

CR 94-49

# RULES CERTIFICATE

STATE OF WISCONSIN )  
 ) SS  
DEPT. OF INDUSTRY, )  
LABOR & HUMAN RELATIONS )

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Carol Skornicka, Secretary of the Department of Industry,

Labor and Human Relations, and custodian of the official records of said department, do hereby certify that

the annexed rule(s) relating to mines, pits and quarries

(Subject)

were duly approved and adopted by this department on August 8, 1994

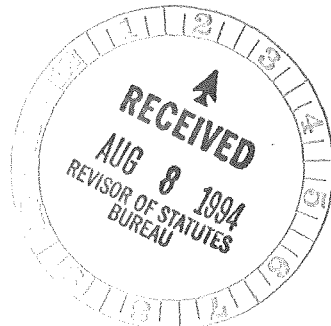
(Date)

I further certify that said copy has been compared by me with the original on file in the department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 1:00 p.m.

in the city of Madison, this 8th day of August A.D. 19 94

*Carol Skornicka*  
Secretary



10-1-94

# ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s)

101.15(2)(e)

Stats., the Department of Industry, Labor and Human Relations  creates;  amends;

repeals and recreates;  repeals and adopts rules of Wisconsin Administrative Code chapter(s):

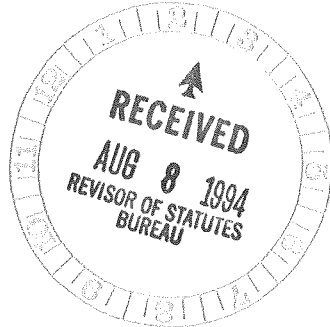
ILHR 8

(Number)

Mines, Pits and Quarries

(Title)

The attached rules shall take effect on the first day of the month following publication  
in the Wisconsin Administrative Register pursuant to section 227.22, Stats.



Adopted at Madison, Wisconsin this

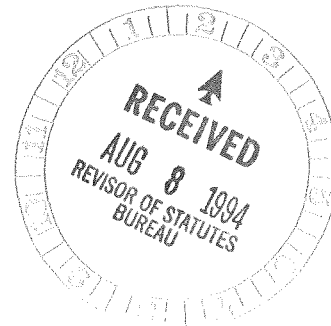
date: August 8, 1994

DEPARTMENT OF INDUSTRY, LABOR AND HUMAN  
RELATIONS

  
Secretary



# RULES in FINAL DRAFT FORM



**Rule No.:** Chapter ILHR 8

**Relating to:** Mines, Pits and Quarries

**Clearinghouse Rule No.:** 94-49

The Department of Industry, Labor and Human Relations proposes an order to repeal and recreate chapter ILHR 8, relating to mines, pits and quarries.

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Analysis of Proposed Rules

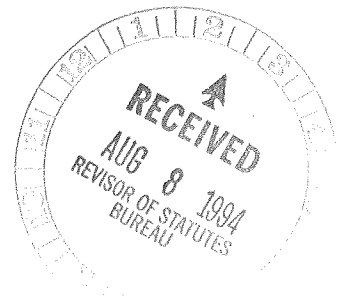
Statutory Authority: Section 101.15 (2)(e), Stats.  
Statutes Interpreted: Section 101.15 (2)(e), Stats.

The Division of Safety and Buildings, within the Department of Industry, Labor and Human Relations, is responsible for adopting and enforcing administrative rules establishing reasonable and effective standards relating to mines, quarries and related activities. The rules of chapter ILHR 8 contain safety and health requirements for the operation of mines, pits and quarries.

The proposed rules consist of a complete revision of chapter ILHR 8. The current rules of chapter ILHR 8 are basically a reprint of obsolete regulations issued by the federal Mine Safety and Health Administration (MSHA) for surface and underground mines. Because the federal MSHA regulations apply to all mines, pits and quarries in Wisconsin and most operators are familiar with those regulations, there is no need to reprint the federal regulations in chapter ILHR 8. Therefore, the proposed rules contain a reference to the MSHA regulations, and also contain amendments for additions to and substitutions for specific MSHA requirements.

