



**Bad River Watershed Association Written Testimony for Public Hearing on Mining Bill  
AB426  
Joint Finance Committee**

16 February 2012

The Bad River Watershed Association (BRWA) is a 10-year-old community organization that involves citizens in taking care of and enjoying their home watershed. We work with volunteers, towns and counties to monitor water quality, improve stream crossings and riverbanks, protect fish habitat, and slow erosion. We are committed to gathering sound scientific data to help make good decisions for the long-term health of our community. Because of our name, people often confuse us with the tribe. We are not a tribal entity, and our work is focused primarily outside of tribal land. We are neither pro-mining nor anti-mining, our members fall into both categories with many members undecided, but we must urge you to vote against AB426.

We understand there may be a need to refine mining legislation to make the permitting process more efficient. However, we are committed to the following statement: **Companies seeking to establish mining operations in Wisconsin should meet requirements that protect water quality and supply, while providing opportunity for public input. Current environmental regulations should not be weakened.** Over 1400 people signed in support of this statement on a petition that was delivered to Wisconsin legislators last year.

We have many specific concerns with the proposed legislation, AB426. We offer some general concerns, environmental concerns, financial concerns, and finally some issues related to public input.

First, some general concerns-(excerpts and page numbers refer to Wisconsin Legislative Council dated Dec 9, 2011 re: LRB 3520/1):

- The permitting process is shortened to 360 days. This would seem like a long time for an individual permit, but this is an extremely complex permit process that would be handed over to an already short-staffed DNR. The bill also limits the ability of the DNR to collect its own data or question the

information provided. We don't feel this is adequate to make good decisions based on facts.

- Current law says a mine can only be permitted if it "will not endanger public health, safety and welfare." This bill removes that most basic protection, and states that a mine will be permitted if it "is not likely to result in substantial adverse impacts." This is very subjective, and in our view, does not do enough to protect the health and safety of citizens.

The bill also rolls back several commonsense environmental protections

- First of all, it expressly states (p. 18)

Under *the bill*, if there is a conflict between the ferrous mining statute and another state environmental statute, the ferrous mining statute will control. The bill does not differentiate between substantive and procedural provisions for that purpose.

This effectively gives mining companies their own set of rules to play by.

- Secondly, wetland protections are drastically weakened. If a mine goes in here, there will be impacts to wetlands. Current laws allow for that, but it requires that those impacts be minimized or avoided, and for good reason. Wetlands act like sponges on the landscape, slowly releasing water to recharge our groundwater and protect our streams from flash flooding. This bill allows wetlands to be replaced with a mine, so long as other wetlands are enhanced, restored, or created somewhere else in the state. If wetlands are destroyed here and replaced with new ones in Madison, it doesn't help our groundwater, our streams, or our wildlife. And what is more, the most pristine and important wetlands that were set aside as off-limits before (called "Areas of Special Natural Resource Interest" or ASNRI) would now be fair game under this bill.
- Instead of requiring mines to comply with current rules on air, groundwater, surface water, and solid and hazardous waste management; the bill merely requires the company to be "committed" to complying with those laws. This would not be acceptable for other industries or individuals, and should not be acceptable for the mining industry.

Of the four remaining conditions for approval under current law, the bill eliminates and replaces two and amends two. First, the bill eliminates the condition requiring that a proposed mining site not be unsuitable for mining (however, as described below, the bill retains unsuitability as a basis for denial of the permit). Second, the bill eliminates the condition requiring the proposed operation to comply with all applicable administrative rules governing air, groundwater, surface water, and solid and hazardous waste management. The bill replaces those conditions with conditions that the applicant has committed to conducting the proposed mining in compliance with the mining permit and other approvals and that the waste site feasibility study and plan of operation must comply with the relevant waste site submissions required under the bill.

- (p. 23) the bill allows mine overburden (waste rock) to be dumped into sensitive wetlands and floodplains, even where it is determined that there is a "reasonable probability that the waste will result in a violation of surface water or groundwater quality standards." These standards are not there for the sake of enforcement alone. They protect our health, our water supply, and our environment. Giving a mine permission to violate them puts all those things at risk.

*The bill includes similar location criteria, with some exceptions. Namely, it does not have any restriction relating to the unsuitability of the area for mining. In addition, the restrictions for locations within 1,000 feet or 300 feet of specified navigable waters do not apply under the bill to activities that are approved by the DNR under specified statutory provisions created by the bill. Finally, the bill does not include the restriction on locations where the DNR determines that there is a reasonable probability that the waste will result in a violation of surface water or groundwater quality standards.*

- The bill would allow mining corporations to draw down water levels from rivers, lakes, streams and groundwater, going so far as to actually prohibit the DNR from imposing any conditions that would limit the amount of water needed for mining. This is a violation of the public's trust. We trust legislators not to give away our well water, lakes, or rivers. People here rely on wells for their water. Some of my neighbors' wells run dry after less than an hour of running a hose, and need time to recharge. There is simply not that much groundwater available here where we sit on bedrock, and what is here must be protected.

