groundwater quality standards are applied to mining activities and would require an operator of a mining project to establish a trust agreement to cover costs associated with potential remedial actions at the mining site. The proposed changes pertaining to groundwater quality protection should have essentially no impact on department costs or revenues as they do not represent a substantial change from the current regulatory approach. The modifications related to the trust agreement, may require some additional staff review time to establish the appropriate amount of the trust and to review the proposed details of the trust agreement. However, since the evaluation is conducted as part of the mining permit evaluation, all costs incurred by the Department are borne by the mining permit applicant, pursuant to s. 144.85(2)(a), Stats. Thus, this proposed bill would have no state fiscal effect.

Long-Range Fiscal Implications

There are no long range state fiscal impacts.

Agency/Prepared by: (Name & Phone No.)

Lawrence J. Lynch 267-7553  
Natural Resources

Authorized Signature/Telephone No.

17 *[Signature]* 6-2794

Date

03/07/97

# FISCAL ESTIMATE WORKSHEET

1995 SESSION

Detailed Estimate of Annual Fiscal Effect  
DOA-2047(R 11/90)

ORIGINAL  UPDATED  
 CORRECTED  SUPPLEMENTAL

LRB or Bill No/Adm. Rule No.  
NR 132 and NR 182 Revisions

Amendment

Subject

Revision of Metallic Mineral Mining Administrative Rules, NR 132 and NR 182

I. One-time Costs or Revenue Fluctuations for State and/or Local Government (do not include in annualized fiscal effect):  
There are no costs associated with this proposal.

II. Annualized Costs:		Annualized Fiscal Impact on State funds for	
		Increased Costs	Decreased Costs
A. State Costs by Category			
State Operations-Salaries and Fringes		\$ 0	\$ - 0
(FTE Position Changes)		(0 FTE)	(- 0 FTE)
State Operations-Other Costs		0	- 0
Local Assistance		0	- 0
Aids to Individuals or Organizations		0	- 0
<b>TOTAL State Costs by Category</b>		<b>\$ 0</b>	<b>\$ - 0</b>
B. State Costs by Source of Funds		Increased Costs	Decreased Costs
GPR		\$ 0	\$ - 0
FED		\$ 0	\$ - 0
PRO/PRS		\$ 0	\$ - 0
SEG/SEG-S		\$ 0	\$ - 0
III. State Revenues- Complete this only when proposal will increase or decrease state revenues (e.g., tax increase, decrease in license fees, etc.)		Increased Rev.	Decreased Rev.
GPR Taxes		\$	\$ -
GPR Earned			-
FED			-
PRO/PRS			-
SEG/SEG-S			-
<b>TOTAL State Revenues</b>		<b>\$</b>	<b>\$ -</b>

### NET ANNUALIZED FISCAL IMPACT

	STATE	LOCAL
NET CHANGE IN COSTS	\$ 0	\$ 0
NET CHANGE IN REVENUES	\$ 0	\$ 0

Agency/Prepared by: (Name & Phone No.)  
Natural Resources  
Lawrence J. Lynch 267-7553

Authorized Signature/Telephone No.  
18 *Joe Polasek* 6-2794

Date  
03/07/97



# Alice Clausing

WISCONSIN STATE SENATOR



## MEMORANDUM

To: John Stolzenberg *6-2988*  
From: Bill Wenzel  
Re: Clearinghouse Rule 97-136  
Metallic Mining – Irrevocable Trusts  
Date: April 23, 1999

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Please find enclosed the *Green Sheet* and related information regarding the proposed metallic mining rule relating to creation of irrevocable trusts. If you have a moment this afternoon could you give a call – I'm a little confused on the process from here on in. You will notice that our last referral to DNR (p.4) contained a *Recommendation* and, in the event the DNR did not concur, an *Objection*. My question is what happens to the objection if the DNR sends back a "new" proposal.

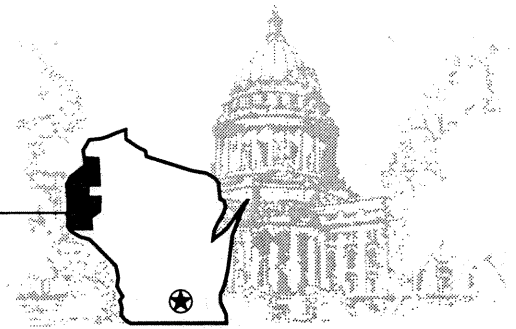
Thanks for taking the time to do a quick overview.





# Alice Clausing

WISCONSIN STATE SENATOR



FAX!

To: Alice

From: Bill *BW*

Re: Clearinghouse Rule 97-136/Mining:Irrevocable Trusts

Date: April 23, 1999

Pages: 14

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I met with Spencer this morning. This is a short overview of important points.

- *\$2.00/ton fee* – Spencer said the rationale for the language regarding the *worst case scenario* was designed to counter the DNR Board’s unwillingness to adopt the *minimum fee* recommendation. Through the power to partially object to a rule and use line item veto we can define the *worst case scenario* in such a way that the *fee* to the mining company will far greater than the \$2.00/ton that we asked for.

*Issue level of insurance*

- *Insurance/performance bond in lieu of cash* – Spencer didn’t have much of a problem with the DNR proposal provided that the insurance policy covered all potential liability. He and I both feel that we can write provisions to require insurers to demonstrate the capability to fully cover any/all liability and to remain solvent throughout the time coverage is necessary. However, a couple of issues arise: 1) when must the trust account be fully capitalized (our position – prior to the time that mining /excavation begins) and 2) what is the minimum level of insurance required (two options: a) worst case scenario or b) \$2.00/ton).

*rule doesn't touch on how to ensure co. meets obligation*

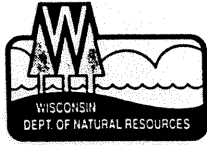
*Spencer: tie policy to worst case scenario rather than risk*

- *Process* - this needs clarification. The motion that was forwarded to the Department after the last hearing instructed the DNR that if they failed to adopt the recommendations contained in Rep. Kedzie’s letter the Committee (Ag & Enviro Resources) would “formally” object and use its line item veto powers to modify the provisions relating to *capitalization of the trust fund (5a)* and *worst case scenario (5b)* in order to ensure that the Rule ultimately did what the Committee wanted it to do. What is not clear to me is what happens to the objection/line item veto if the DNR rejects our



recommendation but forwards a new proposal. I will try to nail that down this afternoon.

This is just a first cut on this. I will do some follow-up with John Stoltenberg this afternoon. **Please note that I have scheduled a meeting Monday, April 26<sup>th</sup> @ 9:30 am with Black, Stoltenberg, Steve (Black's Aide) and myself with a call-in to you to discuss this in more detail and to develop a strategy.**



STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

101 S. Webster Street, 5th Floor, Madison, Wisconsin ■ 608-266-2121

George E. Meyer  
Secretary

Alice

The Natural Resources Board meeting is next Tuesday. The Board requires that we get all greensheets to them before this weekend so that we needed to finalize the greensheet + get it in the mail to them Thursday p.m.

The green sheet tracks very closely the motion of the Committee. If you have any questions, I will be able to be reached today at 608-266-2121 and at home this weekend at 608-258-8815 Thanks, George 4/22/99



Form 1100-1  
Rev. 5-91

**NATURAL RESOURCES BOARD AGENDA ITEM**

Item No. \_\_\_\_\_

**SUBJECT:** Request by Senate Committee on Agriculture and Environmental Resources for modification to Order SW-21-97(A), Pursuant to legislative review - revision of Chapter NR 132, Wis. Adm. Code, pertaining to an Irrevocable Trust Fund for metallic mining operations (approved by Board in September 1997)

**FOR:** April 1999 **BOARD MEETING**

**TO BE PRESENTED BY:** Larry Lynch - WA/3

**SUMMARY:** In September 1997 the Board adopted an amendment to Chapter NR 132 creating an irrevocable trust fund for mining. Subsequently, the Senate Committee on Agriculture and Environmental Resources requested that the Board consider making two changes to the rule. The Department responded to those requests and the Board approved the rule in January 1999. The Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform has again requested the Department consider changes to the rule. First, it suggested that the fund be adequate to fund all worst case remedial and preventive measures that are "possible". Second, the Committee recommended that the fund be fully capitalized very early in the life of a mining project, potentially prior to construction.

