



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Jim Doyle, Governor
Scott Hassett, Secretary
Scott Humrickhouse, Regional Director

Wisconsin Rapids Service Center
473 Griffith Ave.
Wisconsin Rapids, Wisconsin 54494
Telephone 715-421-7800
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Mr. Jerry Fahrner, President
Fahrner Asphalt Sealers
P.O. Box 95
Plover, WI 54467

FID#????
Portage County
SW Grant of Exemption

Subject: Grant of Exemption for Case Specific Determinations Under NR 538.08(7), Wis Adm. Code for Copper Slag Produced by the White Pine Mine located in White Pine, MI

Dear Mr. Fahrner:

Your requested exemption under NR 538.08(7), Wis. Adm. Code White Pine Mine copper slag has been reviewed and exempted subject to the conditions listed in the attached grant of exemption. The proposed copper slag is a material not specifically covered by the definition of an industrial byproduct under s. NR 538.03(2), Wis. Adm. Code. The Department may determine other non-hazardous solid waste with similar characteristics as papermill sludge, coal ash or foundry sand/slag to be considered industrial byproducts according to the definition of industrial byproduct under s. NR 538.03(2), Wis. Adm. Code. Section NR 538.08(7), Wis. Adm. Code, allows the Department to assign categories to high volume industrial wastes that the Department has determined are industrial byproducts. It has been determined that the White Pine Mine copper slag to be a Category 2 industrial byproduct based on Tables 2A and 2B in Appendix I of ch. NR 538, Wis. Adm. Code. The beneficial use of this material can be performed in an environmentally acceptable manner provided the conditions of the attached grant of exemption are followed. Fly ash, bottom ash, foundry sand, foundry slag and papermill sludge are high-volume industrial wastes as defined in s. 289.01(17), Stats. and exemptions to encourage recycling of high-volume industrial wastes are allowable under s. 289.43(7), Stats.

If you have questions regarding this exemption, please contact Michael Miller at (715) 421-7821.

Sincerely,

Donald R. Grasser, P.E., P.H.
Waste Management Program Supervisor
Wisconsin Rapids Service Center

CC: Paul Koziar – WA/3
Michael Miller – Wisconsin Rapids

BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

CONDITIONAL GRANT OF EXEMPTION
FOR CASE SPECIFIC DETERMINATIONS
UNDER NR 538.08(7) WIS. ADM. CODE FOR
WHITE PINE MINE COPPER SLAG

FINDINGS OF FACT

The Department finds that:

1. The White Pine Mine owned and operated a copper mine and smelter in White Pine MI until the facility closed in 1996.
2. The White Pine Mine generated a slag (WPCS) as part of its operations at the copper smelter.
3. On February 17, 2004, the Department received a letter and attachments from Fahrner Asphalt of Plover, Wisconsin requesting the beneficial use of the copper slag as a Category 2 material under s. NR 538.08(7), Wis. Adm. Code. Specifically Fahrner Asphalt wishes to utilize the WPCS as a bonded surface course in Wisconsin.
4. Information submitted regarding the request for use of WPCS as a Category 2 industrial byproduct under ch. NR 538, Wis. Adm. Code includes the following:
 - a. A letter and attachments submitted by Fahrner Asphalt dated February 17, 2004. The attachments included a completed "Beneficial Use of Industrial Byproducts Initial Certification" form for WPCS. The attachments also included both total elemental analysis and leach test results for Category 2 parameters.
5. Additional documents reviewed in regards to the request to use WPCS as a Category 2 industrial byproduct under ch. NR 538, Wis. Adm. Code include the following:
 - a. A Department memo written by Michael Miller documenting a phone call with?????????. From Michigan DEQ.
6. In making the determination of the WPCS as a Category 2 industrial byproduct under ch. NR 538, Wis. Adm. Code, the Department considers the following facts to be significant:
 - a. Based on analytical data received and reviewed, the WPCS is a Category 2 industrial byproduct under s. NR 538.08, Wis. Adm. Code. The beneficial use of an industrial byproduct, if done in accordance with ch. 538, Wis. Adm. Code, is considered protective of human health and the environment.
7. If the conditions set forth below are complied with, the beneficial reuse of WPCS as Category 2 industrial byproduct under ch. NR 538, Wis. Adm. Code will not result in environmental pollution as defined in s. 289.01(8), Stats.

8. If the conditions set forth below are complied with, the beneficial reuse of WPCS Category 2 industrial byproduct under NR 538 Wis. Adm. Code will comply with the applicable portion of chs. 30, 31, 160, and 280 to 299, Stats. and ss. 1.11, 23.40, 59.692, 59.693, 60.627, 61.351, 61.354, 62.231, 62.234, and 87.30, Stats.

CONCLUSIONS OF LAW

1. Based on the foregoing, the Department has authority under s. 289.43(7), Stats., and s. NR 500.08(5), Wis. Adm. Code, to issue a grant of exemption from regulation under ch. 289, Stats., if the exemption would not inhibit compliance with the applicable provisions of chs. 30, 31, 160, and 280 to 299, Stats. and ss. 1.11, 23.40, 59.692, 59.693, 60.627, 61.351, 61.354, 62.231, 62.234, and 87.30, Stats.
2. The Department has authority under s. 289.43(7)(d), Stats., to approve a grant of exemption with conditions if the conditions are needed to ensure compliance with the applicable provisions of chs. 30, 31, 160, and 280 to 299, Stats. and ss. 1.11, 23.40, 59.692, 59.693, 60.627, 61.351, 61.354, 62.231, 62.234, and 87.30, Stats.
3. The conditions set forth below are needed to ensure compliance with the applicable provisions of chs. 30, 31, 160, and 280 to 299, Stats. and ss. 1.11, 23.40, 59.692, 59.693, 60.627, 61.351, 61.354, 62.231, 62.234, and 87.30, Stats., and that the proposal will not result in environmental pollution as defined in s. 289.01(8), Stats.
4. In accordance with the foregoing, the Department has the authority under s. 289.43(7), Stats., and s. NR 500.08(5), Wis. Adm. Code, to issue the following grant of exemption.

CONDITIONAL GRANT OF EXEMPTION

The Department hereby grants an exemption from regulation under ch. 289, Stats., for case specific determinations under NR 538.08(7), Wis. Adm. Code for high volume industrial wastes produced by White Pine Copper Mine subject to compliance with the following conditions:

1. The copper slag is determined to be Category 2 industrial byproducts under ch. NR 538, Wis. Adm. Code.
2. All applicable requirements under ch. NR 538, Wis. Adm. Code shall be followed for all uses of the Category 2 industrial byproducts under ch. NR 538, Wis. Adm. Code.
3. Submission of a \$500.00 exemption review fee.

The Department reserves the right to require the submittal of additional information and to modify this grant of exemption at any time, if in the Department's opinion, modifications are necessary. Unless specifically noted, the conditions of this approval do not supersede or replace any previous conditions of approval for this facility.

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed.

For judicial review of a decision pursuant to sections 227.52 and 227.53, Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

Dated: _____

DEPARTMENT OF NATURAL RESOURCES
For the Secretary

Donald R. Grasser, P.E., P.H.
Waste Management Program Supervisor
Wisconsin Rapids Service Center

Michael L. Miller
Waste Management Specialist
Wisconsin Rapids Service Center