*In addition, if the DNR finds that the applicant cannot meet all of the standards, the department must nevertheless issue the water withdrawal permit if it determines that the public benefits resulting from the mining operation exceed any injury to public rights and interests in a body of water. In making*

- (p. 24) Eliminates requirement that water level measurements and groundwater sampling be submitted to DNR

*The bill* retains the DNR's authority to require a site operator to conduct monitoring, but it does not expressly authorize the department to monitor the site or facility. The bill also retains provisions regarding the scope and frequency of monitoring that the DNR may require, with some exceptions. Exceptions generally relate to the submission of specified samples to the DNR. Specifically, the bill eliminates provisions requiring the submission of water elevation measurements and sampling and requiring specified types of groundwater sampling. With regard to the inspection of active and inactive dams connected with the waste site, the bill retains detailed inspection requirements, but eliminates the requirement that the results of such inspections be submitted to the DNR. Instead, under the bill, the results must be recorded in an operating log. The bill does not expressly authorize the DNR to inspect a waste site operating log.

- There are several streams near the mine site designated as trout streams and Outstanding or Exceptional Resource Waters. (p. 15) The proposed legislation says "areas designated by DNR as being unique or unsuitable for surface mining are not considered for the purposes of determining unsuitability." Does this mean those designations are of no value? If these streams are not worth protecting, which ones are?

unique characteristic preserved by relocation or replacement elsewhere. However, the bill excludes archaeological areas and other lands designated by the DNR from the unique land features to be taken into consideration.

- (p 24) This bill does not allow the DNR to issue a stop work order if the agency finds permit violations or pollution. Without this authority, how can the agency protect us from contamination?

*Current law* authorizes the DNR to issue a stop order to a mining operator, requiring immediate cessation of mining, at any time that the DNR determines that the continuance of mining constitutes an immediate and substantial threat to public health and safety or the environment. [s. 293.83 (4) (a), Stats.] Under *the bill*, the DNR is not authorized to issue a stop order if it makes such a determination. Instead, in such situations, the bill authorizes the DNR to request that DOJ initiate an action for injunctive or other relief in the circuit court of the county in which the mine is located.

Moving on to concerns related to opportunities for public input and vital financial assistance for affected communities:

- (pg 34) The bill states that mining companies will not have to abide by local shoreland and floodplain zoning. These ordinances are put in place and voted on by local people, and no person or single industry should have a blanket exemption from them.

Under *current law*, an applicant for a mining permit must demonstrate compliance with shoreland and floodplain zoning ordinances as a condition for DNR approval of the mining permit. In contrast, *the bill* specifies that ferrous metallic mining operations are not subject to local shoreland and floodplain zoning ordinances and that the DNR may not prohibit ferrous metallic mining activities on the basis of nonconformance with a shoreland or floodplain zoning ordinance.

- Citizen suits are not allowed under the bill. Why would legislators undermine the citizens of Wisconsin like this? Why would they offer such protection to a single industry?
- Furthermore, contested case hearings that would allow expert testimony in front of a judge are removed in the proposed legislation.

And finally, some financial concerns:

- 1) A cap of \$1.1 million on what the company pays in DNR fees to review permits. Costs for this very complex process could easily exceed the cap. Would we as taxpayers be left to foot the bill for the mining company?
- 2) Page 20 of the WI Leg Council Review states that the \$50,000 fee and other fees submitted with a notice of intent are eliminated. This is crucial 'upfront' money typically used by communities to hire attorneys or technical experts during negotiations of the permit process. This has proven invaluable for communities in the frac sand mining areas our state, but our communities cannot afford this expertise without such funding.

Second, it appears that the \$50,000 fee (and subsequent \$50,000 payments) required to be submitted together with a notice of intent under current law **does not apply to ferrous mining permit applicants under the bill.**<sup>16</sup> see footnote!

- 3) Page 20 also describes that 50% of the net proceeds tax would go to the state general fund and not to the Mining Investment and Local Impact fund where it could be awarded to Ashland and Iron Counties or the towns of Morse and Anderson.

**under the bill, 50% of net proceeds occupation tax revenue from ferrous mines must be deposited in the state's general fund. The remaining 50% of such revenue is to be transferred to the Mining Investment and Local Impact Fund.**

- 4) The bill frees the mining company of financial responsibility for the site after the mine has been closed for 20 years. Think about the Superfund site on Chequamegon Bay that Ashland is dealing with now, with Xcel ratepayers and WI taxpayers taking the brunt of the costs. Think about DuPont having to provide Washburn city water to Barksdale residents a few years ago, half a century after the plant was in production. The damage in both cases took

decades longer than 20 years to surface. Who pays once the mining company is gone? The risk associated with a mine should be the company's risk - not the taxpayer's, and not the community's. Why not hold them accountable for 40 years, as the current law states? Or even longer? After all, if nothing goes wrong, it doesn't cost the company anything.

In closing -- Over the past decade, the Bad River Watershed Association has learned that working in the largest watershed in the Lake Superior basin comes with many challenges - environmental and economic. And although we have many differences, we all share a connection with our home watershed. The BRWA works to strengthen that connection for all of us.

We work TOGETHER to find solutions. We suggest that Wisconsin will be a stronger place if decisions that affect our state are made in the same way.