



Senate Committee on Natural Resources and Energy

Clearinghouse Rule 20-043 *Nonferrous Metallic Mineral Mining Activities* *April 8, 2021*

Good afternoon Chair Cowles and members of the Committee. I am Larry Lynch, the mining rules coordinator for the Wisconsin Department of Natural Resources. Thank you for the opportunity to testify on Clearinghouse Rule 20-043 (CR 20-043), related to rules covering nonferrous metallic mineral mining activities.

The Department of Natural Resources is proposing to repeal and recreate the administrative rules pertaining to nonferrous metallic mineral mining and related activities. The rules, Chapters NR 130 (Exploration and Bulk Sampling), NR 131 (Prospecting), NR 132 (Mining) and NR 182 (Mining Waste Management), which were promulgated in 1982, have remained largely unchanged since then and need updating.

There are four main reasons why the proposed mining rules changes are necessary. First, 2017 Wisconsin Act 134 made substantial changes to the nonferrous mining law and included direct changes to the rules. The rules needed to be revised to reflect those changes. Second, there had been a number of statutory changes over the years that had not been incorporated into the rules, resulting in inconsistencies between the law and the rules. Again, the revisions are necessary to ensure consistency. Third, since the rules had not been comprehensively reviewed and revised since their promulgation in 1982, the rules needed to be updated to reflect new technology and regulatory approaches and standards developed over the past several decades. Finally, we also wanted to improve the overall clarity and effectiveness of the rules by modifying provisions that were unclear, ambiguous, or difficult to interpret and implement, based on over 30 years of implementation experience.

The formal rulemaking process began following approval of the Scope Statement by the Natural Resources Board in February 2019. As part of the process, the department developed preliminary drafts of the rules and shared them with a diverse group of external stakeholders to receive their input prior to preparing final drafts of the rules. The stakeholder group included mining industry experts, environmental groups, tribes, and statewide geology experts.

The department prepared a draft Economic Impact Analysis and solicited public comment in August 2020. We received one comment letter that did not include any specific concerns relative to the analysis. The department solicited public comments on the draft rules from late September until late October 2020 and held a virtual public hearing in late October. We received numerous comments, many of which were very specific and technical in nature. The rules were revised, where appropriate, to reflect much of the public input.

While the testimony and public comments on the rules are documented in the record, I can summarize to say that some people testified in general opposition to metallic mining, some testified that the process and result was a good package of rules, and others sought changes that went beyond the language in statutes. Multiple commenters expressed concern with four topics; the department's interpretation of the allowable scope of bulk sampling, the need for a mandatory public hearing at the preapplication stage of the mine permitting process, the unnecessary inclusion of vague or conditional provisions and the need to expand, or in some cases restrict, the scope of areas that are designated as unsuitable for prospecting or surface mining. In each instance, the department modified the draft rules in response to the input received from the public.

The final rules approved by the Natural Resources Board include: development of a separate regulatory framework pertaining to bulk sampling; incorporation of changes to the permit review process, groundwater protection provisions and financial assurance mechanisms resulting from Act 134; removal of specific provisions as directed in Act 134; inclusion of provisions requiring applicants and regulated entities to provide an increased level of detail in certain application and approval submittals; and other changes to clarify process language and technical requirements based on over 30 years of staff experience with the current rules.

Metallic mining projects are complex. We believe this rule package improves the current rules that regulate these activities by correcting inconsistencies between the rules and the statutes. These rules provide well-defined processes and clear information requirements applicable to regulation of nonferrous mining and mining related activities. We relied on our collaboration with the technical experts to convey the changes and get their feedback. The updated rules will provide greater certainty for applicants by clearly delineating regulatory requirements, resulting in less potential conflict over requested information and more certainty in the department's analysis, review and decision-making processes.

On behalf of the Department of Natural Resources, thank you for your time today. I would be happy to answer any questions you may have.



TO: Senate Committee on Natural Resources & Energy

FROM: Craig Summerfield, Director of Environmental & Energy Policy, WMC

RE: Comments on CR 20-043, relating to nonferrous metallic mineral exploration

DATE: April 8, 2021

Chairman Cowles and Members, thank you for the opportunity today to testify on CR 20-043, which implements new requirements related to metallic mining. I am speaking today on behalf of WMC for information only to request a small, but important, change to ensure this rule better reflects the relevant statute.

For background, WMC is the largest general business association in Wisconsin, representing approximately 3,800 member companies of all sizes, and from every sector of the economy. Since 1911, our mission has been to make Wisconsin the most competitive state in the nation to do business. This includes ensuring a predictable state regulatory environment that would help open the door to nonferrous metallic mining in Wisconsin.

To be clear, WMC is on the whole supportive of the changes included in Clearinghouse Rule 20-043. This rule makes important updates to the administrative code that are required by 2017 WI Act 134, such as streamlining the permit process and other reforms.

