1 5. A scenic overlook designated by the department by rule.

2 6. A hiking or biking trail designated by the department or the U.S. Congress.

3 (b) The prohibition in par. (a) does not apply if, regardless of season, the
4 proposed mining waste site is visually inconspicuous due to screening or being
5 visually absorbed due to natural objects, compatible natural plantings, earth berm,
6 or other appropriate means; or if, regardless of season, the proposed mining waste
7 site is screened so as to be as aesthetically pleasing and inconspicuous as is feasible.

8 (be) Except as provided in par. (bn), no person may locate or operate a mining
9 waste site, excluding the portion of a mining site from which ferrous minerals are
10 extracted and that is backfilled with mining waste, within 1,000 feet of a navigable
11 water that is a lake, pond, or flowage.

12 (bg) Except as provided in par. (bn), no person may locate or operate a mining
13 waste site, excluding the portion of a mining site from which ferrous minerals are
14 extracted and that is backfilled with mining waste, within 300 feet of a navigable
15 water that is a river or stream.

16 (bn) The prohibitions in pars. (be) and (bg) do not apply to an activity that is
17 associated with a mining waste site and that is approved by the department under
18 s. 295.60, 295.605, or 295.61.

19 (bq) No person may locate or operate a mining waste site, excluding the portion
20 of a mining site from which ferrous minerals are extracted and that is backfilled with
21 mining waste, within a floodplain.

22 (bt) No person may locate or operate a mining waste site, excluding the portion
23 of a mining site from which ferrous minerals are extracted and that is backfilled with
24 mining waste, in an area within the property owned or leased by the mining operator,

1 or on which the mining operator holds an easement, and on which the mining site
2 is located if the area is closer than 200 feet to the outer boundary of that property.
3 (c) No person may locate or operate a mining waste site, excluding the portion
4 of a mining site from which ferrous minerals are extracted and that is backfilled with
5 mining waste, within 1,200 feet of any public or private water supply well that
6 provides water for human consumption.
7 (d) No person may locate or operate a mining waste site, excluding the portion
8 of a mining site from which ferrous minerals are extracted and that is backfilled with
9 mining waste, within an area that contains mineral resources that are known at the
10 time the application for the mining permit is issued, are likely to be mined in the
11 future, and lie within 1,000 feet of the surface.
12 (1s) BACKFILLED WASTE SITE. For surface mining, the portion of a mining site
13 from which ferrous minerals are extracted and that is backfilled with mining waste
14 and any buildings, structures, roads, or drainage controls associated with that
15 portion of the mining site may be considered a single mining waste site.
16 (2) GENERAL. An applicant for a mining permit shall submit as part of the
17 application a mining waste site feasibility study and plan of operation that
18 demonstrates the suitability of the proposed mining waste site for the disposal of
19 mining wastes and that describes the operation of the mining waste site.
20 (3) WASTE CHARACTERIZATION AND ANALYSIS. For the purposes of this section, the
21 applicant shall perform waste characterization and analysis, to identify the
22 quantities, variability, and physical, radiological, and chemical properties of each
23 mining waste as necessary to assess the potential environmental impact of handling,
24 storage, and disposal. The applicant may include in the waste characterization and
25 analysis a review of the literature and results from similar existing facilities,

materials, or studies. For the purpose of the waste characterization and analysis, the applicant shall conduct testing on representative samples of materials available, on individual mining wastes from the mining process, and if the applicant proposes mixed storage or disposal of individual mining wastes, on composite mining wastes. If physical or chemical segregation of a mining waste is proposed, the applicant shall test each individual waste resulting from the physical or chemical segregation. The applicant shall complete all of the following components of the waste characterization and analysis:

(a) Identification of all mining wastes that will be disposed of or stored in the mining waste site, including classification of mining waste types, estimates of the rates of generation and volumes of each type, and an explanation of the proposed ultimate disposition of each type.

(b) Chemical, radiological, physical, and mineralogical analyses of each type of mining waste.

(c) Analyses of the particle size of the mining wastes.

(d) Chemical and physical characteristics testing, including testing to determine the leaching potential of the mining wastes and the composition of the resulting leachate, using, at a minimum, static testing, kinetic testing, and microscopic testing for mineralization characterization, except that this testing is not required if the applicant demonstrates, based on the analyses in pars. (b) and (c) or on past experience, that there is not a probability for significant adverse environmental impact or a probability of an adverse impact on public health, safety, or welfare.