Department staff has given serious consideration to the suggested changes specified by the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform. We believe that the range of occurrences considered in developing the trust fund must be limited to those events that have a "reasonable possibility" of occurring. We have modified the rule to clarify the intent, but the requirement that the occurrence must be reasonably possible has been retained. In response to the second recommendation, the Department has added a provision requiring the permittee to post a secondary form of financial surety to supplement the trust fund during the operational phase of a mining project. The performance bond or insurance must be posted prior to construction and must be in the full trust fund amount. This will ensure that adequate funds are available throughout the life of a project, including the very early stages of project development, which was a primary concern of the Committee.

**RECOMMENDATION:** Adoption of suggested modifications to Order SW-21-97(A)

**LIST OF ATTACHED MATERIALS:**

- |  |   |   |          |
|--|---|---|----------|
| No <input checked="" type="checkbox"/> | Fiscal Estimate Required                              | Yes <input type="checkbox"/>            | Attached |
| No <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes <input type="checkbox"/>            | Attached |
| No <input type="checkbox"/>            | Background Memo                                       | Yes <input checked="" type="checkbox"/> | Attached |

**APPROVED:**

Kate Cooper for Sue Bangert  
Bureau Director,

Gay Kochmuth  
Administrator,

George E. Meyer  
Secretary,

4/9/99  
Date

4/9/99  
Date

4/22/99  
Date

cc: K. Kessler - WA/3  
L. Lynch - WA/3  
Rep. Lorraine Seratti  
Rep. Spencer Black

S. Bangert - WA/3  
C. Hammer - LC/5  
Rep. Neal Kedzie  
Sen. Alice Clausing



## CORRESPONDENCE/MEMORANDUM

DATE: April 9, 1999

FILE REF: 2720

TO: Natural Resources Board

FROM: George E. Meyer - AD/5

*George*

SUBJECT: Further Modification of Approved Mining Rule Changes, Order SW-21-97(A), Irrevocable Trust Funds for Metallic Mining Projects

**Background**

At its September 1997 meeting, the Natural Resources Board approved the proposed revisions to Ch. NR 132, Wis. Adm. Code, relating to the establishment of irrevocable trust funds for metallic mining projects. Standing committees in both houses of the Legislature conducted hearings on the proposed rule changes in December 1997 and the Senate Committee on Agriculture and Environmental Resources subsequently requested that the rule revisions be further modified (See attached letter from Senator Clausing). The Department's response to those suggested changes were presented to the Natural Resources Board at its January 1999 meeting. The Board approved the modified rule and it was again forwarded to the standing committees in the Legislature.

Hearings were held by standing committees in both houses and the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform, chaired by Senator Clausing, recommended that the Department consider additional modifications to the proposed rule (See attached motion from the Committee). In addition, the Assembly Committee on Environment, chaired by Representative Kedzie, urged the Department to consider the changes suggested by the Senate Committee (See attached letter from Rep. Kedzie). The Department subsequently agreed to consider the suggested modifications.

The motion approved by the Senate Committee asks the Department to consider two fundamental changes to the proposed rule. First, the Committee has suggested that the irrevocable trust fund should be established in an amount sufficient to fund all possible worst case preventive or remedial measures. The rule, as approved at the January Board meeting, states the fund amount is to be based on those remedial measures that have a reasonable possibility of being necessary. The second change suggested by the Committee relates to when full funding of the trust fund must occur. The Committee suggested that the trust fund be fully capitalized very early in the life of a mining project, perhaps even prior to construction as indicated by the specific wording changes suggested in the motion.

**Funding of Worst Case Measures**

The Department has maintained the approach that the trust fund amount must be based on occurrences and related remedial and preventive measures that are reasonably possible to occur or be necessary. We believe the concept of "reasonable possibility" is needed to limit the extent of hypothetical occurrences and scenarios envisioned when assessing the funding needs. Without this limiting factor, the range of occurrences requiring analysis could be unmanageable. The rule provides that costs for worst case occurrences and remedial measures shall be used when those events are found to have a reasonable possibility of occurring or being necessary. The ultimate determination of what constitutes a reasonable possibility will be based on testimony and evidence presented at the contested case master hearing by

interested parties regarding the analysis of "worst case" occurrences. We have further modified the rule language in an attempt to make it very clear that any reasonably possible occurrence and the associated preventive or remedial measures must be considered in the evaluation of funding needs.

### Timing of Full Funding

One of the underlying principles guiding development of the rule has been that the irrevocable trust fund should reflect the degree of risk posed by a project at any point in the life of the project. Thus, if a high degree of risk were present at the onset of a project, the fund would need to be at a commensurate level prior to construction. Conversely, if the greatest risk is not projected to occur until well into or after completion of the operation, the fund should be allowed to develop over the life of the project. The rule language approved by the Board in September 1997 and again in January 1999 incorporated this premise.

The motion adopted by the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform recommends that the fund should be structured such that it be adequate to fund worst case measures early in the life of a project. The rule, as approved by the Board, would achieve that goal if the worst case were projected to occur early in the project's life. However, it is more likely that the risks posed by a mining operation will increase as the project is developed and the greatest risk may not occur until well after the operation has closed. In that case, it would not be reasonable to require full capitalization of the trust fund early in the project, when it is not needed for many years or even decades in the future. As stated previously, our approach has been to allow the fund to grow over time so that it corresponds to level of risk posed by the project at any point in time. The analysis conducted as part of the permitting process will include a projection of the risk presented by the project throughout its life. This analysis, the level of funding and the actual condition and performance of the mining operation will all be reevaluated at regular intervals during the operating phase of a project to ensure that the trust fund is adequate.

Legislators and others are concerned that the process created by the rule does not provide sufficient assurance that the trust fund will truly be adequate to cover catastrophic events that may occur prior to full funding of the trust fund. Thus, they feel it is necessary to provide full funding at the earliest stages of project development. While Department staff is comfortable with the current approach described above, we have developed an additional modification in an attempt to address this concern.

The Department is proposing to require an additional form of financial surety during the operation phase of a mining project. This surety, either a performance bond or insurance, would be posted prior to the initiation of construction and would be in the amount of the projected full trust fund amount. The trust fund would still be the primary source of funds if any preventive or remedial measures were needed, but the bond or insurance could be used in the event the trust fund was inadequate. The proposed provision also specifies that the bond or insurance must remain in effect until the entire mining site has been certified as completely reclaimed. By incorporating this secondary form of surety, our underlying principle of allowing the trust fund to develop in parallel with the risks posed by the project is maintained, the long term form of surety continues to be a "hard" type of security (i.e., the trust fund), the permittee is able to rely on periodic payments and accrued earnings to develop the fund and assurance is provided that adequate funds will be available early in the life of a project to address problems at the mining site.

### Summary

Department staff has given serious consideration to the suggested changes specified by the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform. We believe that the range of occurrences considered in developing the trust fund must be limited to those events that have a reasonable possibility of occurring. We have modified the rule to clarify the intent, but the requirement that the occurrence must be reasonably possible has been retained. The Department has added a proposed provision requiring a permittee to post a secondary form of financial surety to supplement the trust fund during the operational phase of a project. The performance bond or insurance must be posted prior to construction and must be in the full trust fund amount. This will assure that adequate funds are

available throughout the life of a project, including the very early stages of project development, which was a primary concern expressed by the Senate Committee. Adoption of the amendments recommended by staff in response to the legislative comments is requested.

