



Department of Natural Resources

Attn: Larry Lynch (EX/7)

Box 7921

Madison, WI 53707

Re: Comments on CR 20-043 relating to nonferrous metallic minerals exploration, prospecting, mining and mining waste management.

Dear Mr. Lynch -

The Natural Resource Development Association (NRDA) submits the following comments in regard to Clearinghouse Rule (CR) 20-043 and the proposed changes to NR 130, 131, 132 and 182, of Administrative Code.

The NRDA was a strong proponent of 2017 Wisconsin Act 134 (Act 134), the Mining for America Act, which updated Wisconsin's permitting and regulatory framework for the mining industry. Accordingly, we strongly support the need for updates to administrative rules first enacted decades ago because with 21<sup>st</sup> century technology and appropriate rulemaking and regulations, we can encourage and promote mining's safe return to Wisconsin.

There are a couple of areas, however, the DNR should address because these provisions either expand on statutory authority or are too broad and open-ended. These are all areas that we believe should be addressed before CR 20-043 is finalized.

As indicated by a number of academic studies, if a mine were to be sited in Wisconsin, the resulting economic impact would be advantageous to regions of our state that for too long have faced economic challenges. The Badger State sits on a "treasure chest" of nonferrous metallic mineral deposits and the mining industry could benefit Wisconsin, particularly northern Wisconsin, if safe and environmentally conscious mining were to operate.

We appreciate the ability to provide comments on this draft CR 20-043 as the department seeks to update its administrative rules in order "to correct inconsistencies with the existing statutes, bring the rules up to date with current technology and regulatory approaches, and improve overall clarity and effectiveness." The information that follows details the Association's concern about the proposed language. Additionally, we have included academic studies that clearly illustrate the economic impact the mining industry could have on the entire state of Wisconsin.

## **Academic Studies on the Economic Impact of the Mining Industry**

Recently, the University of Minnesota-Duluth's Labovitz School of Business and Economics (UMD) conducted a study called, "[Economic Impact of Ferrous and Nonferrous Mining on Minnesota and the Arrowhead Region including Douglas County, Wisconsin.](#)" This study demonstrates that in 2018 alone, the mining industry directly contributed more than \$2 billion to the economy of the Arrowhead Region, which includes portions of Douglas County in Wisconsin. Additionally, this UMD study finds:

- "The employment multiplier of 2.25 suggests that for every individual job created within the mining industry an additional 1.25 jobs were created in other industries within the region."
- "It is projected that in 2024 the ferrous mining industry will support more than 8,350 jobs in the Arrowhead Region and contribute nearly \$790 million in labor income (wages), \$1.5 billion in value added, and \$3.29 billion in output to the region's economy."
- "By 2024, it is projected that the nonferrous mining industry could contribute \$45 million in labor income, \$210 million in value added, and \$307 million in output to the study area's economy."

Additionally, this study highlights statewide economic impacts as a result of mining projects in Minnesota. As mentioned in the study, "when the mines purchase goods and services from companies that are located beyond the Arrowhead Region but within the state, those purchases are included in the economic impacts for the state." As a result, the positive contributions to Minnesota's economy include:

- "In 2019, ferrous and nonferrous mining combined contributed more than 11,600 jobs, \$1.0 billion labor income, \$2.1 billion in value added spending, and more than \$4.0 billion to the state's economy."
  - Projection for 2024: "By 2024, the ferrous and nonferrous mining industry combined is expected to support roughly 11,200 jobs, \$1.1 billion in labor income, and \$4.1 billion in output statewide."
- In 2022, when Minnesota's mines are anticipated to reach their peak for "capital and construction spending," it is said that "[i]n that year alone, construction and capital spending on the part of the ferrous and nonferrous mines is expected to add more than 12,000 jobs, \$815 million in labor income, \$776 million in value added spending, and \$1.5 billion in total output to the state of Minnesota."

This statewide economic impact is not only important due to these statistics on job creation, labor income, value added spending, and total output, but it is also important to understand the tax revenue the mining industry can bring to a state's economy. As noted, by the UMD study,

- "Minnesota's iron mines paid \$158.7 million in production tax, occupation tax, sales and use tax, income tax, various Ad Valorem and property taxes and royalties and rentals on state minerals in 2018."
- From these taxes paid by Minnesota's iron mines, "[n]early \$53 million of that total went directly to fund the state's education system, \$7 million to university-related expenses and \$46 million to public schools."

A Wisconsin study in 2018, produced by the Center for Research on the Wisconsin Economy (C.R.O.W.E) and titled ["The Economic Impact of a New Metallic Mine in Wisconsin,"](#) also explored the economic footprint mining could have here. The study, authored by renowned UW-Madison economist Professor Noah Williams, highlights many positive economic benefits if a mine were sited in Wisconsin.

