



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix B ... segment V

LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for 2011 LRB-3519/1 (For: Rep. Honadel)

has been copied/added to the drafting file for

2011 LRB-3520 (For: Rep. Honadel)

Are These "Companion Bills" ?? ... No



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 12/09/2011 (Per: JK)

The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

1 2. Purchase of credits from a mitigation bank for a site in a mitigation bank that
2 is located anywhere in the state.

3 3. Purchase of mitigation credits from a mitigation bank established prior to
4 February 1, 2002, if the department determines that the bank sponsor is in
5 compliance with any applicable memorandum of understanding between the bank
6 sponsor and the department.

7 **(9) MINING PERMIT.** Any water quality certification issued by the department,
8 including all of the conditions imposed as part of the certification, shall be included
9 in the mining permit.

10 **(10) CONSERVATION EASEMENTS.** (a) A person who is the holder of a water quality
11 certification that authorizes mitigation to be implemented by the holder of the
12 certification at an on-site location shall grant a conservation easement under s.
13 700.40 to the department to ensure that the wetland that is subject to the mitigation
14 will not be destroyed or substantially degraded by any subsequent proprietor or
15 holder of interest in the property on which the wetland is located. The department
16 shall suspend the mining permit if the holder of the permit fails to grant the
17 easement within the time limit set forth in the mining permit. If the holder
18 subsequently grants the conservation easement to the department, the department
19 shall reinstate the mining permit.

20 (b) Notwithstanding par. (a), the department shall modify or release a
21 conservation easement granted under par. (a) if all of the following apply:

22 1. The department determines that part or all of the wetland subject to the
23 mitigation ceases to be a wetland.

24 2. The person who is required to grant the conservation easement did not
25 contribute to the loss of the wetland as specified in subd. 1.

1 3. Any subsequent proprietor of or holder of interest in the property on which
2 the wetland specified in subd. 1. is located did not contribute to the loss of the
3 wetland.

4 **(11) EXEMPTIONS.** (a) *Artificial wetlands.* All of the following artificial wetlands
5 that are associated with a mining operation are exempt from the water quality
6 certification provisions and compensation and mitigation provisions under this
7 section and under any other statute or rule relating to impacts on wetlands:

8 1. An artificial wetland that is a sedimentation or stormwater detention basin
9 or associated conveyance feature operated and maintained only for sediment
10 detention and flood storage purposes.

11 2. An artificial wetland that is an active sewage lagoon, cooling pond, waste
12 disposal pit, fish rearing pond, or landscape pond.

13 3. An artificial wetland that is actively maintained farm drainage and roadside
14 ditches.

15 4. An artificial wetland as part of an active mining operation.

16 (c) *Other exempted activities.* For nonfederal wetlands, all of the following
17 activities that are associated with a mining operation or bulk sampling are exempt
18 from the water quality provisions and compensation and mitigation provisions under
19 this section and any other law relating to impact on wetlands if the applicant
20 minimizes any adverse effect on the environment as a result of the activities:

21 1. Maintenance, emergency repair, or reconstruction of damaged parts of
22 structures that are in use in a wetland.

23 2. Construction or maintenance of irrigation or drainage ditches.

1 3. Construction or maintenance of farm roads, forest roads, or temporary
2 mining roads that is performed in accordance with best management practices, as
3 determined by the department.

4 **(12) RELATIONSHIP TO OTHER LAWS.** None of the following apply to a mining
5 operation or bulk sampling:

6 (a) Sections 281.36 and 281.37, except as otherwise specifically provided in this
7 section.

8 (b) Any rule promulgated by the department relating to wetlands that conflicts
9 with this section, except that no rule promulgated by the department under s. 281.36
10 or 281.37 applies to a mining operation or bulk sampling.

11 **295.605 Impacts to navigable waters. (1) DEFINITION.** In this section,
12 “navigable water activity” means an activity for which a permit or contract is
13 required under s. 30.12, 30.123, 30.19, 30.195, or 30.20.

14 **(2) PERMIT OR CONTRACT REQUIRED.** No person may engage in any navigable
15 water activity associated with bulk sampling or mining unless the person has been
16 issued a permit or entered into a contract as provided under sub. (4).

17 **(3) APPLICATION; RIPARIAN STATUS.** (a) Any person who intends to engage in a
18 navigable water activity associated with bulk sampling or mining need not be a
19 riparian owner to do any of the following:

20 1. Apply for and be issued an individual permit for a navigable water activity
21 under s. 30.12, 30.123, 30.19, or 30.195.

22 1m. Enter into a contract under s. 30.20.

23 2. Engage in an activity that is exempt under s. 30.12, 30.123, 30.19, 30.195,
24 or 30.20.

1 3. Seek authorization under a general permit issued under s. 30.12, 30.123,
2 30.19, or 30.20.

3 (b) If a person is applying for more than one permit or contract for a navigable
4 water activity associated with bulk sampling or mining, the person may file a single
5 application. The application shall include any information requested by the
6 department under s. 295.45 (3).

7 **(4) REQUIREMENTS.** (a) *Generally.* The department shall issue a permit, or enter
8 into a contract, for a navigable water activity if the navigable water activity meets
9 all of the following requirements:

10 1. The navigable water activity will not significantly impair public rights and
11 interests in a navigable water.

12 2. The navigable water activity will not significantly reduce the effective flood
13 flow capacity of a stream.

14 3. The navigable water activity will not significantly affect the rights of
15 riparian owners or the applicant obtains the consent of the riparian owners.

16 4. The navigable water activity will not significantly degrade water quality.

17 (b) *Measures.* The person applying for the permit or contract shall submit a
18 plan to the department containing proposed measures to to meet the requirements
19 under par. (a) and a proposed schedule for implementing the measures. The plan
20 shall include one or more of the following measures:

21 1. Measures to offset significant impacts to navigable waters by providing
22 public access to, restoring, or enlarging up to 1.5 acres of navigable waters in
23 exchange for each acre of navigable waters that is significantly impacted.

24 2. Measures to improve public rights or interests in navigable waters.

25 3. Measures to offset significant impacts to water quality or quantity.

1 4. Measures to enhance flood storage.

2 5. Compensation or mitigation as provided under s. 295.60.

3 6. Conservation measures as provided in s. 295.61.

4 (bn) *Plan review; finding.* In reviewing the plan, the department may require
5 that measures that are in addition to, or in conjunction with, one or more of the
6 measures specified in par. (b) 1. to 6. be included in the plan. After reviewing the plan
7 and application, if the department finds that the requirements under par. (a) will be
8 met by implementing some or all of the measures contained in the plan, the
9 department shall determine which measures shall be required, shall approve a
10 schedule for implementation, and shall issue the permit or enter into the contract.

11 (c) *Applicability of requirements.* The requirements that are specified in par.
12 (a) 1. to 4. are in lieu of any requirements required for permits under ss. 30.12 (3m)
13 (c), 30.123 (8) (c), 30.19 (4) (c), and 30.195 (2) (c) and are in lieu of any requirements
14 for contracts under s. 30.20 that relate to the state's or public's interests and shall
15 be used, in conjunction with the measures required under par. (b), in any evaluation
16 by the department pursuant to 33 USC 1341.

17 (5) PERMIT CONDITIONS. The department may impose conditions in a permit for
18 a navigable water activity that it determines to be necessary to ensure that the
19 navigable water activities subject to the permit meet the requirements under par. (a).

20 (6) RELATIONSHIP TO OTHER LAWS. (a) Chapter 30 and any rules promulgated
21 under that chapter apply to any navigable water activity subject to this section to the
22 extent that they do not conflict with this section, except as provided in par. (b).

23 (b) Sections 30.208, 30.209, and 30.2095 and any rules promulgated under
24 those sections, do not apply to any navigable water activity that is subject to this
25 section.

1 **295.607 Shoreland and floodplain zoning.** (a) In this section:

2 1. "Development or construction activity" means a waste site, structure,
3 building, fill, or other development or construction activity.

4 2. "Shoreland or floodplain zoning ordinance" means a shoreland or floodplain
5 zoning ordinance or regulation adopted under s. 59.692, 61.351, 62.231, 87.30, or
6 281.31.

7 (b) The department may not prohibit a development or construction activity to
8 be located in an area that would otherwise be prohibited under a shoreland or
9 floodplain zoning ordinance if the development or construction activity is authorized
10 by the department as part of a mining operation covered by a mining permit under
11 s. 295.58.

12 (c) A development or construction activity located in an area that would
13 otherwise be prohibited under a shoreland or floodplain zoning ordinance does not
14 violate the applicable ordinance if the development or construction activity is
15 authorized by the department as part of a mining operation covered by a mining
16 permit under s. 295.58. No shoreland or floodplain zoning variance is required for
17 a development or construction activity located as provided under this paragraph.