(4) SITE SPECIFIC INFORMATION. In addition to performing the mining waste characterization and analysis under sub. (3), for the purposes of the mining waste

1 site feasibility study and plan of operation, an applicant shall conduct field and
2 laboratory investigations to determine physical, chemical, and biological
3 characteristics of the proposed mining waste site. The applicant shall do all of the
4 following:

5 (a) Perform field investigations to determine the specific topography, soil types,
6 and depth to bedrock and groundwater.

7 (b) Perform at least one soil boring, to bedrock or refusal, every 80 acres,
8 characterizing the major geomorphic features such as ridges and lowlands and
9 characterizing each major soil layer according to the unified soil classification
10 system.

11 (c) Prepare a boring log for each soil boring, including soil and rock descriptions,
12 method of drilling, method of sampling, sample depths, date of boring, and water
13 level measurements and dates, with elevations referring to United States geological
14 survey mean sea level datum.

15 (d) Collect soil samples to adequately determine the geology and ensure the
16 proper design and monitoring of the mining waste site, including doing all of the
17 following:

18 1. Collecting the soil samples at not greater than 5 foot depth intervals, unless
19 physical conditions such as soil homogeneity indicate that greater intervals are
20 adequate.

21 2. Collecting the soil samples using generally accepted techniques for sampling
22 undisturbed soils, where that is appropriate.

23 3. Classifying all soil samples according to the unified soil classification
24 system.

(e) Perform soil tests as necessary for classification and correlation purposes and to develop necessary geotechnical design parameters for the mining waste site, without compositing soil samples.

(f) Determine the hydraulic conductivity of the various soil strata, using in situ hydraulic conductivity testing procedures as appropriate to confirm values determined in the laboratory.

(g) Determine horizontal and vertical groundwater flow patterns in and around the proposed mining waste site based on data obtained from groundwater monitoring wells and piezometers constructed in conformity with ch. NR 141, Wis. Adm. Code.

(h) Conduct a program to establish baseline water quality through monitoring groundwater and surface water in the vicinity of the mine and the proposed mining waste site on a monthly basis and establishing physical–chemical and biological characteristics of the concentrations of substances in the water before mining begins at the mining site. The applicant shall do all of the following:

1. Select physical–chemical parameters based on transport and transformation mechanisms in the environment as well as other factors affecting the mobility and toxicity of pollutants.

2. Select biological parameters based on the environmental characterizations under sub. (5) (g), the degree of impact predicted, and the potentially affected organism's sensitivity to contaminants.

3. Establish a final parameter list for groundwater and surface water based on preliminary sampling and known information concerning the waters in the vicinity of the mine and the mining waste site, consideration of applicable water quality standards, and the geology and composition of the ferrous mineral deposit that will

be mined. At a minimum, in the program under this paragraph the applicant shall collect water quality data for all of the following parameters:

a. Specific conductance.

b. Temperature.

c. Hydrogen ion concentration (pH).

d. Dissolved oxygen.

e. The major anions sulfate, chloride, and bicarbonate.

f. The major cations calcium, magnesium, potassium, and sodium.

g. Other total and dissolved metals, including aluminum, iron, and manganese, that may be introduced by the mining activities.

h. General chemistry, including total alkalinity, total organic carbon, gross alpha, gross beta, ammonia, nitrate, total dissolved solids, total hardness, and total suspended solids.

(5) CONTENTS RELATED TO WASTE SITE FEASIBILITY. An applicant shall include all of the following in the mining waste site feasibility study and plan of operation:

(a) A description of the mining waste site location, proposed acreage, proposed mining waste site life and range of disposal capacity, and estimated types and quantities of mining wastes to be contained.

(b) A description of the mining waste characterization and analysis conducted under sub. (3), including a description of the test methods used in evaluating the characteristics of the mining waste and the procedures and records for documenting the chain of custody of the test samples.

(c) An existing site conditions plan sheet consisting of a topographic survey of the area, with elevations tied to United States geological survey mean sea level datum, illustrating the property boundaries, proposed boundaries of the mining

1 waste site, survey grid and north arrow, buildings, water supply wells, utility lines,
2 other man–made features, soil boring locations, observation well locations, and other
3 pertinent information.

4 (d) A series of geologic cross–sections illustrating existing topography; soil
5 borings; soil classification; soil properties; interpreted soil stratigraphy; bedrock;
6 well and boring locations and constructions; and stabilized water level readings.

7 (e) A water table map, using the existing site conditions plan under par. (c) as
8 a base, that is based on stabilized water level readings and, if seasonal changes in
9 groundwater levels are significant, maps those changes.

10 (f) If more than 2 well nests are constructed, groundwater flow nets to illustrate
11 horizontal and vertical flow, which may be illustrated on the geologic cross–sections
12 under par. (d), if appropriate.