The current and proposed rules apply to both new and existing mines, pits and quarries. The proposed rules indicate that the MSHA regulations must be met, and the rules include a minimum of amendments to those regulations. The amendments cover standards for wall, bank and slope stability, safety programs, and abandoned mine openings. The proposed rules contain the same requirements as the current rules for notification to begin operation, permits, and inspections.

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SECTION 1. Chapter ILHR 8 is repealed and recreated to read:

CHAPTER ILHR 8  
MINES, PITS AND QUARRIES

Subchapter I  
Administration and Enforcement

ILHR 8.01 PURPOSE. Pursuant to s. 101.15 (2)(e), Stats., the purpose of this chapter is to establish rules to effect the safety of mines, quarries and related activities.

ILHR 8.02 SCOPE. (1) COVERED. This chapter covers openings or excavations in the earth for the purpose of extracting minerals or other materials and the equipment related to processing or manufacturing of ores, aggregates, cements, lime, clay and silica sands in a mine, pit or quarry.

Note: The department of natural resources has administrative rules concerning metallic mineral exploration, metallic mineral prospecting and metallic mineral mining.

(2) NOT COVERED. This chapter does not cover openings or excavations in the earth created by a person for domestic or farm use at his or her residence or farm.

ILHR 8.03 APPLICATION. This chapter applies to both new and existing mines, pits and quarries, unless specifically stated otherwise.

ILHR 8.04 PETITIONS FOR VARIANCE. (1) PROCEDURE. The department shall consider and may grant a variance from any requirement in this chapter upon receipt of a fee and a completed petition for variance form from the owner, provided an equivalency is established in the petition for variance which meets the intent of the rule being petitioned. The department may impose specific conditions in a petition for variance to promote the protection of the health, safety or welfare of the employes or the public. A violation of any condition under which the petition for variance is granted constitutes a violation of this chapter.

Note 1: The petition for variance application (form SBD-8) is available from the Division of Safety and Buildings, Bureau of Safety Services, P.O. Box 7969, Madison, Wisconsin 53707, telephone 608/266-7529.

Note 2: Section 101.02 (6), Stats., and ch. ILHR 3 outline the procedures for submitting petitions to the department and the department procedures for hearing petitions.

(2) PETITION PROCESSING TIME. Except for priority petitions, the department shall review and make a determination on a petition for variance within 30 business days of receipt of all calculations, documents and fees required to complete the review. The department shall process priority petitions within 10 business days.

ILHR 8.05 PENALTIES. The department may impose penalties and obtain additional remedies for violations of this chapter, as provided in ss. 101.02 (13) and 101.15 (2) (f) 2., Stats.

Note 1: Section 101.02 (13) (a), Stats., indicates that if any employer, employe, owner, or other person violates ss. 101.01 to 101.25, Stats., or fails or refuses to perform any duty lawfully enjoined, within the time prescribed by the department, for which no penalty has been specifically provided, or fails, neglects or refuses to obey any lawful order given or made by the department, or any judgment or decree made by any court in connection with ss. 101.01 to 101.25, Stats., for each such violation, failure or refusal, such employer, employe, owner or other person shall forfeit and pay into the state treasury a sum not less than \$10 or more than \$100 for each such offense.

Note 2: Section 101.15 (2) (f) 2., Stats., indicates that the department may apply to a court of record for the closing of any underground mine, quarry, pit, zinc works or other excavation where the same is being operated in violation of any of its rules or orders, and the owners or operators have failed within a reasonable time to correct any unsafe methods of operation. The failure of any owner or operator to comply with the order or judgment of the court shall subject such party or parties to criminal contempt proceedings.

ILHR 8.06 APPEALS. (1) APPEAL OF LOCAL ORDER. Any person affected by a local order which may be in conflict with a rule of this chapter may petition the department for a hearing on the grounds that the local order is unreasonable and in conflict with the rule.

Note: Section 101.01 (1)(f), Stats., defines "local order" as any ordinance, order, rule or determination of any common council, board of aldermen, board of trustees or the village board, of any village or city, or the board of health of any municipality, or an order or direction of any official of such municipality, upon any matter over which the department has jurisdiction.