18 **295.61 Withdrawals of surface waters and groundwater.** (1)

19 DEFINITIONS. In this section:

20 (a) "Authorized base level of water loss" has the meaning given in s. 281.35 (1)

21 (b).

22 (b) "Environmentally sound and economically feasible water conservation
23 measures" has the meaning given in s. 281.346 (1) (i).

24 (c) "Great Lakes basin" has the meaning given in s. 281.35 (1) (d).

25 (d) "High capacity well" has the meaning given in s. 281.34 (1) (b).

1 (e) "Interbasin diversion" has the meaning given in s. 281.35 (1) (g).

2 (f) "Upper Mississippi River basin" has the meaning given in s. 281.35 (1) (j).

3 (g) Unless the context otherwise requires, "use" includes dewatering.

4 (h) "Water loss" has the meaning given in s. 281.35 (1) (L).

5 (i) "Withdrawal" has the meaning given in s. 281.35 (1) (m).

6 (2) PERMIT REQUIRED. No person may engage in any withdrawal or use of surface
7 water as part of a mining operation or bulk sampling unless the person has been
8 issued a water withdrawal permit under this section. No person may engage in any
9 withdrawal or use of groundwater as part of a mining operation or bulk sampling if
10 the capacity and rate of withdrawal of all wells involved in the withdrawal of
11 groundwater or the dewatering of mines exceeds 100,000 gallons each day unless the
12 person has been issued a water withdrawal permit under this section.

13 (3) PERMIT APPLICATION. (a) *Application.* Any person applying for a water
14 withdrawal permit is required to submit only one application. A person applying for
15 such a permit need not be a riparian owner. An application for a water withdrawal
16 permit shall include any information requested by the department under s. 295.45
17 (3).

18 (b) *Siting analysis.* If withdrawal of water at a mining operation or for bulk
19 sampling will involve one or more high capacity wells, the department shall require
20 an applicant for a water withdrawal permit to submit a siting analysis for the
21 purpose of determining the location of the high capacity wells. The analysis shall
22 include alternate proposed locations for each high capacity well. In evaluating a
23 submitted analysis, the department shall recognize there is a need for mining waste
24 sites, processing facilities, including wastewater and sludge storage or treatment
25 lagoons, to be contiguous to the location of the ferrous mineral deposit, and shall

1 allow any high capacity well to be located so that need will be met. The department
2 shall determine which location for each high capacity well has the fewest overall
3 adverse environmental impacts to the extent practicable. In determining what is
4 practicable, the department shall take into consideration the ability to implement
5 any conservation measures that may be required under sub. (4) (b). Section 281.346
6 (5) (b) 5. does not apply to determining a location under this paragraph.

7 (c) *Entry to land.* After an application for a water withdrawal permit has been
8 submitted under this section, the applicant may enter any land from which the
9 applicant proposes to withdraw water or use water for the purpose of making any
10 surveys required for the mining operation or bulk sampling, but no work may be
11 commenced necessary for the mining operation or the bulk sampling until the
12 department issues the permit under this section.

13 (4) PERMIT ISSUANCE. (a) *General requirements.* The department shall issue
14 a water withdrawal permit if the withdrawal or use of the surface water or
15 groundwater meets all of the following requirements:

16 1. The proposed withdrawal and uses of the water are substantially consistent
17 with the protection of public health, safety, and welfare and will not be significantly
18 detrimental to the public interest.

19 2. The proposed withdrawal and uses of the water will not have a significant
20 adverse impact on the environment and ecosystem of the Great Lakes basin or the
21 Upper Mississippi River basin.

22 3. The proposed withdrawal and use of the water will not be significantly
23 detrimental to the quantity and quality of the waters of the state.

1 4. The proposed withdrawal and use of the water will not significantly impair
2 the rights of riparian owners or the applicant obtains the consent of the riparian
3 owners.

4 5. The proposed withdrawal and use of the water will not result in significant
5 injury to public rights in navigable waters.

6 6. If the withdrawal or the use of the water will result in an interbasin
7 diversion, the requirements of s. 281.35 (5) (d) 7. are met.

8 7. The proposed withdrawal or use of the water will comply with any
9 requirements imposed by the department under par. (cm).

10 (b) *Conservation measures.* The person applying for the permit shall submit
11 a plan to the department containing proposed conservation measures to meet the
12 requirements under par. (a) and a proposed schedule for implementing the
13 measures. The plan shall include one or more of the following measures:

14 1. Environmentally sound and economically feasible water conservation
15 measures.

16 2. Restoration of hydrologic conditions and functions of the source watershed,
17 or if the withdrawal is from a stream tributary to one of the Great Lakes, restoration
18 of the hydrologic conditions and functions of that stream.

19 3. Protection of important upland groundwater recharge areas.

20 4. Stabilization of shorelands.

21 5. Restoration or enhancement of the natural beneficial uses and values of a
22 stream or river.

23 6. Implementation of any feasible methods to offset impacts to water quality
24 or quantity.

1 7. Supplementation of additional water to water bodies to offset lower water
2 levels.

3 8. Taking steps to improve public rights or interests in navigable waters, if
4 navigable waters are subject to the permit.

5 9. Mitigation or compensation as provided in s. 295.60.

6 10. Measures to offset significant impacts to navigable waters by providing
7 public access to, restoring, or enlarging up to 1.5 acres of navigable waters in
8 exchange for each acre of natural navigable waters that is significantly impacted.

9 11. A riparian restoration project, as defined in s. 295.60 (1) (n).

10 12. Measures as provided in s. 295.605.

11 (bn) *Plan review; finding.* In reviewing the plan, the department may require
12 that conservation measures that are in addition to, or in conjunction with, one or
13 more of the conservation measures specified in par. (b) 1. to 12. be included in the
14 plan. After reviewing the plan and application, if the department finds that the
15 requirements under par. (a) will be met by implementing some or all of the
16 conservation measures contained in the plan, the department shall determine which
17 measures shall be required, shall approve a schedule for implementation, and shall
18 issue the permit.

19 (cm) *Impacts to water supplies.* If the department determines that a proposed
20 withdrawal or use of water will result in a significant impact to a public or private
21 water supply, the department shall require the applicant to offset that impact in a
22 manner approved by the department, which may include a requirement that the
23 applicant provide a replacement water supply of similar quality or provide an
24 increased amount of water to the water supply.

1 (d) *Public benefits.* If the department finds under par. (bn) that the applicant
2 cannot meet all of the applicable requirements under par. (a), the department shall
3 nevertheless issue the water withdrawal permit if the department determines that
4 the public benefits resulting from the mining operation exceed any injury to public
5 rights and interests in a body of water that is affected by the mining operation or bulk
6 sampling. In making this determination, the department shall recognize that the
7 withdrawal and use of the waters of the state in connection with mining is in the
8 public's interest and welfare and fulfills a public purpose and shall consider all of the
9 following factors:

10 1. The extent to which the public rights in a navigable body of water, and its
11 related environment, may be substantially and irreparably injured by the proposed
12 withdrawal or use.

13 2. Public benefits that may be provided by increased employment, economic
14 activity, and tax revenues from the mining operation.

15 3. The direct and indirect social benefits and costs that will result from the
16 proposed mining operation.

17 4. The rights of riparian owners or other competing users to the water that will
18 be subject to the permit.

19 5. The extent to which any impacts from mining or bulk sampling will be
20 temporary.

21 (e) *Use of nonriparian waters.* Water withdrawn in accordance with a water
22 withdrawal permit may be used on nonriparian property.

23 (f) *Limits on permit denials.* If the department determines that one of the water
24 withdrawal activities subject to an application for a water withdrawal permit does
25 not meet the requirements for issuing the permit under par. (a), (bn), or (d) and will

1 not be authorized under the permit, the failure to authorize the activity may not
2 affect the department's determination as to whether to approve or deny the permit
3 for other water withdrawal activities that are subject to the application.

4 (5) PERMIT CONDITIONS. The department may impose reasonable conditions in
5 a water withdrawal permit that do not interfere with the mining operation or bulk
6 sampling or limit the amount of water needed for the mining operation or bulk
7 sampling and that relate to any of the following:

8 (a) The location of the withdrawal or use.

9 (b) The authorized base level of water loss from the withdrawal or use.

10 (c) The dates on which or seasons during which withdrawal or use of the water
11 may occur.

12 (d) The purposes for the withdrawal or use of the water.

13 (e) The amount and quality of return flow required and the place of the
14 discharge.

15 (f) The requirements for reporting volumes and rates of withdrawal and any
16 other data specified by the department.