**Attachments**

cc: S. Druckenmiller - AD/5  
K. Kessler - WA/3  
S. Bangert - WA/3  
L. Lynch - WA/3  
C. Hammer - LS/5  
Rep. Lorraine Seratti  
Rep. Spencer Black  
Rep. Neal Kedzie  
Sen. Alice Clausing  
Sen. Robert Cowles

Paper Ballot

February 22, 1999

Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform

MOTION ON CLEARINGHOUSE RULE 97-136, RELATING TO REGULATION OF METALLIC MINERAL MINING

Moved by Senator Clausing that the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform:

1. Recommends that the Department of Natural Resources agree to consider modifying, under s. 227.19 (4) (b) 2., Stats., Clearinghouse Rule 97-136, as set forth in the version of Clearinghouse Rule 97-136 attached to the February 9, 1999 letter to Senator Alice Clausing and Representative Neal Kedzie from George Meyer, Secretary, Department of Natural Resources (the "amended version"), by revising s. NR 132.085 to require that the level of funding for a trust fund be sufficient to fund worst case preventive or remedial measures and that this level of funding be attained early in the life of a mining project.

*DNR didn't go along w/ substance of what committee requested*

2. If the department does not agree to consider the modification identified in item 1. by 5:00 p.m. on February 23, 1999, objects under s. 227.19 (4) (d) 3. and 6., Stats., to the following parts of the amended version of Clearinghouse Rule 97-136 on the grounds that they do not comply with legislative intent and are arbitrary:

*performance bond issue*

a. In proposed s. NR 132.085 (5) (a), all of the following:

- (1) The first sentence.
- (2) The phrase "early in the mining operation" in the second sentence.
- (3) The third sentence.

b. In the fourth sentence in proposed s. NR 132.085 (5) (b), the phrase that begins with "when" and ends with "necessary".

VOTE ON MOTION

YES \_\_\_\_\_ Signed \_\_\_\_\_

NO \_\_\_\_\_ Date 4 \_\_\_\_\_



L9372

State Representative  
**Neal J. Kedzie**

43rd Assembly District

February 24, 1999

George E. Meyer, Secretary  
Department of Natural Resources  
101 S. Webster St.  
Madison, WI 53707-7921

**RECEIVED**

MAR 01 1999

**OFFICE OF THE  
SECRETARY**

Dear Secretary Meyer,

I am writing to you today regarding Clearinghouse Rule No. 97-136, relating to an irrevocable trust fund for metallic mining operations. The Assembly Environment Committee held an informational briefing yesterday on the rule as set forth in your letter dated February 9.

The Committee does not object to this rule, in whole or in part, or request any modifications. I am writing, however, to forward some concerns brought up by some Committee members regarding this rule.

These concerns centered on four main questions: first, what circumstances will define a "worst case scenario" in anticipation of the fund's use; second, how much money is adequate based on the "worst case" definition; third, can language be incorporated into the rule that would assure sufficient funds be available in the early life of a mine for necessary preventive or remedial measures; and fourth, what is the possibility of funding preventive or remedial measures at a base level for all mining projects.

Lastly, concerns were raised about the ability of the state to guarantee that remediation costs for a mining operation would not be left to the taxpayers of this state in the event that a mining company declares bankruptcy.

I support establishing a trust fund that will assure money for reasonably anticipated preventive and remedial measures as well as reasonable, though unanticipated remediation.

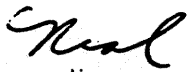
The Assembly Environment Committee supports review of this rule and is confident that the Department will give thoughtful consideration to the concerns stated above as it addresses the modifications requested by the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform.

5

It is the desire of the Assembly Environment Committee, and I believe, all interested parties, including the citizens of this state, to ensure that an irrevocable trust fund for mining projects be established in the near future so to incorporate this necessary protective measure into the Crandon mining project.

I would be happy to discuss these issues, including possible alternatives, with you further as the Department considers additional modifications to the rule.

Sincerely,



Representative Neal Kedzie  
Assembly Environment Committee, Chair

cc: Members, Assembly Environment Committee

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD

AMENDING AND CREATING RULES

The Wisconsin Natural Resources Board  
proposes an order to amend NR 132.09(3)  
and create NR 132.085 relating to regulation of metallic  
mineral mining.

SW-21-97

Analysis prepared by the Department of Natural Resources

Statutory Authority: ss. 293.13, 293.51 and 227.11 (2), Stats.  
Statutes Interpreted: ss. 293.13, and 293.51, Stats.

The proposed changes in ch. NR 132 would require a mining permit holder to establish an irrevocable trust agreement prior to commencing mining and maintain the trust agreement for an indefinite time after operations cease. The trust fund is intended to assure the availability of funds to cover costs associated

with certain reasonably anticipated preventive measures, as well as remedial actions related to unanticipated spills, releases from mining and mining waste facilities, and replacement of damaged water supplies. The fund will be structured such that, after the period of scheduled deposits by the permittee, it will be self-sustaining and adequate to finance necessary preventive and remedial actions well into the future. The proposed rule also includes mechanisms by which the adequacy of the fund is reviewed and adjusted, if necessary.

(b) Following issuance of a certificate of completion of reclamation for the entire mining site or upon permit revocation, the trust corpus shall consist of cash, certificates of deposit, or U.S. government securities. A total of no more than \$100,000 in cash and certificates of deposit may be placed in the trust account; U.S. government securities shall be used for amounts in excess of \$100,000.

(4) The trust fund shall be created and maintained in perpetuity with funds adequate for the following activities:

(a) Remedial action required as the result of spills of hazardous substances, as defined in s. 292.01(5), Stats., at the mining site.

(b) Remedial action to mitigate any hazardous substances that escape from the mine workings into the surrounding environment after the mining operation has ceased.

(c) Remedial action required as the result of failure of a mining waste facility to contain the waste.

(d) Provision of a replacement water supply as required under s. 293.65(4)(d), Stats.

(e) Preventive measures taken to avoid adverse environmental consequences, including measures such as replacement of components of waste disposal facilities. However, if the measures relate to closure or long term care, financial responsibility for the associated costs shall be covered in accordance with ss. NR 182.16 and 182.17, respectively.

(5) Funding of the trust fund shall be determined at the hearing conducted under s. 293.43, Stats., and shall be incorporated into the mining permit issued under s. 293.49, Stats., as follows:

(a) A schedule of payment into the trust fund, during mining operations, shall be established which takes into account a reasonable projection of exposure. Preventive or remedial measures which could be needed early in the mining operation shall be fully funded prior to the commencement of mining. Those preventive or remedial measures which could be needed only later in the operation, or after mining has ceased, may rely on income from the trust and periodic payments into the principal by the permittee.

(b) In establishing the level of funding, the department shall evaluate the likelihood of the need for preventive or remedial measures based on reasonable and conservative risk considerations. In addition to the risk considerations, the department shall evaluate the range of costs of the preventive and remedial measures that might be necessary in response to the risks. The level of funding shall be sufficient to cover the costs of all preventive and remedial measures ~~that have a reasonable possibility of being necessary~~ needed to correct all reasonably possible occurrences. Costs for worst case preventive or remedial measures shall be used when the measures are shown to have a reasonable possibility of being necessary.

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(c) In determining costs associated with the preventive or remedial measures identified in sub. (4), consideration shall be given to the risk assessment submitted pursuant to s. NR 132.07(3)(i), the contingency plan submitted pursuant to ch. NR 182, risks and impacts identified in the environmental impact statement and the measures reasonably anticipated necessary to address those risks and impacts.

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(d) To the extent the trust fund relies on accrued income to pay for future preventive or remedial measures, a conservative projection of earnings above inflation shall be used.

(e) The funding of the trust fund for activities identified in sub. (4) shall consider the existence of other binding, guaranteed sources of funds from the permittee which address the same preventive and remedial measures and the financial ability of the permittee to comply with legal obligations for necessary remedial activities during the operation. It is the intent of this section that the trust fund not duplicate similar financial obligations under other applicable provisions of law or administrative codes.

