

Comparison in brief of WI mining law with 2017 Act 134 Sierra Club – Wisconsin Chapter

Current Mining Law	AB 499/SB 395 – Enacted 2017 Act 134
<p>Prove It First permit requirement of successful operating and closed sulfide mines examples.</p>	<p>Repealed Prove It First permit requirement despite lack of any example mines. Added a permit condition requiring use of technology “capable” of compliance with applicable state law.</p>
<p>Bulk Sampling is considered “mini-mining” and is regulated as prospecting and similarly to full mining. Requires a Notice of Intent to DNR, an environmental analysis or optional Environmental Impact Statement specifying approved data collection to support application; detailed sampling and reclamation plans including special consideration of wetlands protection; posting of bond for reclamation; environmental monitoring of site and provision for on-site inspections at any time; and specific location and environmental standards. Bulk sampling is required to meet same groundwater standards as for mining. Required location criteria including prohibition within 1000 feet of navigable lake, pond, or flowage, and within a floodplain or within 300 feet of a navigable river or stream. Bulk Sampling is generally prohibited in wetlands. Commercial exploitation of the ore body is prohibited. Required public hearing before permit issuance and decision is subject to contested case hearing if requested.</p>	<p>Dropped current permitting approach and creates streamlined and limited licensing approach to for Bulk Sampling. Allows up to 10,000 tons (20 million pounds) of material to be removed and removes prohibition on commercial exploitation of the material. DNR is no longer required to prepare an environmental analysis or Environmental Impact Statement. Applicant submits “Plan” required to show sample locations, erosion control, revegetation plan, and description of known adverse impacts (such as wetlands disturbance) and how impacts will be avoided or minimized. No requirement for data collection for geophysical, geochemical, groundwater or surface water conditions – meaning no baseline is established. No full reclamation plan is required; only limited “revegetation.” Drops required location criteria where bulk sampling is prohibited. Allows commercial exploitation of the ore body. Requires DNR to issue license in 14 days if no additional approvals such as storm water control or wastewater discharge are required. Requires permit decision 60 days after plan is “complete” and public information hearing within 30 days after decision is published. No contested case hearing is allowed for bulk sampling. Removes local control of any authorized erosion control or storm water management. Drops prohibition on licensing an applicant or officers or directors of applicant that has previously forfeited a mining bond. Does not include any requirements for DNR inspections, enforcement, or stop orders.</p>

<p>Irrevocable Trust financial assurance law to ensure contingency funding in available for cleanup and preventative maintenance in perpetuity.</p>	<p>Irrevocable Trust repealed and replaced with a contingency bond that expires and is returned after 40 years. Adds a bond to cover repair or replacement of tailings waste cover or tailings wastewater management system but only from 40-250 years post-mining. Does not provide contingency funding for cleanup of waste dump spills or failure, groundwater contamination from wastes or mine, or drinking water replacement.</p>
<p>Wetlands are protected by comprehensive evaluation and regulatory program that prioritizes avoidance of impacts over potential destruction from mining or siting of mining wastes. Wetlands are presumed not to be used for waste siting without alternative siting analysis. The program is designed to account for the potential significant extent of groundwater withdrawal, and large scale open pits and permanent mining waste sites.</p>	<p>Repealed current wetland regulatory program for mining entirely and replaces with current minimum standards established by 2011 Act 118 – standards designed for projects with limited surface impacts. The current minimums streamlined permitting and simplified approvals for creating mitigation or replacement wetlands.</p>
<p>Notice of Intent (NOI) to submit mine permit applications: DNR must approve methodology for data collection to support application. Data collection is not allowed to begin until after public hearing is held on NOI and Scope of Study (SOS is expected for mining due to large scale but not required). 12-18 months data gathering after NOI and SOS hearing.</p>	<p>NOI required 12 months before permit applications. Applicant may collect supporting data anytime, including prior to NOI submission. DNR is not required to review data collection methodology and <u>is required to accept data collected by the applicant.</u></p>
<p>Permitting deadlines and hearings: No hard deadlines for DNR (or applicant) for review and preparation of EIR, DEIS, and FEIS. Includes 2 public meetings (NOI and DEIS) and a Master Hearing (both public testimony and comments and legal Contested Case hearing) on FEIS leading to permit decision. See page 3 for detailed timeline.</p>	<p>Permitting deadlines and hearings: No Notice of Intent Scope of Study or Environmental Impact Report is required. Only a DEIS is required; no Final EIS is prepared. Hard deadline for DNR review and prep of DEIS of 360-450 days. One public information meeting required before permit decision with no requirement that expert testimony be under oath. Master Hearing is no longer required. A Contested Case hearing may be requested after final decision. See page 3 for detailed timeline.</p>

Current Mine Permitting Timeline

The **current permitting timeline** generally has no hard deadlines for permittee or DNR and estimates by Wisconsin Geological and Natural History Survey and DNR of total time from application to permit decision (steps 1-5) is 2.5-4 years. Permitting process from NOI to decision for the Flambeau mine was 2.5 years.

1) **Applicant files Notice of Intent (NOI)**. NOI public hearing 45-90 days after DNR public notice of submission – no time limit for review of NOI and public comments, and applicant development of Scope of Study (SOS), if specified. Applicant develops SOS (though not a requirement) and gathers field data after NOI hearing (1 year of data required or up to 18 months).

2) **Permit applications and Environmental Impact Report (EIR establishes baseline) submitted. DNR prepares and releases Draft Environmental Impact Statement (DEIS)**. No deadline for DNR work on DEIS after applications and EIR are submitted.

3) **DEIS released**. Public meeting on DEIS 30-60 days after release. Written comments from state and federal agencies and public required by 80 days; public comments by 120 days.

4) **DEIS review of public record, comments and preparation of Final EIS**. No deadline for DNR work on FEIS.

5) **FEIS released**. Master Hearing on permits and EIS held 120-180 days after release of FEIS. Master Hearing is a Contested Case hearing with both open public comments and contested case portion with expert witnesses' testimony under oath and cross-examination. **Hearing Examiner's decision on EIS adequacy and permits** within 90 days after closure of hearing record.

6) Final decision can be appealed to DNR Secretary or judicial appeal to a court.

New Mine Permitting Timeline

The **new permitting timeline** from application to permit decision (steps 1-5) without a contested case hearing and judicial review: 860 – 950 days (2.35-2.5 years) plus X number of days if needed in step 2.

1) **Applicant files NOI** giving DNR **365 days** of notice prior to permit applications. No Scope of Study or Environmental Impact Report is required before applications submitted. No requirement for time period of data collection. (During this period, DNR can hold optional NOI info meeting 45 days if NOI plan is submitted and DNR has 90 days to request more info). No public notice required of an NOI filing.

2) **Mine application submitted**. Review of application and development of DEIS by DNR. Minimum duration: **360 days** after app. is submitted. Maximum duration: **450 + X-days** after app. is submitted, "X-days" = unknown amount of time for applicant to respond to single DNR request for more info.

3) **Draft EIS and permits are issued**. DNR has **30 days** to issue notice of public information hearing and it must be scheduled within **30 days** and include an additional **15 days** for written comments. This is the only required public information hearing in the new permitting process.

4) **Comment period closes** - DNR then has an open time period to compile public record and respond to public comment. **90 days** after completion of public record:

5) **DNR required to issue decision on permits**

6). A Contested Case hearing can be requested within 60 days of decision but final decision by hearing examiner must be reached within 270 days of permit decision.

7) Petition for judicial review (Circuit Court) must be filed by 30 days after hearing examiner's decision.