17 (g) Any other conditions that the department determines are necessary to
18 protect the environment and the public health, safety, and welfare and to ensure the
19 conservation and proper management of the waters of the state.

20 (6) PERMIT MODIFICATIONS. (a) 1. An operator to whom a permit has been issued
21 under this section may request a modification of any condition in the permit.

22 2. If the request for a modification under subd. 1. does not result in an increase
23 in an existing withdrawal resulting in a water loss averaging more than 2,000,000
24 gallons per day in any 30-day period above the operator's authorized base level of

1 water loss, within 30 days of receiving the request the department shall approve the
2 request and amend the permit to incorporate the modification.

3 3. a. If the request for a modification under subd. 1. results in an increase in
4 an existing withdrawal resulting in a water loss averaging more than 2,000,000
5 gallons per day in any 30-day period above the operator's authorized base level of
6 water loss, the department shall determine whether it is required, under ch. NR 150,
7 Wis. Adm. Code, to prepare an environmental assessment or environmental impact
8 statement and, if so, shall prepare an environmental assessment or an
9 environmental impact statement. If the department determines that, under ch. NR
10 150, Wis. Adm. Code, the operator must prepare an environmental impact report, the
11 department may only request information in the environmental impact report that
12 relates to decisions that the department makes under this section related to the
13 permit and the department shall limit its analysis to an evaluation of the request for
14 the modification.

15 b. The department shall publish a class 1 notice, under ch. 985, of the
16 availability of information about a request to which this subdivision applies, its
17 proposed decision on the request, the opportunity to comment within 30 days after
18 the notice is published, and the opportunity to request a public informational
19 hearing. The department shall also provide the notice to the applicant, the persons
20 specified in s. 30.18 (4) (a), and if the modification involves a structure through which
21 water transferred from the Great Lakes basin would be returned to the source
22 watershed through a stream tributary to one of the Great Lakes, the governing body
23 of each city, village, and town through which the stream flows or that is adjacent to
24 the stream downstream from the point at which the water would enter the stream.

1 c. Within 180 days of receiving a request to which this subdivision applies, the
2 department shall approve or deny as provided in sub. (4) the request and, if it
3 approves the request, shall amend the permit to incorporate the modification.

4 (b) 1. The department may propose modifications to any of the conditions in the
5 water withdrawal permit. If it proposes a modification, the department shall
6 determine whether it is required, under ch. NR 150, Wis. Adm. Code, to prepare an
7 environmental assessment or environmental impact statement and, if so, shall
8 prepare an environmental assessment or an environmental impact statement. If the
9 department determines that, under ch. NR 150, Wis. Adm. Code, the operator must
10 prepare an environmental impact report, the department may only request
11 information in the environmental impact report that relates to decisions that the
12 department makes under this section related to the permit and the department shall
13 limit its analysis to an evaluation of the proposed modification.

14 2. The department shall publish a class 1 notice, under ch. 985, of the
15 availability of information about a proposed modification under this paragraph, the
16 opportunity to comment within 30 days after the notice is published, and the
17 opportunity to request a public informational hearing. The department shall also
18 provide the notice to the applicant, the persons specified in s. 30.18 (4) (a), and if the
19 modification involves a structure through which water transferred from the Great
20 Lakes basin would be returned to the source watershed through a stream tributary
21 to one of the Great Lakes, the governing body of each city, village, and town through
22 which the stream flows or that is adjacent to the stream downstream from the point
23 at which the water would enter the stream.

24 3. The department may not impose the modification until after the end of the
25 public comment period under subd. 2.

1 4. Any modified condition under this paragraph may not interfere with the
2 mining operation or limit the amount of water needed for the mining operation if the
3 holder of the water withdrawal permit is implementing any conservation measures
4 that are applicable under the permit.

5 (7) RELATIONSHIP TO OTHER LAWS. None of the following apply to water
6 withdrawal or use that is associated with mining operations or bulk sampling:

7 (a) Sections 30.18, 281.34, and 281.35 and any rules promulgated under those
8 sections, except as specifically provided in this section.

9 (b) Any provision of ch. NR 812, Wis. Adm. Code, that conflicts with this section,
10 except that s. NR 812.08, Wis. Adm. Code, does not apply to water withdrawal or use
11 that is associated with mining operations or bulk sampling.

12 **295.62 Mining waste site construction and completion reports.** (1) An
13 operator shall construct a mining waste site substantially in accordance with the
14 approved mining waste site feasibility study and plan of operation.

15 (2) The operator shall inspect the mining waste site before it is used and ensure
16 that all associated structures are in substantial compliance with the mining waste
17 site feasibility study and plan of operation. The operator shall have a professional
18 engineer, registered as such under ch. 443, document mining waste site construction
19 and render an opinion as to whether the mining waste site has been constructed in
20 substantial conformance with the mining waste site feasibility study and plan of
21 operation. The engineer may use aerial or ground photographs to document the
22 inspection, but photographs do not in themselves constitute compliance with this
23 subsection. The operator shall maintain a complete file describing the items
24 inspected and their condition.

1 (3) An operator shall notify the department in writing when the mining waste
2 site has been constructed in substantial compliance with the mining waste site
3 feasibility study and plan of operation.

4 (4) (a) Within 5 business days of receipt of written notice from an operator that
5 the mining waste site has been constructed in substantial compliance with the
6 mining waste site feasibility study and plan of operation, the department shall either
7 review and inspect the mining waste site to ensure that it was constructed according
8 to the approved mining waste site feasibility study and plan of operation or notify the
9 operator that the department will not conduct a review and inspection before
10 disposal of mining waste in the mining waste site. Within 3 business days of any
11 review and inspection, the department shall notify the operator that the mining
12 waste site may be used for the disposal of mining waste or identify all steps that must
13 be completed to bring the mining waste site into substantial compliance with the
14 mining waste site plan of operation. After the operator completes the steps, the
15 operator shall notify the department that the steps have been completed.

16 (b) An operator may dispose of mining waste in a mining waste site after one
17 of the following occurs:

18 1. The operator receives notice from the department under par. (a) that the
19 department will not conduct a review and inspection before disposal of mining waste
20 in the mining waste site.

21 2. The operator receives notice from the department under par. (a) that the
22 mining waste site may be used for the disposal of mining waste.

23 3. The operator provides notice to the department under par. (a) that any steps
24 required by the department to be completed under par. (a) have been completed.

1 **295.63 Modifications; reporting.** (1) (a) An operator at any time may
2 request a change to a mining permit, the mining plan, the reclamation plan, or the
3 mining waste site feasibility study and plan of operation for any mining site that the
4 operator owns or leases, or request cancellation of the mining permit for any or all
5 of the unmined part of a mining site. The operator shall submit an application for
6 the change or cancellation in the form of a letter giving notice to the department of
7 the proposed change or cancellation and shall identify in the letter the tract of land
8 to be affected by a change in the mining plan, reclamation plan, or mining waste site
9 feasibility study and plan of operation or to be removed from the permitted mining
10 site.

11 (b) The department shall grant a request under par. (a) unless it determines
12 that the requested change makes it impossible for the permit holder to substantially
13 comply with the approved mining plan, reclamation plan, or mining waste site
14 feasibility study and plan of operation. If the department determines that the
15 requested change would make substantial compliance impossible, it shall follow the
16 procedure in sub. (3).

17 (c) If the request under par. (a) is to cancel any or all of the unmined part of a
18 mining site, the department shall ascertain, by inspection, if mining has occurred on
19 the land. If the department finds that no mining has occurred, the department shall
20 order release of the bond or other security posted for the land being removed from
21 the permitted mining site and cancel or amend the operator's written authorization
22 to conduct mining on the mining site. The department may not approve the removal
23 of land where mining has occurred from a permitted mining site, or release that land
24 from the bond or other security under this subsection, unless the operator has
25 completed reclamation to the satisfaction of the department.

1 (2) The operator shall furnish the department with a report for each mining
2 site within 30 days after the end of every 12-month period after issuance of the
3 permit, within 30 days after completion of all mining at the mining site, and within
4 30 days after completion of the mining plan and of the reclamation plan, describing
5 any reclamation work accomplished, or experimental reclamation work performed,
6 during the preceding year. The operator shall include in the reports an annual plan
7 map, color-coded and with a legend, showing all of the following, as of December 31
8 of the previous year, or as near to December 31 of the previous year as mining
9 operations permit:

- 10 (a) Location and boundary of the mining area.
- 11 (b) Any mine mill.
- 12 (c) Any open pit.
- 13 (d) Stockpiles of overburden.
- 14 (e) Stockpiles of waste rock.
- 15 (f) Ferrous ore stockpiles.
- 16 (g) Streams, lakes, and reservoirs.
- 17 (h) Tailings basins.
- 18 (i) Roads.
- 19 (j) Sequential numbers or letters or other method, as approved by the
20 department, permanently assigned to portions of the mining site that have been
21 abandoned before abandonment of the entire mining operation.
- 22 (k) Changes in the surface area disturbed by mining during the preceding year,
23 indicated by vertical crosshatching or other method approved by the department.

