

## 1997 Act 171: Mining Moratorium Law

In April 1998, then-Governor Tommy Thompson signed 1997 Wisconsin Act 171 into law. This law amended the metallic mining statute to establish an additional provision that an applicant for a metallic mining permit must meet in order to receive a mining permit. Commonly referred to as the "Mining Moratorium Law" (s. 293.50, Wisconsin Statutes), the law requires an applicant to provide examples of a mining operation in the U.S. or Canada that have not resulted in significant environmental pollution. The law includes specific qualifying criteria that must be satisfied in order for the example site, or sites, to be considered. The mining company must submit documentation from groundwater/surface water monitoring that includes data showing that:

- (1) An example mine has been *closed* for 10 years without the pollution of groundwater or surface water from acid drainage at the tailings site or at the mine site or from the release of heavy metals; and
- (2) An example mine has *operated* for 10 years without the pollution of groundwater or surface water from acid drainage at the tailings site or at the mine site or from the release of heavy metals.

In addition, the candidate mine or mines identified must be located in a sulfide ore body that together with the host rock has a net acid generation potential (i.e. the potential to create acid drainage). Furthermore, the candidate mine cannot be listed on the national priorities list of contaminated sites, and cannot be an operation for which the operator is no longer in business and has no successor that may be liable for contamination.

The Department must verify the information and present its recommendations on satisfying the requirements of the Mining Moratorium Law before a mining permit can be issued.

# Statutory Language

Because the wording of any law determines how the Department interprets the law, we have reproduced the Mining Moratorium Law in its entirety, as adopted by the Legislature.

**This text is for illustrative purposes only, and is not to be used for regulatory or legal purposes. For those purposes, Chapter 293 Wisconsin Statutes must be consulted.**

## **293.50 Moratorium on issuance of permits for mining of sulfide ore bodies.**

**(1)** In this section:

(a) "Pollution" means degradation that results in any violation of any environmental law as determined by an administrative proceeding, civil action, criminal action or other legal proceeding. For the purpose of this paragraph, issuance of an order or acceptance of an agreement requiring corrective action or a stipulated fine, forfeiture or other penalty is considered a determination of a violation, regardless of whether there is a finding or admission of liability.

(b) "Sulfide ore body" means a mineral deposit in which metals are mixed with sulfide minerals.

**(2)** Beginning on May 7, 1998, the department may not issue a permit under s. 293.49 for the mining of a sulfide ore body until all of the following conditions are satisfied:

(a) The department determines, based on information provided by an applicant for a permit under s. 293.49 and verified by the department, that a mining operation has operated in a sulfide ore body which, together with the host rock, has a net acid generating potential in the United States or Canada for at least 10 years without the pollution of groundwater or surface water from acid drainage at the tailings site or at the mine site or from the release of heavy metals.

(b) The department determines, based on information

provided by an applicant for a permit under s. 293.49 and verified by the department, that a mining operation that operated in a sulfide ore body which, together with the host rock, has a net acid generating potential in the United States or Canada has been closed for at least 10 years without the pollution of groundwater or surface water from acid drainage at the tailings site or at the mine site or from the release of heavy metals.

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(a) The department may not base its determination under sub. (2) (a) or (b) on any mining operation that has been listed on the national priorities list under 42 USC 9605 (a) (8) (B) or any mining operation for which the operator is no longer in business and has no successor that may be liable for any contamination from the mining operation and for which there are no other persons that may be liable for any contamination from the mining operation.

(b) The department may not base its determination under sub. (2) (a) or (b) on a mining operation unless the department determines, based on relevant data from groundwater or surface water monitoring, that the mining operation has not caused significant environmental pollution, as defined in s. 293.01 (4), from acid drainage at the tailings site or at the mine site or from the release of heavy metals.

**(3)** This section applies without regard to the date of submission of the permit application.

History: 1997 a. 171

**Question:** Does *one* candidate mine have to meet *both* the 10-year operations requirement and the 10-year closure requirement in order to qualify?

**Answer:** The law requires a mining permit applicant to identify "a mining operation" that meets the 10-year operations requirement. In a separate paragraph of the law, the mining permit applicant is required to identify "a mining operation" that meets the 10-year closure requirement

without causing pollution. Our interpretation, based on the wording in the law, is that the above criteria could be satisfied by a single example or two separate mines.

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**Question:** Should the Department stop its review of the proposed Crandon Mine until the review of the candidate mines has been completed?

**Answer:** The Legislature established the mining moratorium approval process to coincide with the existing approval process for all of the other mining permitting criteria. Before the decision-maker can issue the metallic mining permit, there must be compliance with all mining laws and rules, including the mining moratorium provisions. Compliance or noncompliance with the moratorium criteria, and with all other applicable rules and regulations, will be judged at the end of the process, when all the information has been generated and evaluated.