I am here today because there is a small portion of the rule that is inconsistent with the statute. Wisconsin Statute 293.01(28) prescribes a detailed definition of "unsuitability" for the purposes of prospecting or surface mining. In the rule, "unsuitability" is defined in NR 131.103(25) and NR 132.103(28).

Unfortunately, the definition of "unsuitability" in CR 20-043 is slightly different in two aspects:

1. The rule lists "*State natural areas designated under s. 23.28, Stats*" as an additional provision within the definition of "unsuitability," even though no corresponding provision exists in the statutory definition.
2. The rule lists the phrase "*Other areas of a type designated by statute or administrative rule as unique or unsuitable for prospecting or surface mining*" in the incorrect subsection, and thus changes its meaning.

For your reference, the differing definitions can be found on pages 21 and 47 of CR 20-043.

To correct this, WMC asks that this Committee consider formally requesting modifications to the rule by the DNR. One solution is to have CR 20-043 directly reference the statutory definition of "unsuitability," as found in s. 293.01(28). Alternatively, the Committee could instead request that the DNR transcribe the statutory definition verbatim within the rule.

While seemingly minor, the DNR's two modifications to the statutory definition of "unsuitability" appear to have the practical effect of making more land in Wisconsin off limits to metallic mining under the administrative code. At a time when it is more important than ever to open Wisconsin to jobs and investment, we should not be putting up additional, artificial barriers to mining exploration in the state. This is especially true when these barriers were never authorized by the Legislature.

Thank you for considering my testimony on Clearinghouse Rule 20-043. I would be happy to answer questions.

Comparison – Definition of “Unsuitability” Statute vs. Rule

<p style="text-align: center;"><u>Statute: s. 293.01(28)</u></p> <p>(28) “Unsuitability” means that the land proposed for prospecting or surface mining is not suitable for such activity because the prospecting or surface mining activity itself may reasonably be expected to destroy or irreparably damage either of the following:</p> <p>(a) Habitat required for survival of species of vegetation or wildlife designated as endangered through prior inclusion in rules adopted by the department, if such endangered species cannot be firmly reestablished elsewhere.</p> <p>(b) Unique features of the land, as determined by state or federal designation and incorporated in rules adopted by the department, as any of the following, which cannot have their unique characteristic preserved by relocation or replacement elsewhere:</p> <ol style="list-style-type: none"> 1. Wilderness areas. 2. Wild and scenic rivers. 3. National or state parks. 4. Wildlife refuges and areas. 5. Archaeological areas. 5m. Listed properties, as defined in s. 44.31 (4). 6. Other lands of a type designated as unique or unsuitable for prospecting or surface mining. 	<p style="text-align: center;"><u>Rule: NR 131.103(25) and NR 132.103(28)</u></p> <p>NR 131.103(25):</p> <p>(25) “Unsuitable” or “unsuitability” means that the land proposed for prospecting is not suitable for such activity because the prospecting activity itself may reasonably be expected to destroy or irreparably damage any of the following:</p> <p>(a) Habitat required for survival of species of vegetation or wildlife as designated in ch. NR 27, if such endangered species cannot be firmly reestablished elsewhere.</p> <p>(b) Unique features of the land, as determined by state or federal designation as any of the following, that cannot have their unique characteristic preserved by relocation or replacement elsewhere:</p> <ol style="list-style-type: none"> 1. Wilderness areas designated by statute or administrative rule. 2. Wild and scenic rivers designated by statute or administrative rule. 3. National or state parks designated by statute or administrative rule. 4. Wildlife refuges and areas designated by statute or administrative rule. 5. Properties of historical significance identified as listed properties under s. 44.31 (4), Stats., and archaeological sites as defined under s. 44.47 (1) (b), Stats. 6. State natural areas designated under s. 23.28, Stats. <p>(c) Other areas of a type designated by statute or administrative rule as unique or unsuitable for prospecting or surface mining.</p>
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Comparison – Definition of “Unsuitability”
Statute vs. Rule

	<p>NR 132.103(28):</p> <p>(28) “Unsuitable” or “unsuitability” means that the land proposed for surface mining is not suitable for such activity because the surface mining activity itself may reasonably be expected to destroy or irreparably damage any of the following:</p> <p>(a) Habitat required for survival of species of vegetation or wildlife as designated in ch. NR 27, if such endangered species cannot be firmly reestablished elsewhere.</p> <p>(b) Unique features of the land, as determined by state or federal designation as any of the following, that cannot have their unique characteristic preserved by relocation or replacement elsewhere:</p> <ol style="list-style-type: none">1. Wilderness areas designated by statute or administrative rule.2. Wild and scenic rivers designated by statute or administrative rule.3. National or state parks designated by statute or administrative rule.4. Wildlife refuges and areas designated by statute or administrative rule.5. Properties of historical significance identified as listed properties under s. 44.31 (4), Stats., and archaeological sites as defined under s. 44.47 (1) (b), Stats6. State natural areas designated under s. 23.28, Stats. <p>(c) Other areas of a type designated by statute or administrative rule as unique or unsuitable for prospecting or surface mining.</p>
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