1 (L) Anticipated changes in the surface area disturbed by mining during the
2 current year, indicated by horizontal crosshatching or other method approved by the
3 department.

4 (m) Elevations of stockpiles and tailings basins.

5 (n) Drainage on and away from the surface area disturbed by mining, showing
6 directional flow of water in drainage ways, natural watercourses, and streams,
7 intermittent and flowing, including discharge from the mining.

8 (o) The name of the geologist, engineer, or surveyor responsible for the
9 preparation of the map.

10 (p) The date the map was prepared.

11 (3) If the department finds that a change requested under sub. (1) (a) would
12 make substantial compliance with the approved mining plan, reclamation plan, or
13 mining waste site feasibility study and plan of operation impossible or it finds, based
14 on a review conducted no more frequently than every 5 years, that because of
15 changing conditions, including changes in reclamation costs or reclamation
16 technology, the reclamation plan for a mining site is no longer sufficient to
17 reasonably provide for reclamation of the mining site consistent with this
18 subchapter, it shall require the applicant to submit an amended mining plan,
19 reclamation plan, or mining waste site feasibility study and plan of operation and
20 applications for amending any approval associated with the proposed amendments
21 to the mining plan, reclamation plan, or mining waste site feasibility study and plan
22 of operation. The public notice, public comment, and public hearing procedures in
23 s. 295.57 apply to amended plans and applications under this subsection. The
24 department shall approve or deny the amended mining plan, reclamation plan, or
25 mining waste site feasibility study and plan of operation in accordance with s.

1 295.58, within 30 days following the close of the public comment period. The
2 applicant may continue to operate under the existing mining permit until the
3 amended mining permit is issued or denied.

4 **295.635 Required mining waste site inspections, record keeping,**
5 **reporting, and responses. (1) DEFINITIONS. In this section:**

6 (a) "Active dam" means a dam and associated settling area into which tailings
7 or wastewater are being introduced or that has not been reclaimed in a manner
8 approved by the department.

9 (b) "Inactive dam" means a dam and associated settling area that is no longer
10 being used for disposal of tailings or wastewater and that has been reclaimed in a
11 manner approved by the department.

12 (2) GENERAL. The operator shall, at least monthly, visually inspect all of the
13 following and record observations in a mining waste site operating log:

14 (a) The active portions of the mining waste site for possible damage or
15 structural weakening.

16 (b) Mining waste handling and monitoring equipment and readings, to ensure
17 normal operation and measurements.

18 (c) Fences or barriers around the mining waste site, for possible damage.

19 (d) The buffer area around the mining waste site, for possible environmental
20 damage related to its operation.

21 (3) ACTIVE DAMS. The operator shall, at least monthly, inspect active dams and
22 record the findings in the mining waste site operating log. The operator shall record
23 at least all of the following findings:

24 (a) Condition of vegetation on the dam and within 50 feet from the outside base.

25 (b) Piezometric levels within the mass of the dam.

1 (c) Condition of soil surfaces on the top and slopes of the dam and within 50 feet
2 from the outside base.

3 (d) Condition of drainage ditches near the base of the dam.

4 (e) Liquid surface level and amount of freeboard.

5 (f) Condition of spillways, conduits, and water level control structures.

6 **(4) INACTIVE DAMS.** The operator shall inspect inactive dams quarterly and
7 record the findings in the mining waste site operating log. The operator shall record
8 at least all of the following findings:

9 (a) Condition of soil surfaces on the top and slopes of the dam and within 50 feet
10 from the outside base.

11 (b) Piezometric levels within the mass of the dam if that instrumentation has
12 been determined to be necessary or is required in the long-term care provisions of
13 the mining waste site feasibility study and plan of operation.

14 (c) Condition of spillways, conduits, and water level control structures.

15 **(5) DEFECTIVE CONDITIONS OF DAMS POSING RISK OF ADVERSE IMPACT.** When a
16 defective condition that poses a significant risk of adverse impact to the environment
17 is found during an inspection of a dam, the operator shall ensure that it is recorded
18 and corrected at the earliest practicable time. At the earliest practicable time, the
19 operator shall make a written report to the department of the condition and the
20 actions proposed and taken for its correction. Within 5 business days of receipt of a
21 written report, the department may confirm the correction of the condition and
22 specify any necessary additional corrective action. An operator shall consider any
23 of the following items as indicating a condition that requires prompt investigation
24 and that may require corrective action:

1 (a) Seepage on the outer face of the dam accompanied by boils, sand cones, or
2 deltas.

3 (b) Silt accumulations, boils, deltas, or cones in the drainage ditches at the base
4 of the dam.

5 (c) Cracking of soil surface on the top or either face of the dam.

6 (d) Bulging of the outside face of the dam.

7 (e) Seepage, damp areas, or boils in the vicinity of, or erosion around, a conduit
8 through the dam.

9 (f) Any shrinkage of the top or faces of the dam.

10 **(6) POTENTIAL DEFECTS OF DAMS.** All of the following conditions indicate
11 potential defects and the operator shall closely check them on subsequent
12 inspections for an active dam and conduct an intermediate inspection if they exist
13 for an inactive dam:

14 (a) Patches of overgrown vegetation on the outside face or close to the base of
15 the dam.

16 (b) Surface erosion, gulying, or wave erosion on the inside of the dam.

17 (c) Surface erosion, gulying, or damp areas on the outside of the dam, including
18 the berm and the area within 50 feet from the outside base.

19 (d) Erosion below any conduit.

20 (e) Wet areas or soggy soil on the outside of, or in natural soil below, the dam.

21 **(7) RECORD KEEPING RELATED TO DAMS.** (a) The operator shall retain all records
22 relating to dam monitoring, analytical, and verification activities and data,
23 including all original strip chart recordings and instrumentation, calibration, and
24 maintenance records, until termination of operator responsibility, except to the
25 extent that copies of those records have previously been provided to the department.

1 (b) The operator shall maintain in a permanent file all of the following
2 construction records pertaining to any dam in case they are needed for future
3 reference:

4 1. Aerial photos of the construction site before construction.

5 2. Construction drawings and modifications of the drawings.

6 3. Construction specifications and modifications of the specifications.

7 4. Results of all soil tests on foundations and fill materials.

8 5. Logs of borings and engineering geology reports.

9 6. Copies of construction progress inspections pertinent to core trench, toe
10 drain, internal drains, and other significant phases of the structure including, at the
11 option of the operator, photographs of various structural items.

12 7. Aerial photos of the entire dam taken within 90 days after all construction
13 is completed.

14 8. A description of and justification for all deviations or variances from the
15 construction plans and specifications.

16 **(8) RESPONSES TO UNPLANNED EVENTS.** If a mining waste site has an accidental
17 or emergency discharge, a fire, an explosion, or other unplanned or unpredicted
18 event that is likely to damage human health or the environment, the operator shall
19 follow the procedures set forth in the contingency plan under s. 295.51 (6) (f) and
20 shall report the incident to the department and to county, town, and tribal
21 governmental agencies immediately after the operator has discovered the event.

22 **(9) ANNUAL REPORT.** The operator shall submit to the department an annual
23 summary report concerning the mining waste site containing all of the following:

24 (a) Statistical summaries of annual and cumulative data.

1 (b) A comparison of the summaries under par. (a) to mining waste
2 characterization, leachate characterizations, effluent predictions, and baseline
3 water quality and background water quality data as contained in the approved
4 mining waste site feasibility study and plan of operation.

5 (c) The results of verification procedures and a presentation of the error
6 associated with each parameter reported.

7 (d) Information from monitoring wells that have not been affected, including
8 a discussion of whether the baseline values should be modified due to natural
9 variability and what the new values should be.

10 (10) **APPLICABILITY.** This section does not apply to a surface mine that is
11 backfilled with mining waste.

12 **295.64 Mining site monitoring; general. (1) GENERAL.** The department,
13 as a condition of a mining permit, shall require the operator to perform adequate
14 monitoring of environmental changes during the course of the mining and for the
15 additional period of time that is necessary to satisfactorily complete reclamation and
16 completely release the operator from any bonds or other security required. The
17 department may monitor environmental changes concurrently with the operator
18 and for an additional period after the security is released.