(6) Principal and income accrued from the trust fund may be used to pay for activities identified in sub. (4), only if:

(a) The mine permittee is not obligated by law or conditions of other obligations, such as the provision for a bond under s. 293.51, Stats., to pay for the activities, or



## COMMENTS FOR THE END OF THE MINING TRUST HEARING

Toward the conclusion of the hearing, you might want to make statements similar to the following:

- I chaired this committee when it voted 4-1 to implement a \$2 per ton minimum payment for the Mine Emergency Disaster Fund.
- I still feel strongly that a minimum trust fund amount should be set, and, at certain points, apparently DNR felt that a minimum was justified, too.
- Since DNR has changed its mind and is not willing to implement a minimum, perhaps the committee needs to be creative to ensure that taxpayers are protected and the funding amount is adequate to cover worst possible case environmental disaster scenarios.
- There were some insightful comments offered today on how to do that.
- I will review these comments and offer a paper ballot with a motion to partially object to this rule.
- My motion will seek to retain the committee's original intent of having an adequate amount of funding in the Mine Emergency Disaster Fund, while still allowing the rule to move forward.
- I will have this motion to committee members by the end of the week.

Randy,

Attached are two changes to the rule that I think would accomplish our goal. #1 is a moderate change to ensure the fund covers costs for worst case scenarios.

#2 is a more aggressive change. In #2, delete all under 5(a) and 5(b) and except that which is circled.

Let me know what you think about the two of them.

7  
# 1

(b) Remedial action to mitigate any hazardous substances that escape from the mine workings into the surrounding environment after the mining operation has ceased.

(c) Remedial action required as the result of failure of a mining waste facility to contain the waste.

(d) Provision of a replacement water supply as required under s. 293.65(4)(d), Stats.

(e) Preventive measures taken to avoid adverse environmental consequences, including measures such as replacement of components of waste disposal facilities. However, if the measures relate to closure or long term care, financial responsibility for the associated costs shall be covered in accordance with ss. NR 182.16 and 182.17, respectively.

(5) Funding of the trust fund shall be determined at the hearing conducted under s. 293.43, Stats., and shall be incorporated into the mining permit issued under s. 293.49, Stats., as follows:

(a) A schedule of payment into the trust fund, during mining operations, shall be established which takes into account a reasonable projection of exposure. Preventive or remedial measures which could be needed early in the mining operation shall be fully funded prior to the commencement of mining. Those preventive or remedial measures which could be needed only later in the operation, or after mining has ceased, may rely on income from the trust and periodic payments into the principal by the permittee.

(b) In establishing the level of funding, the department shall evaluate the likelihood of the need for preventive or remedial measures based on reasonable and conservative risk considerations. In addition to the risk considerations, the department shall evaluate the range of costs of the preventive and remedial measures that might be necessary in response to the risks. The level of funding shall be sufficient to cover the costs of all preventive and remedial measures that have a reasonable possibility of being necessary. Costs for worst case preventive or remedial measures shall be used ~~when the measures are shown to have a reasonable probability possibility of being necessary.~~

(c) In determining costs associated with the preventive or remedial measures identified in sub. (4), consideration shall be given to the risk assessment submitted pursuant to s. NR 132.07(3)(i), the contingency plan submitted pursuant to ch. NR 182, risks and impacts identified in the environmental impact statement and the measures reasonably anticipated necessary to address those risks and impacts.

(d) To the extent the trust fund relies on accrued income to pay for future preventive or remedial measures, a conservative projection of earnings above inflation shall be used.

(e) The funding of the trust fund for activities identified in sub. (4) shall consider the existence of other binding, guaranteed sources of funds from the permittee which address the same preventive and remedial measures and the financial ability of the permittee to comply with legal obligations for necessary remedial activities during the operation. It is the intent of this section that the trust fund not duplicate similar financial obligations under other applicable provisions of law or administrative codes.

(6) Principal and income accrued from the trust fund may be used to pay for activities identified in sub. (4), only if:

(a) The mine permittee is not obligated by law or conditions of other obligations, such as the provision for a bond under s. 293.51, Stats., to pay for the activities, or

(b) The mine permittee is financially incapable of paying for the costs of the activities regardless of legal obligations to do so.

(7) Notwithstanding sub. (6), principal and income from the trust fund may be used to pay for activities identified in sub. (4), which require immediate attention while issues of financial responsibility are resolved. Should the permittee, a successor in interest to the permittee or another party be determined to be financially responsible for the costs of the activities, the reimbursement monies obtained from those entities shall be deposited in the trust account.

(8) Activities identified under sub. (4) shall be undertaken by private entities under contract with the department and the trustee. The department

# 2

(b) Remedial action to mitigate any hazardous substances that escape from the mine workings into the surrounding environment after the mining operation has ceased.

(c) Remedial action required as the result of failure of a mining waste facility to contain the waste.

(d) Provision of a replacement water supply as required under s. 293.65(4)(d), Stats.

(e) Preventive measures taken to avoid adverse environmental consequences, including measures such as replacement of components of waste disposal facilities. However, if the measures relate to closure or long term care, financial responsibility for the associated costs shall be covered in accordance with ss. NR 182.16 and 182.17, respectively.

(5) Funding of the trust fund shall be determined at the hearing conducted under s. 293.43, Stats., and shall be incorporated into the mining permit issued under s. 293.49, Stats., as follows:

(a) A schedule of payment into the trust fund, during mining operations, shall be established which takes into account a reasonable projection of exposure. Preventive or remedial measures which could be needed early in the mining operation shall be fully funded prior to the commencement of mining. Those preventive or remedial measures which could be needed only later in the operation, or after mining has ceased, may rely on income from the trust and periodic payments into the principal by the permittee.

(b) In establishing the level of funding the department shall evaluate the likelihood of the need for preventive or remedial measures based on reasonable and conservative risk considerations. In addition to the risk considerations, the department shall evaluate the range of costs of the preventive and remedial measures that might be necessary in response to the risks. The level of funding shall be sufficient to cover the costs of all

*A. Eccola*

Alice Clausing  
Chair of Senate Committee on Agriculture,  
Environment, Campaign Finance Reform

February 17, 1999

Dear Senator Clausing,

Thank you for this opportunity to hear a voice from the North and have testimony read on our behalf. Time and distance prevent us from presenting this to you personally. We are fortunate to have the wonders of technology and a functioning network to help us have a voice in this matter.

The 400 or so members of Environmentally Concerned Citizens of Lakeland Area ECCOLA, have been concerned about the potential for the mining of the sulfide mineral deposits found in our region. That concern is in fact one of the main reasons we formed this group in the early 90's. Our initial concern was the Noranda proposal to build the Lynne mine near the Willow Flowage. Had the Noranda project gone according to schedule, they would be piling up millions of tons of tailings as we speak. These would have been located in areas surrounded by lakes, wetlands, streams, all very near the shores of the Willow Flowage in Southwestern Oneida County. Some of our members worked on the Flambeau Mine permit as well as the earlier versions of the permits to mine the Crandon/Mole Lake deposit. Our collective years of research have taught us a great deal about the risks and benefits of these types of mines, and the companies that want to use our waters and lands for their profit.

All through the eighties and nineties we have been very concerned about the long term storage of acid producing tailings, history justifies our concerns. We have made these concerns known to regulators in this state for some time. They have told us our concerns are unwarranted because the DNR is in charge and they wouldn't allow mistakes to be repeated in Wisconsin. I wish we could be confident in their abilities to do this.

The long term liability for these tailings has been an incredible liability to communities across this planet and we see no reason we should be put into the same situation. Our concerns have been discounted by DNR as misinformation, scare-mongering and generally ignored. There was a brief bit of satisfaction when the Republicans came forward before the elections three Summers ago with

the proposal to create an emergency fund to clean up acid mine drainage should it occur. Our concerns were as valid then as they are now.

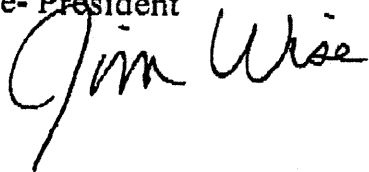
History has also convinced us that we must get our money in hand so to speak as we can't always trust these companies to pay their bills. Witness the Noranda fiasco where they skipped the country owing Wisconsin taxpayers over \$300,000. Also witness the inability of our DNR to collect these tax dollars in spite of their claims to be able to do that. The last I heard on this matter our Department of Justice has also been unable to retrieve this bad debt. Can you imagine if this was 10 million dollars owed to us for a toxic spill, or tailings leaks by a company from Canada. I would like to point out here that Nicolet Minerals has never built a single mine, 18 months ago they didn't even exist.