(2) PETITION OF AN ADMINISTRATIVE RULE. Pursuant to s. 227.12, Stats., any municipality, corporation or any 5 or more persons having an interest in an administrative rule may petition the department requesting the adoption, amendment or repeal of that rule.

## Subchapter II General Requirements

ILHR 8.10 NOTIFICATION TO BEGIN OPERATION. (1) Each year before work is commenced in a pit or quarry, the pit or quarry operator shall complete and return to the department form SBD-6736 for each pit or quarry. The notification shall be returned to the department at least 10 days prior to the beginning of work in each pit or quarry.

Note 1: The notice is required from the operator for all pits and quarries where work is performed, whether or not the operator owns the pit or quarry. Only one initial notice is required for a pit or quarry where work is performed on an intermittent basis during the year.

Note 2: Copies of form SBD-6736, Notice to Begin Operation, are available from the Division of Safety and Buildings, Bureau of Safety Services, P.O. Box 7969, Madison, Wisconsin 53707, telephone 608/266-7529.

(2) Each year before work is commenced in a pit or quarry, the pit or quarry operator shall make arrangements for obtaining emergency medical assistance and transportation for injured persons.

ILHR 8.11 PERMITS. (1) GENERAL. Before an excavation of a shaft may be commenced, a permit shall be obtained from the department. As provided by s. 101.15 (2) (c), Stats., this section does not apply to shafts less than 50 feet in depth wherein persons are not employed, shafts not equipped with power driven hoists used for hoisting persons in and out of the shafts, or shafts not covered with a flammable building.

(2) APPLICATION FOR PERMIT. Application for a shaft excavation permit shall be made on form SBD-52 together with the payment of the permit fee.

Note: Copies of form SBD-52, Mine Shaft Excavation Permit Application, are available from the Division of Safety and Buildings, Bureau of Safety Services, P.O. Box 7969, Madison, Wisconsin 53707, telephone 608/266-7529.

(3) PLANS AND SPECIFICATIONS. Plans and specifications shall be submitted with the application for a shaft excavation permit which show that the shaft, excavation and workings are in compliance with this chapter.

(4) PERMIT PROCESSING TIME. The department shall review and make a determination on a shaft excavation permit application within 30 business days of receiving the required information and fees.

ILHR 8.12 FEES. (1) INSPECTION FEES. The operator shall pay to the department an annual safety inspection service fee, periodic mine inspection fee and drill rig inspection fee as specified in ch. ILHR 2. Fees for special inspections, as specified in ch. ILHR 2, shall be paid to the department by the person requesting the inspection.

(2) PERMIT FEE. A fee as specified in ch. ILHR 2 shall be paid to the department by the person applying for a shaft excavation permit.

ILHR 8.13 INSPECTIONS. (1) GENERAL REQUIREMENTS. The authorized inspectors of the department, upon presenting appropriate credentials to the owner, operator or agent in charge, may:

(a) Enter without delay and at reasonable times any mine, pit or quarry where work is performed by an employe of an employer; and

(b) Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any mine, pit or quarry and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any employer, owner, operator, agent or employe.

(2) REPRESENTATION. The inspector, before making an inspection, shall contact the employer or employer's representative, who shall be given an opportunity to accompany the inspector during the physical inspection of any workplace under sub. (1).

Note: The department policy is not to give advance notice, but in the scheduling and in the act of inspecting it may not always be possible to avoid advance notice or to obtain accompaniment.

ILHR 8.14 FEDERAL REQUIREMENTS. No person may operate a mine, pit or quarry unless the person complies with 30 U.S.C. 811, 957 and 961 and the safety and health standards in 30 CFR Parts 56 and 57.

Note: Authority over mines is given to the federal government under the federal Mine Safety and Health Act. The operation of surface and underground mines is regulated by the federal Mine Safety and Health Administration, Department of Labor, under Title 30 CFR Parts 56 and 57.

### Subchapter III Amendments to Federal Regulations

ILHR 8.20 AMENDMENTS TO FEDERAL REGULATIONS. The amendments to the federal Mine Safety and Health Administration (MSHA) regulations are specified in this subchapter and are rules of the department.