19 (2) **ANALYSES.** (a) The department shall review baseline water quality data
20 with respect to groundwater and monitoring data associated with the mine, mining
21 waste sites, and sites for the disposal of wastes that are not mining wastes at the time
22 of each review of the mining permit or reclamation plan under s. 295.63 (3) and when
23 the operator requests a modification of the mining permit or reclamation plan.

24 (b) An operator shall have bacteriological analyses of water samples and all
25 radiological analyses associated with the mining site performed by the state

1 laboratory of hygiene or at a laboratory certified or approved by the department of
2 health services. An operator shall have other laboratory tests the results of which
3 are submitted to the department under this subchapter performed by a laboratory
4 certified or registered under s. 299.11, except that this requirement does not apply
5 to any of the following:

- 6 1. Physical testing of soil.
- 7 2. Air quality tests.
- 8 3. Tests for hydrogen ion concentration (pH).
- 9 4. Tests for chlorine residual.
- 10 5. Tests for temperature.

11 **295.643 Mining waste site monitoring.** (1) GENERAL. The department may
12 require the monitoring of groundwater, surface water, leachate, or other physical
13 features associated with a mining waste site.

14 (2) PHYSICAL FEATURES. The department may require the monitoring of air
15 quality, berms, embankments, vegetation growth, and drainage control structures
16 associated with the mining waste site. The department may require monitoring of
17 other chemical or biological conditions, if the department determines that the
18 monitoring is necessary to assess the impact of the mining waste site on critical
19 aquatic and terrestrial ecosystems.

20 (3) MONITORING WELLS AND OTHER DEVICES. (a) The department shall require
21 the installation of groundwater monitoring wells at a mining waste site. The
22 department may require installation of leachate monitoring wells, lysimeters,
23 moisture probes, and similar devices and associated water quality sampling and
24 analysis programs to detect the effects of leachate on groundwater.

1 (b) The department shall determine the required number of groundwater
2 monitoring wells based on the size of the mining waste site, the design of the mining
3 waste site, the types of mining waste, and the hydrologic and geologic setting of the
4 mining waste site. The department shall ensure that the number of wells is adequate
5 to yield samples representative of the groundwater quality both up gradient and
6 down gradient of the mining waste site.

7 (c) An operator shall construct all monitoring wells in accordance with ch. NR
8 141, Wis. Adm. Code, and in such a manner as to prevent, to the extent practicable,
9 the exchange of water between aquifers.

10 **(4) DESTRUCTION OF MONITORING DEVICES.** (a) If for any reason a monitoring well
11 or other monitoring device associated with a mining waste site is destroyed or
12 otherwise fails to function properly, the operator shall notify the department in
13 writing within 5 days of discovering the destruction or malfunction.

14 (b) The operator shall either restore the monitoring well or other device or
15 properly abandon it and replace it with a functioning device within 60 days of
16 notifying the department under par. (a) unless the department notifies the operator
17 otherwise in writing within 30 days of receiving notice from the operator.

18 **(5) SAMPLING OTHER WELLS.** The department may require an operator to sample
19 public or private wells as part of a regular monitoring program or to determine the
20 extent of groundwater contamination associated with a mining waste site. If the
21 owner of a well does not authorize access for sampling, the operator shall promptly
22 notify the department.

23 **(6) REQUIRED MONITORING AND ANALYSIS.** (a) An operator shall monitor
24 groundwater at locations identified in the waste site feasibility study and plan of
25 operation on a quarterly basis, during March, June, September, and December,

1 unless the department agrees to an alternate schedule. The department may base
2 an alternate schedule on the hydrogeologic system's characteristics, such as flow
3 velocity and stratigraphy, and on fluctuations in quality as determined through
4 background water quality or baseline water quality sampling and mining waste
5 type. The operator shall analyze for the parameters listed in the approved waste site
6 feasibility study and plan of operation.

7 (b) An operator shall use the methods for groundwater and surface water
8 sample collection, preservation, and analysis that are specified in the approved
9 mining waste site facility study and plan of operation.

10 (7) WATER ELEVATION MEASUREMENTS. The operator shall make water elevation
11 measurements on a quarterly basis.

12 (8) OPERATIONS REPORT. The department may require an operator to submit an
13 operations report to assess the effectiveness and environmental acceptability of
14 mining waste site operations. The operator may include in the report a discussion
15 of confinement of the active fill area and an analysis of leachate and other
16 monitoring, surface water control and erosion control, revegetation, settlement,
17 volume of the mining waste site utilized, leachate quantity and quality, slope
18 stability, equipment performance, volume and type of waste disposed of, and other
19 relevant parameters.

20 (9) REPORTS OF MONITORING DATA. The operator shall forward to the department,
21 within 60 days after sampling, 3 copies of the monitoring data required by this
22 section to be collected during each quarter.

23 **295.645 Groundwater quality, monitoring, and response. (1)**

24 DEFINITIONS. In this section:

1 (a) "Alternative concentration limit" means the concentration of a substance
2 in groundwater established by the department to replace a groundwater quality
3 standard when the department grants an exemption.

4 (b) "Statistically significantly different" means an amount of change
5 determined by the use of statistical tests for measuring significance at the 95 percent
6 confidence level.

7 **(2) DESIGN MANAGEMENT ZONE.** (a) Notwithstanding the rule-making authority
8 in s. 160.21 (2) and except as provided under par. (b), for the purposes of ch. 160, the
9 horizontal distance to the boundary of the design management zone for a mining
10 operation is 1,200 feet from the limits of the engineered structures of the mining
11 waste site, including any wastewater and sludge storage or treatment lagoons, the
12 edge of the mine, and the adjacent mine mill and ferrous mineral processing facilities
13 or at the boundary of the property owned or leased by the applicant, whichever
14 distance is less.

15 (b) When issuing or modifying a mining permit or issuing or reissuing any other
16 approval, the department may expand the design management zone by a horizontal
17 distance of up to an additional 1,200 feet in any direction as provided in this
18 paragraph, but not beyond the boundary of the property owned or leased by the
19 applicant. The department may not expand the design management zone unless the
20 applicant demonstrates all of the following:

21 1. That preventive action limits and enforcement standards or alternative
22 concentration limits cannot be met at the boundary of the design management zone
23 if it is not expanded.

1 2. That preventive action limits and enforcement standards or alternative
2 concentration limits will be met at the boundary of the expanded design
3 management zone.

4 (c) Notwithstanding the rule-making authority in s. 160.21 (2), for the
5 purposes of ch. 160, the vertical distance to the boundary of the design management
6 zone for a mining site, including any mining waste site, extends no deeper than 1,000
7 feet into the Precambrian bedrock or than the final depth of the mining excavation,
8 whichever is greater.

9 **(3) POINT OF STANDARDS APPLICATION.** (a) Any point at which groundwater is
10 monitored is a point of standards application to determine whether a preventive
11 action limit or an alternative concentration limit to a preventive action limit has been
12 attained or exceeded for an activity regulated under a mining permit or another
13 approval related to the mining operation. Any of the following is a point of standards
14 application to determine whether an enforcement standard or an alternative
15 concentration limit to an enforcement standard has been attained or exceeded for an
16 activity regulated under a mining permit or another approval related to the mining
17 operation:

18 1. Any point of present groundwater use.

19 2. Any point beyond the boundary of the property on which the activity is
20 conducted, subject to par. (b).

21 3. Any point that is within the boundary of the property on which the activity
22 is conducted but is beyond the design management zone, subject to par. (b).

23 (b) No point at a depth of greater than 1,000 feet into the Precambrian bedrock
24 or than the final depth of the mining excavation, whichever is greater, is a point of
25 standards application under this subsection.

1 (c) Section 160.21 (2) does not apply to an activity regulated under this
2 subchapter.

3 (4) CHANGE IN GROUNDWATER QUALITY. If the analysis of samples collected
4 through monitoring indicates that the quality of groundwater is statistically
5 significantly different from either baseline water quality or background water
6 quality and the evaluation of the data shows a reasonable probability that without
7 intervention groundwater quality standards or alternative concentration limits will
8 be attained or exceeded, the operator shall do all of the following:

9 (a) Notify the department within 10 days after the operator receives the results
10 of the analysis of the samples.

11 (b) Determine, if possible, the cause of the difference in water quality, such as
12 a spill, a design failure, or an improper operational procedure.

13 (c) Determine the extent of groundwater contamination or the potential for
14 groundwater contamination.

15 (d) Implement the applicable portions of the approved contingency plan.