In the past 7 years we have had 4 mining companies and 7 company presidents through here with their promises of prosperity and long term commitment to our communities. 3 of these companies and 6 of the presidents have left. While we may take them at their word, we need to have verification with that trust. There is no better verification than money in the bank. It makes trust much easier. It also proves they will literally put their money where their mouth is.

The question here today is how much and when do we set that amount? It is illogical to wait until the end of this long and expensive process to set the amount. It is unfair to the companies, unless they already know the amount, to make them wait until the end. The difference between .25/ton and \$2.00/ton may make the difference in the viability of the Crandon/Mole Lake proposal or the other known deposits up here. For this reason and all of the above, we strongly urge this committee to insist that an appropriate amount of dollars be committed in advance to ensure we won't be burdened with enormous clean up costs by companies that come and go in our state.

Thank you again for this opportunity.

Respectfully on behalf of ECCOLA  
Jim Wise- President





# Mining Impact Coalition of Wisconsin Inc.

— committed to research and education about the social, economic and environmental impacts of metallic sulfide mining —

Mining Impact Coalition of Wisconsin, PO Box 55372, Madison WI 53705-9172, ph: (608) 238-2001, email: MICWINC@aol.com

Date: February 17, 1999  
To: Senate Committee on Agriculture and Environmental Resources  
From: Mining Impact Coalition of Wisconsin  
Re: Order SW-21-97(A), Irrevocable Trust Fund

Dear Committee members,

The Mining Impact Coalition of Wisconsin has reviewed the changes made by the Department of Natural Resources on January 27, 1999 to the Irrevocable Trust Fund, or Mine Disaster Emergency Fund. We are disappointed with changes, largely because they fail to take into account the recommendations of this committee made in Dec. 1997. With no guarantee that the fund will be front-loaded so as to guarantee money is available for mining spills and waste releases, we remain concerned that Wisconsin's residents and our environment are still at risk. The DNR could have required minimum fees be placed into the fund, but decided against such a common-sense provision. By failing to do so, the DNR has given up at least part of its authority by allowing any individual mining company to propose both the types of activities needing funding and the amount of funds necessary to do so.

The DNR also ceded additional authority to the Master Hearing Examiner when it decided to postpone the final decision on these issues until the final hearing on any mining permit. This decision deprives the public and even the regulators the ability to judge early on whether any individual trust fund is correctly determined and adequately funded. Even mining companies would benefit from knowing what is required of them from the outset of any given proposal.

The difficulty with which the mining industry has had in demonstrating a successful sulfide mine only proves the need for an adequate fund. Mining is a risky and messy enterprise, one that too often has resulted in accidental and even negligent releases of contamination from wastes and process chemicals.

We urge the Committee to consider again, modification of the rule so that there will be some guarantee that enough money is placed into the fund at the beginning of any mining proposal.

Thank you for your consideration and for the opportunity to make these comments.

Kira Henschel, president  
Mining Impact Coalition of Wisconsin

Tom Wilson  
PO Box 124  
Fairchild, WI 54741  
715/334-2271  
Resenergy@aol.com

*DRAFT*

Testimony before  
Senate Committee on Agriculture, Environment and Campaign Finance Reform  
Proposed Natural Resources Administrative Rule NR 132,  
pertaining to an Irrevocable Trust Fund for metallic mining operations  
Order SW-21-97(A)

February 17, 1999

Thank you for the opportunity to address you today. My name is Tom Wilson and I am co-chairman of the Mining subcommittee of the Wisconsin Stewardship Network. Two weeks ago



something to be paid for by an emergency clean-up fund. As analogy, the periodic replacement of tires is not an emergency repair cost; it is an anticipated expense of operating a car. The Mine Disaster Emergency Fund is there to deal with the collateral damage when one of those tires unexpectedly and prematurely blows out at 60 mph.

The purpose of the Irrevocable Trust is to cover *unanticipated* systems failures such as a catastrophic tailings dam failure as recently occurred in Spain or, under the new Crandon plan, an unidentified failure of the grouting cap which results in an acid plume not caught by the monitoring wells until there is significant groundwater pollution.

The DNR purports it can estimate the costs of a system failure using the same engineering assumptions upon which the system was designed, the permit was issued and, as we have already been assured, will not fail. The purpose of the Mine Disaster Emergency Fund is to cover those possible disasters that might occur when the mining company's engineering assumptions prove inadequate.

The DNR's per ton fees should be based not on their engineered projections of what costs will be to repair what they expect to happen, but rather should be based on historical costs incurred by

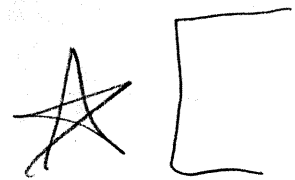
WHAT HAS HAPPENED WITH MINE EMERGENCY DISASTER FUND

Deane Harrison

When?

I. Chronology

- A. DNR first drafted the Mining Irrevocable Trust Rule based on a petition by legislators (led by Seratti and you signed on) to establish a trust fund for mining companies that wished to mine in the state. ①
- B. The rule was set up so a mining company would have to put funds into a Mine Emergency Disaster fund to cover costs of possible future environmental damage caused by mining activity.
- C. Although during public hearings, DNR discussed setting a minimum fee, the department first submitted the rule to your committee with no minimum payment into the fund.
- D. Because of long-term concerns about taxpayers footing the bill for multi-million dollar mine clean up costs, your committee voted 4-1 to:
  - 1. Establish a minimum payment of \$2 per ton of mine waste deposited at the site.
  - 2. Require DNR to create a standard for identifying the worst case preventive or remedial measures to protect the public and environment from harm caused by a mining operation.
- E. Higher fees were considered:
  - 1. Senator Alan Lasee commented that he didn't know whether \$2 per ton was enough or too much. He even offered \$3 per ton or \$4 per ton, but \$2 per ton was the established minimum for the committee.
  - 2. Sierra Club has offered that \$5 per ton should be the established minimum for the Mine Emergency Disaster Fund.
- F. DNR took the rule back for further consideration.
- G. DNR prepared a green sheet for the Natural Resources Board (dated January 15, 1998) that incorporated the \$2 per ton minimum fee, but did not create a worst case scenario standard to protect the environment. DNR said the standard was best determined on a case-by-case basis.
- H. DNR pulled the rule back and did not have the Natural Resources Board hear the rule again.
- I. DNR prepared a second green sheet memo for the Metallic Mineral Council (dated March 3, 1998) that also did not establish the worst case standard and set a minimum fee that would accumulate a trust fund amount equal to the combined value of:
  - 1. \$1 per ton for each ton of potentially acid generating waste disposed of in a mining waste facility;
  - 2. \$1 per ton of potentially acid-generating material placed in an underground mine as backfill; and
  - 3. \$.25 per ton for each ton of potentially acid-generating material placed in an underground mine as backfill below the expected elevation of the final post-mining groundwater table.
- J. DNR again pulled the rule back
- K. On April 17, 1998, DNR again prepared a memo for consideration by the Natural Resources Board. This time, the Mine Emergency Disaster Fund was reduced by about 92% to:



When?

1. \$.25 per ton of mining waste disposed of above ground, and
  2. \$.05 per ton of mining waste disposed of in the mine workings.
- L. DNR again removed the rule from consideration.
- M. Finally, DNR revised its green sheet for Natural Resources Board review. In a green sheet prepared for the Board in January (1999), DNR's new rule again did not have the worst case standard included. It also reverted back to the original rule and did not have a minimum trust account. It said the Trust Fund amount should also be set on a case-by-case basis.
- N. The board approved the rule unanimously, and DNR submitted the rule for committee review on February 10<sup>th</sup>.
- O. The committee has ten working days to act on the rule.