Note: The referenced MSHA section number, located in brackets, follows the ILHR designation and precedes the text of the rule.

ILHR 8.21 [MSHA 56.2 and 57.2] DEFINITIONS. (1) ADDITIONS. The following definitions are in addition to those set forth in MSHA 56.2 and 57.2:

(a) "Department" means the department of industry, labor and human relations.

(b) "Excavation" or "workings" has the meaning given in s. 101.15 (2)(a)1., Stats.

Note: Section 101.15 (2)(a)1., Stats., defines "excavation" or "workings" as any or all parts of a mine excavated or being excavated, including shafts, tunnels, drifts, cross cuts, raises, winzes, stopes and all other working places in a mine.

(c) "Mine" means a surface or underground opening or excavation in the earth for the purpose of extracting minerals or other materials.

(d) "Mineral" has the meaning given in s. 101.15 (2)(a)2., Stats.

Note: Section 101.15 (2)(a)2., Stats., defines "mineral" as a product recognized by standard authorities as mineral, whether metalliferous or nonmetalliferous.

(e) "Operator" means the person or firm that operates or is responsible for an excavation in the earth for the purpose of extracting minerals or other materials, or for the crushing, screening or washing equipment.



(f) "Pit" means a surface opening or excavation in the earth for the purpose of extracting minerals or other materials.

(g) "Quarry" means a surface opening or excavation in the earth for the purpose of extracting nonmetallic minerals or other nonmetallic materials.

(h) "Sign" means a communication conspicuously posted, legible, having a contrasting background and a legend composed of block letters.

(i) "Trip light" means a light displayed on the opposite end of a train from the locomotive or engine.

(2) SUBSTITUTIONS. The following definitions are substituted for the respective definitions in MSHA 56.2 and 57.2:

(a) "Approved" means accepted by the department.

(b) "Blasting agent" means any material or mixture consisting of a fuel and oxidizer intended for blasting, not otherwise classified as an explosive and in which none of the ingredients is classified as an explosive, provided that the material or mixture cannot be detonated by a No. 8 test blasting cap under the conditions specified for the cap sensitivity test.

(c) "Escapeway" means a passageway through which persons may leave if the ordinary exit is obstructed.

(d) "Explosive" means any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion unless the compound, mixture or device is otherwise classified by the department.

(e) "Mill" includes any ore mill, sampling works, concentrator, and any crushing, grinding, screening or other preparation plant used at, and in connection with, an excavation, mine, pit or quarry.

(f) "Shaft" has the meaning given in s. 101.15 (2)(a)3., Stats.

Note: Section 101.15 (2)(a)3., Stats., defines "shaft" as an opening made for mining minerals, for hoisting and lowering persons or material, or for ventilating underground workings.

ILHR 8.22 [MSHA 56.3130] WALL, BANK AND SLOPE STABILITY. The following rules are substituted for MSHA 56.3130:

(1) CONTROL OF WALLS AND BANKS. Standards acceptable to the department for the safe control of pit walls, including the overall slope of the pit wall, shall be established and followed by the operator. Such standards shall be consistent with prudent engineering design, the nature of the ground and the kind of material and mineral mined, and shall insure safe working conditions according to the degree of slope. Mining methods shall be selected which will insure wall and bank stability, including benching as necessary to obtain a safe overall slope.

(2) BENCH STABILITY. To insure safe operation, the width and height of benches shall be governed by the type of equipment to be used and the operation to be performed.

ILHR 8.23 [MSHA 56.44 and 57.44] USE RESTRICTIONS. In addition to MSHA 56.44 and 57.44:

(1) FLAMMABLE AND COMBUSTIBLE LIQUIDS. Flammable and combustible liquids shall be stored and handled in accordance with ch. ILHR 10.

(2) LIQUEFIED PETROLEUM GASES. Liquefied petroleum gases shall be stored and handled in accordance with ch. ILHR 11.