16 (5) RESPONSE CONCERNING PREVENTIVE ACTION LIMITS. In accordance with s. NR
17 140.24 (1) to (5), Wis. Adm. Code, the department shall evaluate the range of
18 responses proposed by the operator when a preventive action limit or an alternative
19 concentration limit to a preventive action limit is attained or exceeded and the
20 analysis of samples indicates that the quality of groundwater is statistically
21 significantly different from either baseline water quality or background water
22 quality at a point of standards application. In designating the appropriate response,
23 the department shall evaluate the operator's proposed range of responses, including
24 any alternate responses to those identified in s. NR 140.24, Wis. Adm. Code. For any
25 alternate responses, the department shall consider the technical and economic

1 feasibility of alternate responses, the practicality of stopping the further release of
2 the substance, and the risks and benefits of continued mining operations. The
3 department shall designate the appropriate response, except that, notwithstanding
4 s. 160.21 (3) and the rule-making authority under s. 160.21 (1), the department may
5 not prohibit a practice or activity or require closure and abandonment of a mining
6 waste site, including any wastewater and sludge storage or treatment lagoon, unless
7 it has followed the procedures in s. 295.78 and satisfies the requirements of s. 160.23
8 (4) and (6). The department may determine that no response is necessary and that
9 an exemption is not required when the requirements of s. NR 140.24 (5) (a) or (b), Wis.
10 Adm. Code are met.

11 (6) RESPONSE CONCERNING ENFORCEMENT STANDARDS. (a) In accordance with s.
12 NR 140.26 (1) and (2), Wis. Adm. Code, the department shall evaluate the range of
13 responses proposed by the operator based on the responses listed in Table 6 of s. NR
14 140.26, Wis. Adm. Code, when an enforcement standard or an alternative
15 concentration limit to an enforcement standard is attained or exceeded and the
16 analysis of samples indicates that the quality of groundwater is statistically
17 significantly different from either baseline water quality or background water
18 quality at a point of standards application. In designating the appropriate response,
19 the department shall evaluate the operator's proposed range of responses against
20 those identified in Table 6 of s. NR 140.26, Wis. Adm. Code. The department shall
21 designate the appropriate response, except that, notwithstanding ss. 160.21 (3) and
22 160.25 (1) (a) and the rule-making authority under s. 160.21 (1), the department may
23 not prohibit a practice or activity or require closure and abandonment of a mining
24 waste site, including any wastewater and sludge storage or treatment lagoon, unless
25 it has followed the procedures in s. 295.78 and all of the following apply:

1 1. The department bases its decision upon reliable test data.

2 2. The department determines, to a reasonable certainty, by the greater weight
3 of the credible evidence, that no other remedial action would prevent the violation
4 of the enforcement standard at the point of standards application.

5 3. The department establishes the basis for the boundary and duration of the
6 prohibition.

7 4. The department ensures that any prohibition imposed is reasonably related
8 in time and scope to maintaining compliance with the enforcement standard at the
9 point of standards application.

10 5. If the substance involved is naturally occurring, unless the substance
11 involved is carcinogenic, teratogenic, or mutagenic in humans, the department
12 considers the existence of the background concentration of the substance in
13 evaluating response options to the noncompliance with the enforcement standard or
14 alternative concentration limit for that substance and determines that the proposed
15 prohibition will result in the protection of or substantial improvement in
16 groundwater quality notwithstanding the background concentrations of the
17 substance.

18 (b) The department may only require a remedial action to be taken if the
19 remedial action is reasonably related in time and scope to the substance, activity, or
20 practice that caused the enforcement standard or alternative concentration limit to
21 an enforcement standard to be attained or exceeded and the quality of groundwater
22 to be statistically significantly different from either baseline water quality or
23 background water quality at the point of standards application.

24 (c) If nitrates or any substance of welfare concern attains or exceeds an
25 enforcement standard and if the analysis of samples indicates that the quality of

1 groundwater is statistically significantly different from either baseline or
2 background water quality, then the department shall evaluate whether the
3 enforcement standard was attained or exceeded in whole or in part due to high
4 background water quality concentrations of the substance and whether the
5 additional concentrations represent a public welfare concern before it designates the
6 appropriate response and, notwithstanding ss. 160.21 (3) and 160.25 (1) (a) and the
7 rule-making authority under s. 160.21 (1), the department may not prohibit a
8 practice or activity or require closure and abandonment of a mining waste site,
9 including any wastewater and sludge storage or treatment lagoon, unless it has
10 followed the procedures in s. 295.78 and par. (a) 1. to 4. apply.

11 (d) If compliance with an enforcement standard is achieved at a point of
12 standards application, then sub. (5) applies.

13 (7) ENVIRONMENTAL ANALYSIS NOT REQUIRED. An action under sub. (5) or (6) with
14 respect to a specific site does not constitute a major state action under s. 1.11 (2).

15 (8) EXEMPTIONS TO GROUNDWATER QUALITY STANDARDS. When issuing or
16 modifying a mining permit or issuing or reissuing any other approval, the
17 department may grant an exemption from a groundwater quality standard and
18 establish an alternative concentration limit to a groundwater quality standard.

19 (9) APPLICABILITY OF OTHER LAW. Chapter NR 140, Wis Adm. Code, applies to
20 mining operations and mining sites, including mining waste sites, only to the extent
21 that it does not conflict with this section.

22 **295.65 Successors.** (1) When one operator succeeds to the interest of another
23 in an uncompleted mining operation by sale, assignment, lease, or otherwise, the
24 department shall release the first operator from the duties imposed upon the first
25 operator by this subchapter as to the mining operation and transfer the mining

1 permit and any approvals under ss. 295.60, 295.605, and 295.61 to the successor
2 operator if all of the following apply:

3 (a) The successor operator agrees to comply with the requirements of this
4 subchapter.

5 (b) The successor operator discloses whether it has forfeited any performance
6 security because of noncompliance with any mining laws within the previous 10
7 years, posts any bond or other security required under s. 295.59, and assumes all
8 responsibilities of all applicable approvals granted to the predecessor operator.

9 (2) The department is not required to prepare an environmental impact
10 statement or an environmental assessment for the purposes of this section.

11 **295.66 Cessation of mining or reclamation.** If there is a cessation of
12 mining or reclamation for 30 days or more that is not set forth in either the mining
13 plan or the reclamation plan, the operator shall notify the department of the
14 cessation within 48 hours of the cessation of mining and shall begin stabilization of
15 the mining site. The department may require the operator to provide technical,
16 engineering, and any other information that the operator believes shows that its
17 actions to stabilize the mining site are adequate. If the department determines, after
18 reviewing the information provided by the operator, that the proposed stabilization
19 of the mining site will result in a substantial adverse impact to the environment, the
20 department shall order the operator to begin additional measures to protect the
21 environment, including, if the cessation is reasonably anticipated to extend for a
22 protracted period of time, reclamation according to the reclamation plan or part of
23 the reclamation plan. Usual and regular shutdown of operations on weekends, for
24 maintenance or repair of equipment or facilities, or for other customary reasons do
25 not constitute a cessation of mining.

1 **295.67 Determination of abandonment of mining.** (1) Except as provided
2 in sub. (2), abandonment of mining occurs if there is a cessation of mining, not set
3 forth in an operator's mining plan or reclamation plan or by any other sufficient
4 written or constructive notice, extending for more than 6 consecutive months.

5 (2) Abandonment of mining does not occur if all of the following apply:

6 (a) The cessation of mining is due either to labor strikes or to unforeseen
7 developments such as adverse market conditions.

8 (b) The cessation of mining does not continue beyond the time, not to exceed
9 5 years, specified by the department.

10 (c) The mining site is maintained in an environmentally stable manner during
11 the cessation of mining.

12 (d) The reclamation of the mining site continues according to the reclamation
13 plan during the cessation of mining to the extent practicable.

14 **295.68 Certificates of completion and release of security.** (1) Upon the
15 petition of the operator, but not less than 4 years after notification to the department
16 by the operator of the completion of the reclamation plan or not less than one year
17 after notification to the department by the operator of the completion of the
18 reclamation plan as to a portion of the mining site, if the department finds that the
19 operator has completed reclamation of any portion of the mining site in accordance
20 with the reclamation plan and this subchapter, the department shall issue a
21 certificate of completion setting forth a description of the area reclaimed and a
22 statement that the operator has fulfilled its duties under the reclamation plan as to
23 that area.

24 (2) Upon the issuance of any certificate of completion under sub. (1) for any
25 portion of the mining site, but not for the entire mining site, the department shall

1 allow the operator to reduce the amount of the bond or other security provided under
2 s. 295.59 (1) to an amount equal to the estimated cost of reclamation of the portion
3 of the mining site that is disturbed or for which reclamation has been completed but
4 no certificate of completion has been issued.

5 (3) Upon issuance of a certificate or certificates of completion of reclamation
6 for the entire mining site, the department shall require the operator to maintain a
7 bond or other security under s. 295.59 (1) equal to at least 10 percent of the cost to
8 the state of reclamation of the entire mining site, except that if the mining site in the
9 mining plan is less than 10 acres, the department may release the bond or other
10 security after issuance of the certificate of completion for the entire mining site.