## II. Potential committee action:

- A. Do nothing and let the rule pass as is. (Considering that the Department completely disregarded your committee's recommendation, this is not a good scenario. The plus is that the rule would take effect and there would be some trust fund in place. The minus is that DNR could set the fund woefully low so there is no taxpayer protection included in the trust).
- B. Considering offering further modifications to DNR. (Considering DNR and the Natural Resources Board are not supportive of a minimum payment, this is also not a good scenario. They are not likely to approve of a minimum at any time).
- C. Object to the rule in part and let the remainder go. (Legislative rules give committees broad authority to line item certain segments of a rule - like the Governor - and cross out words, phrases or numbers to make them entirely different. This may be an appealing option. The rule would move forward in part, but the recommended revisions would be subject to Joint Committee of Review of Administrative Rules review. I met with Judy Robson's office about this on Monday).
- D. Object to the whole rule. (This stops the rule from moving forward. JCRAR would then have 30 days to take action on the rule. Since a standing committee objected, the committee must act on the rule).
- E. JCRAR options.
1. Object to the rule. This requires that a bill be drafted to implement the language of the rule.
  2. Vote for the rule. This would override your committee's objection and the rule would move forward as is.
  3. Tie vote leads to implementation of the rule as it is currently drafted.

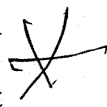
## III. Why your committee should take action on this rule and object at least in part

- A. DNR has completely disregarded your committee's action on this rule.
1. It never included a method for identifying worst case measures to protect the environment. Why doesn't the DNR want to find out what the worst possible case scenarios are in case there is a disaster? The public should want to know how big the disaster could be.

2. DNR rejected any minimum trust fund fee. Without a minimum payment, how can the state ensure taxpayers that they will not be footing the bill for mining disaster clean up decades in the future?
- B. DNR has been all over the map on whether there should be a minimum.
1. First DNR did not offer a minimum.
  2. Then it agreed that a \$2 minimum was acceptable, but changed its mind.
  3. Then it agreed that a combination of \$1 per ton and \$.25 per ton of mining waste was acceptable, but again changed its mind.
  4. Next, it was suggested that a \$.25 per ton/\$.05 per ton trust fund split was acceptable.
  5. Finally, it settled on the original notion of not having any minimum.
  6. If DNR can not figure out how it wants to establish a trust fund account, how can the public be certain that its long-term interests are being protected?
  7. Who is really calling the shots at DNR? Why has the department been so unsure of setting a minimum? Their delays and uncertainty are jeopardizing whether a Mine Emergency Disaster Fund will even be created. They are jeopardizing the long - term interest of Wisconsin's environment and its taxpayers, who would have to pay for any mining clean up.
  8. Remember that DNR is also all over the map on the Mining Moratorium issue.
    - a. First, DNR agreed that one mine would have to satisfy both requirements of having been operated for ten years and closed for ten years without polluting the environment.
    - b. Later, DNR said that it was clear that two different mines could be used to satisfy the Mining Moratorium laws ten year/ten year requirement.
    - c. DNR Secretary George Meyer even said he asked the Attorney General about this. The Attorney General denied that a request from DNR had ever been made.

#### IV. Questions for DNR

- A. Why has the department changed its mind so many times about this rule?
- B. Has the mining industry had any input in how this trust fund should be created? Has the Governor had any input on this rule?
- C. What assurances can the department provide to this committee and Wisconsin taxpayers that they will not be paying for the clean up costs for mining company disasters?
- D. Does the department realize it is jeopardizing the creation of a Mine Emergency Disaster Fund by playing games with this rule?
- E. Insurance policies offer protection from unexpected occurrences. By not including a worst case scenario standard, hasn't DNR disregarded this primary fact of the insurance aspect of the Mine Emergency Disaster Fund?
- F. If the Trust Fund is established through the mine permitting process, doesn't this give the (mining companies) the ability to provide the information about worst case scenarios in a case-by-case situation?

- G. Does the department realize that, at the Summitville mine in Colorado, taxpayers are stuck with costs of more than \$150 million when the foreign owned mining company filed for bankruptcy?
- H. Does DNR realize that clean up of the Upper Clark Fork River Basin in Montana is currently estimated at a minimum of \$750 million? 
- I. Is DNR aware of a 1996 mine tailings pond failure in the Philippines that spilled four million tons of tailings when a tailings dam collapsed? That failure cost \$80 million to clean up – equivalent to about \$20 per ton of spilled tailings.
- J. Given all this information, how can DNR say that a \$2 per ton minimum (about \$88 million for Crandon) is excessive and can be better determined on a case-by-case basis?
- K. How can DNR reasonably extrapolate costs up to one hundred years from now and say that this fund will have an infinite amount of money? How can you estimate possible clean up costs in the future? Remediation accounts will certainly increase with time, as should the Trust account.
- L. How much money does Nicolet minerals expect to secure from extracting minerals from Wisconsin soils? Given this amount of profit expected for this site, isn't it reasonable to require the company to set a minimum trust fund account to pay for any environmental disasters at the Crandon site?

Serra def  
①

(b) Remedial action to mitigate any hazardous substances that escape from the mine workings into the surrounding environment after the mining operation has ceased.

(c) Remedial action required as the result of failure of a mining waste facility to contain the waste.

(d) Provision of a replacement water supply as required under s. 293.65(4)(d), Stats.

(e) Preventive measures taken to avoid adverse environmental consequences, including measures such as replacement of components of waste disposal facilities. However, if the measures relate to closure or long term care, financial responsibility for the associated costs shall be covered in accordance with ss. NR 182.16 and 182.17, respectively.

(5) Funding of the trust fund shall be determined at the hearing conducted under s. 293.43, Stats., and shall be incorporated into the mining permit issued under s. 293.49, Stats., as follows:

*Timing*  
~~(a) A schedule of payment into the trust fund, during mining operations, shall be established which takes into account a reasonable projection of exposure. Preventive or remedial measures which could be needed early in the mining operation shall be fully funded prior to the commencement of mining. These preventive or remedial measures which could be needed only later in the operation, or after mining has ceased, may rely on income from the trust and periodic payments into the principal by the permittee.~~

(b) In establishing the level of funding, the department shall evaluate the likelihood of the need for preventive or remedial measures based on reasonable and conservative risk considerations. In addition to the risk considerations, the department shall evaluate the range of costs of the preventive and remedial measures that might be necessary in response to the

Serra Club  
2

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(b) In establishing the level of funding, ~~the department shall evaluate the likelihood of the need for preventive or remedial measures based on reasonable and conservative risk considerations. In addition to the risk considerations the department shall evaluate the range of costs of the preventive and remedial measures that might be necessary in response to the mine. The level of funding shall be sufficient to cover the costs of all preventive and remedial measures that have a reasonable possibility of being necessary. Costs for worst case preventive or remedial measures shall be when the measures are shown to have a reasonable probability possibility of being necessary.~~

(c) In determining costs associated with the preventive or remedial measures identified in sub. (4), consideration shall be given to the risk assessment submitted pursuant to s. NR 132.07(3)(i), the contingency plan submitted pursuant to ch. NR 182, risks and impacts identified in the environmental impact statement and the measures reasonably anticipated necessary to address those risks and impacts.

(d) To the extent the trust fund relies on accrued income to pay for future preventive or remedial measures, a conservative projection of earnings above inflation shall be used.

(e) The funding of the trust fund for activities identified in sub. (4) shall consider the existence of other binding, guaranteed sources of funds from the permittee which address the same preventive and remedial measures and the financial ability of the permittee to comply with legal obligations for necessary remedial activities during the operation. It is the intent of this section that the trust fund not duplicate similar financial obligations under other applicable provisions of law or administrative codes.

(6) Principal and income accrued from the trust fund may be used to pay for activities identified in sub. (4), only if:

(a) The mine permittee is not obligated by law or conditions of other obligations, such as the provision for a bond under s. 293.51, Stats., to pay for the activities, or

(b) The mine permittee is financially incapable of paying for the costs of the activities regardless of legal obligations to do so.