For example, the report finds a single new mine operating in Oneida County would produce:

- 350 new, full-time, mining jobs;
- An average annual pay rate of \$72,568 (85 percent higher than the average pay in the county);
- 700 total jobs created in tertiary industries;
- \$44 million in additional labor income;
- \$243 million in economic output each year; and
- \$6.8 million in state and local taxes generated annually.

Another report from the University of Minnesota-Duluth's Labovitz School of Business and Economics called, ["Modeled Prospective Regional Socio-Economic Impacts of the Back Forty Project Menominee County, Michigan"](#) further examined the potential economic impacts that a mine could have in Wisconsin. This study focused on the Back Forty, a proposed mine that could have a similar economic impact to mines that could be sited in Wisconsin in the future, and concluded that the mine would provide the following impacts for the local and statewide community:

- 250 or more Permanent Jobs;

- Annual Tax Revenue of \$20 million;
- State royalties of over \$16.5 million; and
- 2-3 Years of Construction Activity.

The Association believes these credible academic studies should be highlighted because it is an important part of the conversation when discussing the possibility of mining projects in Wisconsin. The Mining for America Act of 2017 kickstarted the return of the mining industry in Wisconsin and, with revised rules, we hope to build on that momentum so we can realize the statewide economic opportunity waiting to be unleashed.

### **Suggested Revisions to CR 20-043**

Once again, the Association notes that we are supportive of the rulemaking process, and appreciate the ability to include our comments on the proposed administrative rule changes contained in CR 20-043. It is important for the rulemaking process to provide a strong regulatory framework and remove uncertainties in order to provide a level playing field for permitting in the future. These rule revisions, within CR 20-043, are an important step to ensuring a clear regulatory framework for the industry.

Rules should be clear and detailed enough that a company knows what is expected of them in order to plan out the entire life cycle of a mine. As a result, we appreciate the agency's efforts to "provide greater clarity and effectiveness to the rules based on past experience in implementing the rules over the past 35 years." These proposed rule changes also address and include many changes related to engineering details that are required for submittals required under NR 182, and these changes provide specificity and clarity to information that is required in Feasibility Studies, Plans of Operation, and Construction Documentation. Many of the proposed changes are also consistent with engineering requirements for other regulated industrial and municipal waste facilities. Moreover, the engineering requirements are consistent with engineering practice related to tailings and mine waste management in the mining industry today.

We also appreciate the agency's efforts for soliciting comments from the industry as the DNR created the [Economic Impact Analysis](#) for CR 20-043. As noted in NRDA's written comments on Draft Economic Impact Analysis for Board Order EA-14-18, we appreciate the department's efforts to reach out to the mining industry since as the department notes, "the costs [of the proposed rule revisions] are expected to be incurred by exploration companies and applicants for prospecting or mining permits and operators of prospecting or mining projects over a ten

year period.”

Overall, we believe that the rules do capture the majority of changes that were required under Act 134 and the department has added important updates to these rules. However, in some instances, the proposed rules seem to expand on statutory authority and some rules contain open-ended language that should be addressed before this rule is finalized.

#### Concerns Over Statutory Authority

As mentioned, most of the rules follow the new statutory procedures under Act 134. However, the Association is concerned about regulations that may exceed statutory authority and we intend to monitor these provisions throughout the administrative rules process. An example where the rules seem to expand upon statutory authority has been included below.

- NR 130.109 Notice procedure and exploration plans.
  - This section effectively creates a new permitting step in the exploration process due to a new provision that essentially transforms the notice provision into a preliminary decision that is similar to that for the notice of intent for mining.
    - Under current law: There is a requirement for a notice to DNR and then an application for an exploration license. *See, Wis. Stat. s. 293. 21(4) and NR 130.10.*
    - New provision: Language contained within this section, requires a public notice and then a formal decision by the department to “approve, conditionally approve or deny the notice.”

The Association believes that provisions, such as the one included above, should be addressed before this rule is finalized.

#### Concerns Over Open-Ended Rule Provisions

Throughout the life cycle of a mine, the DNR has the ability to “request additional information from the applicant relating to the proposed prospecting or mining project.” In fact, in the course of a mine life cycle, regulators and companies will work together for the goal of achieving responsible resource development through an extensive exchange of information particularly because individual mine projects are unique.

However, the DNR should address provisions within CR 20-043 that are too open-ended, which could result in responsible investment being needlessly driven from the state. As Steve Donohue, Vice President of Mining at Foth Infrastructure & Environment, LLC., provided in his [written testimony](#) for 2017 AB 499,

“We need to ask why Michigan and Minnesota are able to attract mining investments, leading to the permitting of new metallic mine projects, when mining investment in Wisconsin is dormant...Certainly the citizens of Michigan and Minnesota value their natural environment, clean water and clean air as much as Wisconsin citizens.

“The basic reason there is no investment in this state from the metallic mining industry is due to regulatory uncertainty and ambiguous rules embedded in Wisconsin’s current statutory and regulatory framework for the development of metallic resources. It is the open-ended review process and ambiguous rules that drive investment away from the state.”