11 (4) After 10 years after the issuance of a certificate or certificates of completion
12 for the entire mining site, the department shall release the remaining bond or other
13 security provided under s. 295.59 (1) if the department finds that the reclamation
14 plan has been complied with.

15 **295.69 Termination of proof of financial responsibility for long-term**
16 **care of mining waste site.** (1) One year after closure, and annually thereafter
17 until the department terminates the obligation to maintain proof of financial
18 responsibility for long-term care of a mining waste site under sub. (2) (c), an operator
19 who has carried out all necessary long-term care during the preceding year, may
20 apply to the department for a reduction in the amount of the proof of financial
21 responsibility provided under s. 295.59 (2m) equal to the costs of long-term care for
22 that year. The operator shall provide an itemized list of costs incurred. If the
23 department determines that the costs incurred are in accordance with the long-term
24 care requirements in the approved waste site feasibility study and plan of operation
25 and that adequate funds exist to complete required long-term care for the remainder

1 of the 40-year period on which the amount of the proof of financial responsibility was
2 originally determined, the department shall authorize in writing a reduction in the
3 amount of proof of financial responsibility provided. The department shall make its
4 determinations within 90 days of an application.

5 (2) (a) An operator may apply to the department for termination of its
6 obligation to maintain proof of financial responsibility for long-term care of the
7 mining waste site under s. 295.59 (2m) at any time after the mining waste site has
8 been closed for 20 years by submitting an application that demonstrates that
9 continuation of the obligation to maintain proof of financial responsibility for
10 long-term care is not necessary for adequate protection of public health or the
11 environment. The burden is on the operator to prove by a preponderance of the
12 evidence that continuation of the obligation to maintain proof of financial
13 responsibility for long-term care is not necessary for adequate protection of public
14 health or the environment.

15 (b) Within 30 days of receiving an application under par. (a), the department
16 shall provide notice to the public of the application for termination of the obligation
17 to maintain proof of financial responsibility for long-term care. In the notice, the
18 department shall invite the submission of written comments by any person on the
19 application within 30 days of the day on which the notice is published. The
20 department shall provide the notice by publishing a class 1 notice under ch. 985 in
21 the official newspaper designated under s. 985.04 or 985.05 or, if none exists, in a
22 newspaper likely to give notice in the area of the mining waste site. The department
23 shall also send the notice to the operator.

24 (c) Within 120 days of the day on which the department publishes the notice
25 under par. (b), the department shall determine either that proof of financial

1 responsibility for long-term care of the mining waste site is no longer required, in
2 which case the applicant is relieved of the responsibility of providing proof of
3 financial responsibility for long-term care, or that proof of financial responsibility
4 for long-term care of the mining waste site is still required, in which case the
5 applicant may not submit another application under par. (a) until at least 5 years
6 have elapsed since the previous application.

7 **295.695 Inspections by the department.** (1) Any duly authorized officer,
8 employee, or representative of the department who has received the safety training
9 under 30 CFR 48.31 may enter and inspect any property, premises, or place on or at
10 which any mining operation or facility is located or is being constructed or installed
11 at any reasonable time for the purpose of ascertaining the state of compliance with
12 this subchapter and the provisions of chs. 281, 283, 285, 289, 291, 292, and 299 and
13 rules promulgated under those chapters that are applicable to the mining operation.
14 No person may refuse entry or access to any authorized representative of the
15 department who requests entry for purposes of inspection, and who presents
16 appropriate credentials.

17 (2) No person may obstruct, hamper, or interfere with any inspection
18 authorized in sub. (1).

19 (3) The department shall furnish to the operator a written report on any
20 inspection setting forth all observations, relevant information, and data that relate
21 to compliance status.

22 **295.73 Fees.** (1) An applicant for a mining permit is not required to pay any
23 application or filing fee for any approval other than a mining permit,
24 notwithstanding any fee required under ch. 23, 29, 30, 169, 281, 283, 285, 289, or 291,
25 or rules promulgated under those chapters.

1 (3) (a) The department shall assess an applicant a fee equal to its costs for
2 evaluating the mining project, including the costs for consultants retained by the
3 department to evaluate the application for the mining permit and the application for
4 any other approval and to perform environmental analysis under s. 1.11 or
5 \$1,100,000, whichever is less.

6 (b) The applicant shall pay fees as follows:

7 1. One hundred thousand dollars shall be paid at the time that the bulk
8 sampling plan is filed under s. 295.45 or at the time that the notice of the intention
9 to file a mining permit application is filed, whichever is first.

10 2. Two hundred fifty thousand dollars when the department provides cost
11 information demonstrating that the payment under subd. 1. has been fully allocated
12 against actual costs.

13 3. Two hundred fifty thousand dollars when the department provides cost
14 information demonstrating that the payment under subd. 2. has been fully allocated
15 against actual costs.

16 4. Two hundred fifty thousand dollars when the department provides cost
17 information demonstrating that the payment under subd. 3. has been fully allocated
18 against actual costs.

19 5. Two hundred fifty thousand dollars when the department provides cost
20 information demonstrating that the payment under subd. 4. has been fully allocated
21 against actual costs.

22 (b) After the department approves or denies the application for a mining permit
23 or, if the applicant withdraws the application for a mining permit, after the applicant
24 withdraws the application, the department shall refund to the applicant any amount

1 paid by the applicant under par. (a) but not fully allocated against the department's
2 actual costs.

3 (4) Subchapter VI of ch. 289 does not apply to mining waste disposed of in a
4 mining waste site covered by a mining permit, except that an operator shall pay the
5 fees specified in ss. 289.63 (4), 289.64 (3), and 289.67 (1) (d).

6 **295.75 Effect of other laws.** If there is a conflict between a provision in this
7 subchapter and a provision in ch. 23, 29, 30, 160, 169, 281, 283, 285, 289, or 291 or
8 in a rule promulgated under one of those chapters, the provision in this subchapter
9 controls.

10 **295.77 Review.** (1) Notwithstanding s. 227.42, no person is entitled to a
11 contested case hearing on a decision by the department under this subchapter or on
12 a decision by the department relating to the issuance of an approval.

13 (2) Judicial review of a decision described in sub. (1) is the exclusive method
14 for challenging the decision. The court shall base review of a decision described in
15 sub. (1) on the administrative record before the department. The scope of the review
16 is that specified in s. 227.57. No judicial review is available before the department
17 issues the final decision on an approval.

18 **295.78 Mining and reclamation; orders.** (1) (a) If the department finds a
19 violation of law or any unapproved deviation from the mining plan, reclamation plan,
20 or mining waste site feasibility study and plan of operation at a mining site under
21 a mining permit, the department shall do one of the following:

22 1. Issue an order requiring the operator to comply with the law, mining plan,
23 reclamation plan, or mining waste site feasibility study and plan of operation within
24 a specified time.

1 2. Require the alleged violator to appear before the department for a hearing
2 and answer the department's charges.

3 3. Request the department of justice to initiate action under s. 295.79.

4 (b) Any order issued under par. (a) 1. following a hearing takes effect
5 immediately. Any other order takes effect 10 days after the date the order is served,
6 unless the person named in the order requests in writing a hearing before the
7 department within the 10-day period.

8 (c) If no hearing on an order issued under par. (a) 1. was held and if the
9 department receives a request for a hearing within 10 days after the date the order
10 is served, the department shall provide due notice and hold a hearing. If after the
11 hearing the department finds that no violation has occurred, it shall rescind its order.

12 (d) If an operator fails to comply with an order issued under par. (a) 1. within
13 the time for compliance specified in the order, the department shall suspend the
14 mining permit until the operator fully complies with the order, except that if the
15 operator seeks review of the order under s. 295.77, mining may continue until the
16 final disposition of the action, except as provided under sub. (4).

17 (e) The department shall inform the department of justice of a suspension
18 under par. (d) within 14 days. After receiving notice of a suspension, the department
19 of justice may commence an action under s. 295.79.

20 (2) If reclamation of a mining site is not proceeding in accordance with the
21 reclamation plan and the operator has not begun to rectify deficiencies within the
22 time specified in an order, or if the reclamation is not properly completed in
23 conformance with the reclamation plan within one year after completion or
24 abandonment of mining on any portion of the mining site, unless because of acts of
25 God, such as adverse weather affecting grading, planting, and growing conditions,

1 the department, with the staff, equipment, and material under its control, or by
2 contract with others, shall take the actions that are necessary for the reclamation of
3 mined areas. The operator is liable for the cost to the state of reclamation conducted
4 under this subsection.