(7) Notwithstanding sub. (6), principal and income from the trust fund may be used to pay for activities identified in sub. (4), which require immediate attention while issues of financial responsibility are resolved. Should the permittee, a successor in interest to the permittee or another party be determined to be financially responsible for the costs of the activities, the reimbursement monies obtained from those entities shall be deposited in the trust account.

(8) Activities identified under sub. (4) shall be undertaken by private entities under contract with the department and the trustee. The department

1/ Larry Lynch / Paul Hemen

### Irrevocable trust

- no clean up provision
- Creation of legi

State Senator  
**Alice Clausen** 

State Capitol, P.O. Box 7882, Madison, WI 53707-7882  
 1-800-862-1092 (Toll-free)      608-266-7745 (Madison)      715-232-1390 (Menomonee)

current law

reclamation bond  
 insurance  
 solid viable to  
 need to go beyond

- 1 Flat fee's  
Process to ↑↓
- 2 5 yrs to capitalize, fund  
call / expense

case by case - determinant on of risk + costs - board approved 97 - fees imposed (\$/ton) - suggestion of \$2/ton → gen.

possibility of occurring

DOES NOT  
 DUK \* wants flat fee - Bd approved

of reasonable accidents

Alice

Senate kicked by

A/ fund must consider all accidents / remedial measures

UNREASONABLE POSSIBILITY OF OCCURRING

of fund fully capitalized up front

will not require deposits of cash

UNREASONABLE

secondary form of financial security to full amount of liability



②

worse case scenario's (falling into  
Wolfe River)

process: lots of citizen input in evaluation/  
assessment (early in process)

1/ company's submits assessment plus  
remedial efforts

2/ identify  
of risks/  
remediation

3/ public - copies

4/ negotiation of DNR

5/ final plan approval

6/ EIS - will discuss these issues  
(public hearing / comment)

7/ contested case -  
cross-examination

8/ Bond by  
Class A - rated  
insurance comp  
w/ periodic  
reviews

claims → damages from  
mining operation

||| attorney's  
fees

disput  
confirmation  
of  
drinking  
water  
wells

1) claim to town / county

2) DNR determines "fault"

periodic reviews → risk determinations

Ac

tand tied to profits generated  
vs. risk e time

industrial  
money  
up  
front

**NATURAL RESOURCES BOARD AGENDA ITEM**

**SUBJECT:** Request by Senate Committee on Agriculture and Environmental Resources for modification to Order SW-21-97(A), Pursuant to legislative review - revision of Chapter NR 132, Wis. Adm. Code, pertaining to an Irrevocable Trust Fund for metallic mining operations (approved by Board in September 1997)

**FOR: April 1999 BOARD MEETING**

**TO BE PRESENTED BY:** Stan Druckenmiller - AD/5

**SUMMARY:** Following initial adoption in September 1997 by the Board of an amendment to Chapter NR 132 creating an irrevocable trust fund for mining, the Senate Committee on Agriculture and Environmental Resources requested the Board consider making two changes to the rule. The Department responded to those requests and the Board approved the rule in January 1999. The Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform has again requested the Department consider changes to the rule. First, it suggested that the fund be adequate to fund all worst case remedial and preventive measures that are possible. Second, the Committee recommended that the fund be fully capitalized very early in the

life of a mining project, potentially prior to construction.

Department staff has given serious consideration to the suggested changes specified by the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform. We believe that the range of occurrences considered in developing the trust fund must be limited to those events that have a reasonable possibility of occurring. We have modified the rule to clarify the intent, but the requirement that the occurrence must be reasonably possible has been retained. The Department has added a provision requiring the permittee to post a secondary form of financial surety to supplement the trust fund during the operational phase of a mining project. The performance bond or insurance must be posted prior to construction and must be in the full trust fund amount. This will ensure that adequate funds are available throughout the life of a project, including the very early stages of project development, which was a primary concern of the Committee.

**RECOMMENDATION:** Adoption of modifications to Order SW-21-97(A)

**LIST OF ATTACHED MATERIALS:**

- |  |   |   |          |
|--|---|---|----------|
| No <input checked="" type="checkbox"/> | Fiscal Estimate Required                              | Yes <input type="checkbox"/>            | Attached |
| No <input checked="" type="checkbox"/> | Environmental Assessment or Impact Statement Required | Yes <input type="checkbox"/>            | Attached |
| No <input type="checkbox"/>            | Background Memo                                       | Yes <input checked="" type="checkbox"/> | Attached |

**APPROVED:**

**DRAFT**

\_\_\_\_\_  
Bureau Director, Date

\_\_\_\_\_  
Administrator, Date

\_\_\_\_\_  
Secretary, Date

- |                       |                     |
|-----------------------|---------------------|
| cc: K. Kessler - WA/3 | S. Bangert - WA/3   |
| L. Lynch - WA/3       | C. Hammer - LC/5    |
| Rep. Lorraine Seratti | Rep. Neal Kedzie    |
| Rep. Spencer Black    | Sen. Alice Clausing |

interested parties regarding the analysis of "worst case" occurrences. We have further modified the rule language in an attempt to make it very clear that any reasonably possible occurrence and the associated preventive or remedial measures must be considered in the evaluation of funding needs.

### **Timing of Full Funding**

One of the underlying principles guiding development of the rule has been that the irrevocable trust fund should reflect the degree of risk posed by a project at any point in the life of the project. Thus, if a high degree of risk were present at the onset of a project, the fund would need to be at a commensurate level prior to construction. Conversely, if the greatest risk is not projected to occur until well into or after completion of the operation, the fund should be allowed to develop over the life of the project. The rule language approved by the Board in September 1997 and again in January 1999 incorporated this premise.

The motion adopted by the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform recommends that the fund should be structured such that it be adequate to fund worst case measures early in the life of a project. The rule, as approved by the Board, would achieve that goal if the worst case were projected to occur early in the project's life. However, it is more likely that the risks posed by a mining operation will increase as the project is developed and the greatest risk may not occur until well after the operation has closed. In that case, it would not be reasonable to require full capitalization of the trust fund early in the project, when it is not needed for many years or even decades in the future. As stated previously, our approach has been to allow the fund to grow over time so that it corresponds to level of risk posed by the project at any point in time. The analysis conducted as part of the permitting process will include a projection of the risk presented by the project throughout its life. This analysis, the level of funding and the actual condition and performance of the mining operation will all be reevaluated at regular intervals during the operating phase of a project to ensure that the trust fund is adequate.

Legislators and others are concerned that the process created by the rule does not provide sufficient assurance that the trust fund will truly be adequate to cover catastrophic events that may occur prior to full funding of the trust fund. Thus, they feel it is necessary to provide full funding at the earliest stages of project development. While Department staff is comfortable with the approach described above, we have developed an additional modification in an attempt to address this concern.

The Department is proposing to require an additional form of financial surety during the operation phase of a mining project. This surety, either a performance bond or insurance, would be posted prior to the initiation of construction and would be in the amount of the projected full trust fund amount. The trust fund would still be the primary source of funds if any preventive or remedial measures were needed, but the bond or insurance could be used in the event the trust fund was inadequate. The proposed provision also specifies that the bond or insurance must remain in effect until the entire mining site has been certified as completely reclaimed. By incorporating this secondary form of surety, our underlying principle of allowing the trust fund to develop in parallel with the risks posed by the project is maintained, the long term form of surety continues to be a "hard" type of security (i.e., the trust fund), the permittee is able to rely on periodic payments and accrued earnings to develop the fund and assurance is provided that adequate funds will be available early in the life of a project to address problems at the mining site.

### **Summary**

Department staff has given serious consideration to the suggested changes specified by the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform. We believe that the range of occurrences considered in developing the trust fund must be limited to those events that have a reasonable possibility of occurring. We have modified the rule to clarify the intent, but the requirement that the occurrence must be reasonably possible has been retained. The Department has added a provision requiring a permittee to post a secondary form of financial surety to supplement the trust fund during the operational phase of a project. The performance bond or insurance must be posted prior to construction and must be in the full trust fund amount. This will assure that adequate funds are available

Paper Ballot

February 22, 1999

Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform

**MOTION ON CLEARINGHOUSE RULE 97-136, RELATING TO REGULATION OF METALLIC MINERAL MINING**

Moved by Senator Clausing that the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform:

1. Recommends that the Department of Natural Resources agree to consider modifying, under s. 227.19 (4) (b) 2., Stats., Clearinghouse Rule 97-136, as set forth in the version of Clearinghouse Rule 97-136 attached to the February 9, 1999 letter to Senator Alice Clausing and Representative Neal Kedzie from George Meyer, Secretary, Department of Natural Resources (the "amended version"), by revising s. NR 132.085 to require that the level of funding for a trust fund be sufficient to fund worst case preventive or remedial measures and that this level of funding be attained early in the life of a mining project.