## **Mining Moratorium Rules Petition Denied**

At its December 1999 meeting, the Natural Resources Board denied a request by citizen groups and legislators to prepare administrative rules to guide Department staff in its implementation of the Mining Moratorium Law. The Board heard comments from citizens regarding a petition delivered to the Board questioning the Department's decision that administrative rules were not necessary to interpret the language of the Mining Moratorium Law. In action following citizen participation on this issue, the Board denied the petition on a unanimous vote.

The Board frequently receives petitions on drafting administrative rules, and in accordance with the Department's normal practice, DNR technical and legal staff reviewed the petition and reported their findings. In this case, staff felt strongly that some of the rules being requested were contradictory to the law itself, poor interpretations of the law, or simply unnecessary for the law to be applied. Furthermore, the Department feels that there is adequate guidance in the Mining Moratorium Law itself, such that further technical explication through administrative rules is unnecessary. In general, the Department will adopt administrative rules if directed by the State Legislature or when it is technically necessary in order to apply the legislation in a regular and consistent manner.

There were two principle requests in the Petition. Speakers in support of the petition focused on both requests at the September and December 1999 Board meetings:

- That the Board interpret the law to mean that one mine must meet both the "open mine" and "closed mine" criteria, rather than allow a mining company to submit two mine sites. Both Department and Legislative Council legal staff rejected that interpretation of the law and concluded the law allows for separate mines to be used.
- That the Board adopt a rule requiring any example mine to be located in an environment similar to that of any mine being proposed for Wisconsin. Again, such an interpretation would be directly contrary to the law itself. The law allows a sulfide mine(s) anywhere in the US or Canada to be used—so long as the ore body and host rock has a net acid generating potential. The law was passed with no requirement that the example mines be similar to the mine being evaluated here and any other interpretation would be directly contrary to the law as written and debated. Several times during the legislative process, amendments were introduced requiring example mine(s) to be located in areas of "similar geologic characteristics", language suggested by Department staff, and each time these amendments were rejected by the Legislature.

Many of the people who spoke to the Board in favor of the Petition were quite candid regarding these two points. They stated that the law as passed did not clearly accomplish the intended goal of the legislation. They explicitly requested that the Board adopt rules to change the effect of the law to one that better fit their desire as to how the law should read. However, the mission of an administrative agency is to apply the wishes of the Legislature, not override its decisions.

Implementation of the law will take place through the environmental impact statement and mine permitting process, which is an open process allowing for full public input. Department recommendations as to compliance with the Mining Moratorium Law will be shared with the public. Importantly, an administrative law judge will make the decision as to compliance with the law, after weighing all of the testimony and evidence presented at the Master Hearing.

## Candidate Mines Submitted by Nicolet Minerals Company

In January 1999, Nicolet Minerals Company, the company proposing to develop an underground zinc-copper-lead mine near Crandon, Wisconsin, submitted the names of three North American mines for review under the 1998 Mining Moratorium Law:

- McLaughlin Mine in Lower Lake, California, US
- Cullaton Lake Mine in Nunavut Territory, Canada
- Sacaton Mine near Casa Grande, Arizona, US

The **McLaughlin Mine** located in Lower Lake, California, is owned and operated by Homestake Mining Company. This open pit gold mine began operations in 1983 and is still producing today. It was submitted as a candidate mine to meet the law's 10-year "operating" criterion.

The **Cullaton Lake Mine** located in Canada's Nunavut Territory (formerly part of the Northwest Territories), is owned by Homestake Canada, Inc., of Vancouver. It was an underground gold mine that was developed and operated between 1976 and 1985. It was submitted as a candidate mine that meets the 10-year "closure" criterion.

The **Sacaton Mine** located near Casa Grande, Arizona, is owned and was operated by ASARCO of New York. It was an open pit copper mine that operated from 1972 until its closure in 1984. It was submitted in fulfillment of both the "operating" and "closure" requirements.

In May, 2002, the Department issued a [letter to NMC](#) stating that the Sacaton Mine in Arizona does not now meet the requirements of 1997 Act 171 ("Mining Moratorium Law"). The failure to meet the requirements was not because DNR reviewers have reason to believe that there has been environmental pollution at the site, but rather "there is simply not enough information from which to draw any conclusion regarding the mining site's performance in the period following closure."

The Department has been reviewing and verifying information submitted on the three example mines to determine the accuracy, adequacy, and completeness of the submitted data. In addition, staff have met with regulators in Arizona, California, and Canada, and visited the three mine sites.

When our review is complete we will develop a recommendation on whether or not the three mines meet the requirements of the law. A document providing an interim assessment of the three candidate mines will be released when the *Draft Environmental Impact Statement* is published. The final recommendations will be presented at the same time the DNR submits to the decision maker at the Master Hearing its recommendations on the applicants' mining permit application, and other Department permits, approvals, and licenses.

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