5 (3) The department shall cancel all other mining permits held by an operator
6 who refuses to reclaim a mining site in compliance with the reclamation plan after
7 the completion of mining or after the cancellation of a mining permit. The
8 department may not issue any mining permit for that mining site or any other
9 mining site in this state to an operator who refused to reclaim the mining site in
10 compliance with the reclamation plan.

11 (4) At any time that the department determines that the continuance of mining
12 constitutes an immediate and substantial threat to public health and safety or the
13 environment, the department may request the department of justice to institute an
14 action in circuit court of the county in which the mine is located for a restraining
15 order or injunction or other appropriate remedy to stop mining until the immediate
16 and substantial threat is eliminated.

17 (5) Section 281.346 (7m) does not apply to a water withdrawal associated with
18 a mining operation for which a mining permit has been issued.

19 **295.79 Enforcement; penalties.** (1) The department of justice shall enforce
20 this subchapter and any order issued under this subchapter. The circuit court of the
21 county where the violation occurred has jurisdiction to enforce this subchapter or any
22 orders issued under this subchapter, by injunction or other appropriate relief.

23 (2) (a) Any person who authorizes or engages in mining without a mining
24 permit and written authorization to mine under s. 295.59 (3) shall forfeit all profits

1 obtained from those illegal activities and not more than \$5,000 for each day during
2 which the mine was in operation.

3 (b) A person to whom par. (a) applies is also liable to the department for the full
4 cost of reclaiming the affected area of land and any damages caused by the mining.

5 (c) If the violator of par. (a) is a corporation, limited liability company,
6 partnership, or association, any officer, director, member, manager, or partner who
7 knowingly authorizes, supervises, or contracts for mining is also subject to the
8 penalties in this subsection.

9 (3) Any person who makes or causes to be made in an application or report
10 required by this subchapter a statement known to the person to be false or
11 misleading in any material respect or who refuses to submit information required by
12 a mining permit or by this subchapter may be fined not less than \$1,000 nor more
13 than \$5,000. If the false or misleading statement is material to the issuance of the
14 mining permit and the mining permit would not have been issued had the false or
15 misleading statement not been made, the court may revoke the mining permit. If any
16 violation under this subsection is repeated the court may revoke the mining permit.

17 (4) (a) Any person who commits a violation of this subchapter or any permit or
18 order issued under this subchapter, except for the violations enumerated in subs. (2)
19 or (3), shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each
20 day of continued violation is a separate offense, except that no forfeiture may be
21 imposed during the time that continued mining is authorized under s. 295.63 (3).
22 While an order is suspended, stayed, or enjoined, this penalty does not accrue.

23 (b) In addition to the penalties provided under par. (a), the court may award
24 the department of justice the reasonable and necessary expenses of the investigation
25 and prosecution of the violation, including attorney fees. The department of justice

1 shall deposit in the state treasury for deposit into the general fund all moneys that
2 the court awards to the department or the state under this paragraph. These moneys
3 shall be credited to the appropriation account under s. 20.455 (1) (gh).

4 (5) Any person having an interest that is or may be adversely affected may
5 intervene as a matter of right, in any enforcement action brought under this section.

6 **SECTION 111.** 299.85 (7) (a) 2. and 4. of the statutes are amended to read:

7 299.85 (7) (a) 2. Notwithstanding minimum or maximum forfeitures specified
8 in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969,
9 29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and
10 (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2),
11 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97,
12 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a),
13 295.19 (3) (a) and (b) 1., 295.37 (2), 295.79 (2), (3), and (4), 299.15 (4), 299.51 (5),
14 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if a regulated entity that
15 qualifies under sub. (2) for participation in the Environmental Compliance Audit
16 Program corrects violations that it discloses in a report that meets the requirements
17 of sub. (3) within 90 days after the department receives the report that meets the
18 requirements of sub. (3), the regulated entity may not be required to forfeit more than
19 \$500 for each violation, regardless of the number of days during which the violation
20 continues.

21 4. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314
22 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m)
23 (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and
24 (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57
25 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a),

1 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b)
2 1., 295.37 (2), 295.79 (2), (3), and (4), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62
3 (3) (a) and (c), and 299.97 (1), if the department approves a compliance schedule
4 under sub. (6) and the regulated entity corrects the violations according to the
5 compliance schedule, the regulated entity may not be required to forfeit more than
6 \$500 for each violation, regardless of the number of days during which the violation
7 continues.

8 **SECTION 112.** 299.95 of the statutes is amended to read:

9 **299.95 Enforcement; duty of department of justice; expenses.** The
10 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
11 ss. 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan approvals,
12 permits, and water quality certifications of the department, except those
13 promulgated or issued under ss. 285.57, 285.59, and 299.64 and except as provided
14 in ss. 285.86 and 299.85 (7) (am). The Except as provided in s. 295.79 (1), the circuit
15 court for Dane county or for any other county where a violation occurred in whole or
16 in part has jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this chapter or
17 the rule, special order, license, plan approval, permit, or certification by injunctive
18 and other relief appropriate for enforcement. For purposes of this proceeding where
19 chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan
20 approval, permit or certification prohibits in whole or in part any pollution, a
21 violation is considered a public nuisance. The department of natural resources may
22 enter into agreements with the department of justice to assist with the
23 administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid
24 to the department of justice under these agreements shall be credited to the
25 appropriation account under s. 20.455 (1) (k).

1 **SECTION 113.** 323.60 (1) (gm) of the statutes is created to read:

2 323.60 (1) (gm) "Minerals" mean unbeneficiated metallic ore but does not
3 include mineral aggregates such as stone, sand, and gravel.

4 **SECTION 114.** 323.60 (5) (d) 3. of the statutes is amended to read:

5 323.60 (5) (d) 3. All facilities with 10 or more employees in major group
6 classifications 10 to 13 in the standard industrial classification manual, 1987
7 edition, published by the U.S. office of management and budget, at which a toxic
8 chemical is used at or above an applicable threshold quantity, except that compliance
9 with the toxic chemical release form requirements under this subdivision is not
10 required for the placement of a toxic chemical in a storage or disposal site or facility
11 that is located at a facility with a permit under ch. 293 or a mining permit under
12 subch. III of ch. 295 if the toxic chemical consists of or is contained in merchantable
13 by-products, as defined in s. 293.01 (7) or 295.41 (25), minerals as defined in s. 293.01
14 (8), or refuse, as defined in s. 293.01 (25) or 295.41 (41).

15 **SECTION 115.** 710.02 (2) (d) of the statutes is amended to read:

16 710.02 (2) (d) An exploration mining lease as defined in s. 107.001 (1) and land
17 used for mining and associated activities under chs. 293 and 295.

18 **SECTION 116. Nonstatutory provisions.**

19 (1) RULES.

20 (a) The department of natural resources shall submit in proposed form rules
21 revising chapters NR 130, 131, 132, and 182, Wisconsin Administrative Code, that
22 are in effect on the effective date of this paragraph and revising any other rules
23 promulgated under section 293.13 (1) (a) of the statutes that are in effect on the
24 effective date of this paragraph to the legislative council staff under section 227.15
25 (1) of the statutes no later than the first day of the 5th month beginning after the

1 effective date of this paragraph. The proposed revised rules shall clarify that
2 chapters NR 130, 131, 132, and 182, Wisconsin Administrative Code, and any other
3 rules promulgated under section 293.13 (1) (a) of the statutes do not apply to ferrous
4 metallic mining.

5 (b) The department of natural resources shall submit in proposed form rules
6 revising chapters NR 500 to 555 and 600 to 679, Wisconsin Administrative Code, that
7 are in effect on the effective date of this paragraph and revising any other rules
8 promulgated under sections 289.05 and 289.06 (1) of the statutes that are in effect
9 on the effective date of this paragraph to the legislative council staff under section
10 227.15 (1) of the statutes no later than the first day of the 5th month beginning after
11 the effective date of this paragraph. The department shall revise the rules in
12 chapters NR 500 to 555 and 600 to 679, Wisconsin Administrative Code, and any
13 other rules promulgated under sections 289.05 and 289.06 (1) of the statutes so that
14 they are consistent with subchapter III of chapter 295, of the statutes, as created by
15 this act.

16 (c) The department of natural resources shall submit, to the legislative council
17 staff under section 227.15 (1) of the statutes, no later than the first day of the 5th
18 month beginning after the effective date of this paragraph, in proposed form rules
19 revising any rules of the department that are in effect on the effective date of this
20 paragraph, in addition to the rules under paragraphs (a) and (b), that provide
21 exemptions for nonferrous mining or associated activities to provide the same
22 exemptions for ferrous mining and associated activities.