2. If the department does not agree to consider the modification identified in item 1. by 5:00 p.m. on February 23, 1999, objects under s. 227.19 (4) (d) 3. and 6., Stats., to the following parts of the amended version of Clearinghouse Rule 97-136 on the grounds that they do not comply with legislative intent and are arbitrary:

a. In proposed s. NR 132.085 (5) (a), all of the following:

- (1) The first sentence.
- (2) The phrase "early in the mining operation" in the second sentence.
- (3) The third sentence.

b. In the fourth sentence in proposed s. NR 132.085 (5) (b), the phrase that begins with "when" and ends with "necessary".

**VOTE ON MOTION**

YES \_\_\_\_\_ Signed \_\_\_\_\_

NO \_\_\_\_\_ Date \_\_\_\_\_

It is the desire of the Assembly Environment Committee, and I believe, all interested parties, including the citizens of this state, to ensure that an irrevocable trust fund for mining projects be established in the near future so to incorporate this necessary protective measure into the Crandon mining project.

I would be happy to discuss these issues, including possible alternatives, with you further as the Department considers additional modifications to the rule.

Sincerely,



Representative Neal Kedzie  
Assembly Environment Committee, Chair

cc: Members, Assembly Environment Committee

**Before the Senate  
Committee on Agriculture & Environmental Resources  
And Campaign Finance Reform  
February 17, 1999**

**Testimony of  
The Wisconsin Department of Natural Resources  
On  
Clearinghouse Rule 97-136, Revision of Chapter NR 132, Wis. Adm. Code**

The Department of Natural Resources is appearing today in support of Clearinghouse Rule 97-136 which would revise Chapter NR 132 to require establishment of irrevocable trust funds for metallic mining operations.

The Senate Committee on Agriculture and Environmental Resources, in December 1997, requested the Department of Natural Resources to consider two specific changes to the proposed rule revisions. First, the Committee suggested that the rule include a standard for identifying worst case risks and remedial measures to be considered by the fund. Second, the Committee suggested that the rule establish a minimum fund amount based on a rate of payment of \$2 per ton for mining waste disposed of at the mining site or used as backfill in an underground mine.

In response to the first suggestion, the department did not include a standard for worst case risks or remedial measures. It is our belief that worst case analyses are very project-specific requiring case-by-case assessment of risks and associated remedial measures. There is no practical way to devise and implement a meaningful standard for worst case risks and remedial actions. Rather, we have modified the rule by inserting additional language to clarify that a range of risks and remedies must be considered and that the fund must reflect those risks and remedial measures that have a reasonable possibility of occurring or being necessary.

In regard to the \$2 per ton rate of payment, the department understands the rationale behind the request, but we cannot support it. The challenge comes in determining the appropriate rate of payment so it makes sense for all mining operations while recognizing the varied degree of risk presented by different projects. Department staff considered a number of different approaches to incorporate the concept of a minimum, including the \$2/ton option.

Using the proposed Crandon Project as an example, we conducted an analysis of how the trust fund would develop if the \$2/ton rate of payment were implemented. In conducting the analysis we made very conservative assumptions concerning the rate of earnings and rate of inflation. We also assumed that there would be a recurring cost of remediation of \$30 million every 100 years, to fund total replacement of the cover system at the tailings disposal facility plus a 50% contingency. This too we feel is a conservative assumption. The analysis showed that a rate of payment of \$2 per ton would generate excessive dollar amounts in the fund, far greater than what would reasonably be needed. For example, at the end of operation, the fund would have generated \$77 million, in current dollars, compared to the remedial costs of \$30 million. The fund would continue to grow so that one hundred years after closure, the fund would have reached \$527 million, again in current dollar value.

Department staff considered other options. We applied different rates of payment for backfill material versus tailings to be disposed of on the surface. We also assigned different rates of payment for acid

generating versus non-acid generating materials. At one point we thought we had devised a structure that made sense, at least for the Crandon Project. However, the company later announced some major project design changes and our assumptions were no longer valid. This exercise highlighted the fact that risks and the necessary remedial measures for any given project are driven by the specific design and environmental characteristics of each project. It further enforced the belief that specifying a rate of payment by rule will likely lead to the wrong answer – the rate of payment will either be too high or too low for any given project. In terms of being too high we have significant problems with the defensibility of specifying mandatory payments into an irrevocable fund, which are not tied to reality and which are clearly excessive. Therefore, we made the decision to leave the structure of the code as originally written and have not incorporated the \$2 per ton minimum payment.

The rule contains several important elements to ensure adequate funding. First, it provides for case-by-case evaluation of the risks, remedial measures and associated costs through the mine permitting process, which is a very open and public process. Second, the actual fund amount, structure and payment schedule will be determined by an administrative law judge after the contested case master hearing, having received input from all other interested parties. Third, the rule requires the fund to be established prior to construction, in an amount adequate to cover those risks that are present early in the life of the project. And fourth, through periodic reviews, the trust fund's growth and underlying assumptions will be assessed along with the overall performance of the project to determine if any adjustments to the fund structure or payment schedule are needed.

In conclusion, the department believes the best approach is one that advocates the careful consideration of each project and that tailors the fund to meet the needs of that project.



## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

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**Mason, Cory**

**From:** Mason, Cory  
**Sent:** Monday, August 16, 1999 2:35 PM  
**To:** Beilke, Dustin; Brost, Jennifer S; Grimm, Maggie; 'Julie Olson'; Richard, JoAnna M.; Robson, Judy; Roller, Rachel; Sklansky, Ron; Soderbloom, Kathy; Sweet, Richard; Flury, Kelley; Grothman, Glenn; Rep.Grothman; Black, Spencer; Rep.Black; Kreuser, Jim; Rep.Kreuser; Seratti, Lorraine; Rep.Seratti; Welch, Bob; Sen.Welch; Shibilski, Kevin; Sen.Shibilski; Grobschmidt, Richard; Sen.Grobschmidt; Darling, Alberta; Sen.Darling; Villa, Jim; Nuutinen, Aaron; Holschbach, Todd; Sumi, John; Wakefield, Les; Perala, Steve; Bruhn, Mike; Ohlson, Gwen; Krifka, Nancy; Collins, Winn; Fiocchi, Timothy; Kluesner, Elizabeth M; 'Caryl Terrell'; 'John Robinson'  
**Subject:** Objection of NR 132 (CR-97-136) in JCRAR  
**Expires:** Thursday, September 30, 1999 5:00 PM

The following Clearinghouse Rule has been referred to the Joint Committee for the Review of Administrative Rules on **July 29, 1999**.

**97-136**—RE: NR 132; regulation of metallic mineral mining [covered in report on CR 97-057]. (Submitted by the Department of Natural Resources).

The committee now has review of the rule for the next 30 days (**until August 28, 1999**). If the committee would like to further review the rule, we have 30 additional days to review the rules from the date we request the review.

The Rule was referred to JCRAR as an **objection** by the Senate Committee on Agriculture, Environmental Resources and Campaign Finance Reform on July 22, 1999.

I will be forwarding the materials associated with the Rules to the members of the committee. Anyone else desiring a copy, please feel free to request one.

Sincerely,

Cory Mason  
Committee Clerk  
Senator Robson's Office  
JCRAR

PO Box 7882  
15S  
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Madison WI, 53707-7882  
608/266-2253  
608/267-5171  
[cory.mason@legis.state.wi.us](mailto:cory.mason@legis.state.wi.us)

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