The department has spent years in development of these rules and spent considerable effort trying to get it right. By making simple changes, the DNR can address provisions that contain open-ended authority through minor modifications. This will help address concerns over Wisconsin’s “open-ended review process and ambiguous rules that drive investment away from the state.”

#### Examples of Open-Ended Provisions

The department has said that within this CR 20-043 there are several sections of the administrative rule that have “additional informational requirements [that] have been added.” Indeed, the rules propose significant details that would be required in the course of the application process and other requirements throughout the chapters revised by CR 20-043. Thus, the need for the open-ended authority contained in the existing rules is greatly reduced and any such authority in the proposed rules should be circumscribed by reasonable limitations. At a minimum, requests for additional information beyond that now specified should include an explanation for why the department is requesting that information.

Examples of open-ended authority can be found in the below provisions:

- NR 131.105(1)(g). “Other pertinent information as requested by the department.”

- NR 131.105(7). “The department may at any time after consultation with the person submitting a preapplication notification under sub. (1) revise or modify its requirements regarding information that must be gathered and submitted as part of the information needed for preparation of the prospecting permit application, environmental impact report, mining waste site feasibility report, plan of operation, or other applications for permits, licenses, and approvals issued by the department.”
- NR 131.107(3)(n) “Other information or documentation that the department may require.”
- NR 132.105(1)(g). “Other pertinent information as requested by the department.”
- NR 132.105(7). “The department may at any time after consultation with the person submitting a preapplication notification under sub. (1) revise or modify its requirements regarding information that must be gathered and submitted as part of the information needed for preparation of the mining permit application, environmental impact report, mining waste site feasibility report, plan of operation, or other applications for permits, licenses, and approvals issued by the department.”
- NR 132.107(4)(n). “Other information or documentation that the department may require.”

While these provisions contain language that can be viewed as too open-ended, the DNR has reined in this authority in other areas of CR 20-043. In this language that reined in this authority, the rules create either a requirement for a specific DNR finding or an explanation for why the DNR is requesting additional information. As a result, the DNR has created some kind of metric for applicants on why the department is requesting additional information that is above and beyond what an applicant may be expecting. This is demonstrated in the below examples:

- NR 182.105 in addition to specific prohibitions on mining within certain locations, there are two general categories that provide:
  - “(12) Within an area *where the department, after investigation, finds* that there is a reasonable probability that disposal of mining waste within such an area will result in a violation of applicable surface water quality criteria and standards as specified in chs. NR 102 to 104.” (*Emphasis added*)
  - “(13) Within an area *where the department finds, after investigation,* there is a reasonable probability that disposal of mining waste within

such an area will cause groundwater quality enforcement standards to be attained or exceeded beyond the design management zone specified in s. NR 182.107.” (*Emphasis added*)

- NR 182.107(1u) 5 provides a general category after a list of indicator parameters that are tied to the characteristics of the mining or specific conditions of the site:
  - “An operator shall monitor groundwater at locations approved by the department in the vicinity of the prospecting or mining site on a monthly basis for at least 12 consecutive months during the initial site preparation and construction phase at the mining waste site and prospecting or mining site to further characterize baseline water quality prior to operation. An operator shall include, in the parameters analyzed, those substances specified by the department for monitoring, *indicator parameters as specified by the department, parameters identified as important based on characteristics of the mining wastes, and any other parameters deemed appropriate by the department for the specific conditions of the site.*” (*Emphasis added*)

The DNR has created language that would address our concerns over some of the rule provisions that are too open-ended. If the DNR could apply this language to the open-ended provisions throughout CR 20-043, based on language the department has already created, the rules would be in a much better place.

## **Conclusion**

As the Association has stated in this testimony, it is important for the rulemaking process to provide a strong regulatory framework that provides a fair, level playing field for permitting in the future. This will require ongoing cooperation with the state to ensure economic benefits and environmental protections are properly balanced.

With minor modifications to CR 20-043 that we have described, the mining industry believes the department will allow for permitting of new mines in a manner that is transparent, decreases regulatory uncertainty, and ensures protection of important environmental resources. This is particularly true because many of the changes contained in the revised rules are consistent with many practices currently employed in the industry and are often required by investors to ensure environmentally sustainable mine development.

We believe the mining industry, environmental interests, and regulators can work together to protect the environment and support economic opportunities in the Badger State in order to



set the stage for a productive future of the mining industry and related industries across the state of Wisconsin. With modifications to this draft rule, Wisconsin can create a climate for resource development that is both environmentally sound and economically beneficial to Wisconsin.

For more than 30 years the miner on the Wisconsin state flag has been out of work. Let's get miners back to work! The state has a tremendous opportunity to see fantastic economic growth while ensuring sound environmental controls that will keep Wisconsin's land pristine for generations to come.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nathan Conrad'. The letters are stylized and connected, with a large 'N' and 'C'.

Nathan Conrad  
Executive Director  
Natural Resource Development Association  
[DevelopOurResources.org](http://DevelopOurResources.org)