ILHR 8.24 [MSHA 56 and 57 Subparts E] EXPLOSIVES. In lieu of MSHA Parts 56 and 57 Subparts E, the storage, handling and intrastate transportation of explosive materials shall comply with ch. ILHR 7.

ILHR 8.25 [MSHA 56.13030 and 57.13030] BOILERS. In lieu of MSHA 56.13030 and 57.13030, all boilers and pressure vessels shall be constructed, installed and maintained in accordance with chs. ILHR 41 and 42.

ILHR 8.26 [MSHA 56 and 57 Subparts Q] SAFETY PROGRAMS. In addition to MSHA Parts 56 and 57 Subparts Q:

(1) ESTABLISHMENT OF SAFETY PROGRAM. The employer shall establish an ongoing safety program to prevent accidents and increase safety. The employer shall require all employes to actively participate in the safety program.

Note: The MSHA's annual miner refresher training is considered adequate to meet the ongoing safety program requirements.

(2) SAFETY REGULATIONS. All employes and officials shall be familiar with company, state and federal safety regulations.

(3) ACCIDENT PREVENTION. All supervisors and employes shall be trained in accident prevention.

ILHR 8.27 [MSHA 56.19025 and 57.19025] LOAD END ATTACHMENTS. In addition to MSHA 56.19025(a) and 57.19025(a), the U-bolt of each clip shall encircle the short or "dead" end of the rope.

ILHR 8.28 [MSHA 57.20021] ABANDONED MINE OPENINGS. In addition to MSHA 57.20021:

(1) FENCE OR FILL. Whenever any mine shaft or exploration shaft is abandoned or its use discontinued, the operator or contractor shall promptly fill in the shaft or well to grade or enclose the shaft or well with a fence. The surface property owner shall be responsible for maintaining the fence or fill in a safe condition.

(2) FENCE CONSTRUCTION. Fences shall be constructed of woven wire at least 72 inches wide. The fence shall be constructed so no crawl space exists between the bottom of the fence and the ground. All wires shall be fastened to posts set into the ground and spaced at not more than 8-foot intervals. Woven wire fences shall not be smaller than No. 12 wire gauge. Cross wires and mesh wires shall be not smaller than No. 16 wire gauge. The strands shall be not more than 12 inches apart.

(3) CAPS. Where shafts or wells are capped, the cap shall consist of reinforced concrete slabs at least 6 inches in thickness or with a native stone at least 3 times the diameter of the test well, or with a tapered concrete plug. The property owner shall be responsible for maintaining the cap in a safe condition.

(4) MAPPING OF UNDERGROUND WORKINGS. (a) All underground workings shall be surveyed and mapped within a reasonable time as work develops. All underground workings shall be surveyed and mapped before they are allowed to become inaccessible. All surveys shall be tied to an exterior quarter section corner.

(b) Before any mine having underground workings is abandoned, the operator of the mine shall have an engineer or surveyor make a map, on a scale not smaller than 100 feet to the inch, showing all underground workings. A print or copy of such a map certified by the operator or designee as being accurate shall be filed with the department.

(END)

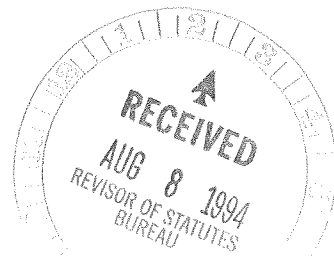
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EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

\* \* \* \* \*

CODES6:100



Tommy G. Thompson  
Governor  
Carol Skornicka  
Secretary



Mailing Address:  
201 E. Washington Avenue  
Post Office Box 7946  
Madison, WI 53707-7946  
Telephone (608) 266-7552

## State of Wisconsin Department of Industry, Labor and Human Relations

August 8, 1994

Gary Poulson  
Assistant Revisor of Statutes  
Suite 800  
131 W. Wilson St.  
Madison, Wisconsin 53703-3233

Douglas LaFollette  
Secretary of State  
10th Floor  
30 West Mifflin Street  
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

### TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 94-49  
RULE NO. Chapter ILHR 8  
RELATING TO: Mines, Pits and Quarries

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,

  
Carol Skornicka  
Secretary

