

Clearinghouse Rule 13-057

Report to
Legislative Council Rules Clearinghouse
Chapters NR 103, 123, 130, 131, 132, 135, 140, 182, 213, 214,
406, 500 to 538, 812, and 815, Wis. Adm. Code
Natural Resources Board Order WA-14-13

Wisconsin Statutory Authority

Section 103 of 2013 Wisconsin Act 1 (the Act) is a non-statutory provision that directs the Department to revise certain rules and to clarify the rules' applicability to ferrous mining activities that are regulated under subchapter III of chapter 295, Stats.

Federal Authority

Not applicable. These rule changes are not based on a federal requirement.

Court Decisions Directly Relevant

None.

Analysis of the Rule and Reason for the Rule.

The objective of the proposed rules is to satisfy the Department's obligation to promulgate rules as directed by section 103 of the Act. The Department has reviewed all chapters of the Wisconsin Administrative Code administered by the Department and has proposed amendments to those rules as required by section 103 of the Act. Generally, proposed language has been added to specific sections so that the rules are consistent with the new ferrous mining law, subch. III of ch. 295, and with other statutory amendments made by the Act.

The proposed rules clarify that ferrous mining activities are regulated under the new subch. III of chapter 295, Stats., created by the Act. The proposed rules: 1) revise the mining regulations in chs. NR 130, 131, 132, and 182, Wis. Adm. Code, to clarify that these rules apply only to nonferrous mining; 2) revise the solid waste regulations in chs. NR 500 to 538, Wis. Adm. Code, to be consistent with the new ferrous mining law and to clarify that the rules apply only to solid waste facilities that are not regulated under the mining laws; and 3) revise sections of other regulations that currently provide an exemption for metallic mining activities so that the rules are consistent with the Act.

The Department has determined that some rules identified in section 103 do not require revision. The Department has not proposed revisions to chs. NR 540 to 555 of the solid waste rules because these rules do not apply to metallic mining. The Department has not proposed revisions to chs. NR 660 to 679, the hazardous waste rules, because the

applicable rules are required by federal law and thus the existing rules are in accordance with s. 295.51(1e)(b), Stats., of the new ferrous mining law. Section 295.51(1e)(b), Stats., specifies that mining wastes that are hazardous are subject to subch. III of ch. 295, Stats., and not to chs. NR 660 to 679, the state's hazardous waste rules, except as necessary to comply with applicable federal hazardous waste regulations adopted under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 to 6991m. The Department is authorized by the U.S. Environmental Protection Agency (EPA) to administer the federal hazardous waste program in Wisconsin. The state is required to have regulations that are at least as stringent as those required by federal law. State hazardous waste rules that identify when a waste is hazardous (e.g., if the waste has certain characteristics or meets specific listings) are parallel and equivalent to the federal hazardous waste regulations. State regulations that identify when a mining waste is exempt from regulation are also exactly parallel to federal law. Because the applicable state regulations in chs. NR 660 to 679 are necessary to comply with federal hazardous waste regulations, no changes are proposed in these chapters.

Rule Effect

The effect of the proposed rules is to amend existing rules so that they are consistent with the changes in state law made by the Act. The changes in state rules proposed in Board Order WA-14-13 apply to the State of Wisconsin's regulation of mining activity.

All applicable federal laws continue to apply to proposed ferrous and nonferrous mining activities. The proposed rule changes do not conflict with any applicable federal laws and regulations. Both ferrous and nonferrous metallic mining activities must meet the requirements of federal laws such as the Clean Water Act, 42 U.S.C. 1251 to 1387, and the Clean Air Act, 42 U.S.C. 7401 to 7671q. These federal laws are administered by the EPA and the U.S. Army Corps of Engineers (ACOE). In addition, hazardous wastes are subject to federal hazardous waste laws under Subtitle C of RCRA.

Agency Procedures for Promulgation

Public hearing, Natural Resources Board final adoption, Governor's final approval, followed by legislative review.

Description of any Forms

None.

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