13 (g) An environmental characterization that describes the structure and
14 functional relationships of ecosystems potentially affected by the proposed mining
15 waste site.

16 (h) A report on the water quality data collected under the baseline monitoring
17 program under sub. (4) (h) to establish baseline water quality.

18 (i) A land use map, using the existing site conditions plan under par. (c) as a
19 base, showing plant communities, wildlife habitat, places where rare and
20 endangered species have been sighted, archaeological or historic sites, buildings,
21 and areas of social importance.

22 (j) A table showing existing water quality of all potentially affected surface
23 waters, indicating important aquatic habitat.

24 (k) Local climatological data for seasonal precipitation, evaporation, air
25 temperature, and wind velocity and direction. The applicant may use an annual

1 record on the proposed mining waste site or adequate data to correlate the proposed
2 mining waste site conditions to an existing observation station as the basis for this
3 data.

4 (L) A discussion of regional conditions, supplemented with maps or
5 cross–sections where appropriate, addressing all of the following:

6 1. Topography.

7 2. Hydrology, including surface water drainage patterns and important
8 hydrologic features such as navigable waters, springs, drainage divides, and
9 wetlands.

10 3. Geology, including the nature and distribution of bedrock and
11 unconsolidated deposits.

12 4. Hydrogeology, including depth of groundwater, flow directions, recharge and
13 discharge areas, groundwater divides, aquifers, and the identification of the aquifers
14 used by all public and private wells within at least 1,200 feet of the proposed mining
15 waste site.

16 5. Groundwater and surface water quality and precipitation chemistry.

17 6. Climatology.

18 7. Identification of owners of land adjacent to the proposed mining waste site.

19 8. Zoning.

20 9. Existing land uses with particular emphasis on known recreational, historic,
21 archaeological, scientific, cultural, or scenic significance.

22 10. Existing or proposed access roads and weight restrictions on those roads.

23 11. Identification of aquatic and terrestrial ecosystems such as stream orders
24 and classifications.

1 (m) A discussion of alternative methods of disposing of mining waste materials,
2 including an analysis of the practicability of the reuse, sale, recovery, or processing
3 of the mining wastes for other purposes.

4 (n) An analysis of the results of the mining waste characterizations under sub.
5 (3), the site specific information under sub. (4) and this subsection, and the regional
6 information under par. (L) in relation to the approach for locating the mining waste
7 site and developing appropriate design, construction, operation, monitoring, and
8 long–term care requirements for each type of mining waste.

9 (o) A proposed mining waste site design, based on conclusions resulting from
10 analysis of the mining waste characterizations under sub. (3) and the site data under
11 sub. (4), that includes all of the following:

12 1. A map, using the existing site conditions plan under par. (c) as a base, that
13 shows proposed access, lateral extent of filling, and phases of mining waste site
14 development.

15 2. A series of cross–sections, using the geologic cross–sections under par. (d) as
16 the base, that show existing topography, proposed base grades, and final grades.

17 3. Preliminary earthwork balance calculations, showing amounts of materials
18 expected to be moved on the mining waste site prior to the disposal of mining waste.

19 4. Proposed methods for leachate control.

20 5. Proposed methods of mining waste site development, phasing, access control,
21 and other special design features.

22 6. Expected material balances showing the quantities of each type of mining
23 waste identified in par. (a) showing the amounts generated, disposed of on site, and
24 taken off site, including all of the following:

25 a. The projected conditions existing at the end of a typical year of production.

1 b. The projected conditions existing at the end of operations.

2 c. The projected conditions existing at the end of reclamation.

3 7. A discussion of the reasoning behind the design of the major features of the
4 mining waste site, such as traffic routing, base grade and relationships to subsurface
5 conditions, anticipated waste types and characteristics, phases of development,
6 mining waste site monitoring, and similar design features.

7 8. A proposed monitoring program, based on potential variations in the quality
8 and quantity of mining waste and methods of processing, transport and disposal, and
9 on the variability of important environmental conditions, designed to monitor the
10 proposed mining waste site for compliance with all environmental standards that
11 are applicable under this subchapter.

12 9. The results of engineering and hydrologic modeling to assess mining waste
13 site performance relative to compliance with applicable groundwater quality
14 standards to a depth of not more than 1,000 feet into the Precambrian bedrock or to
15 the final depth of the mining excavation, whichever is greater, and to compliance
16 with applicable surface water quality standards, examining a period equal to the
17 proposed period in which the mining waste site is proposed to operate plus 250 years
18 after closure of the mining waste site. The applicant may also include information
19 from other mining operations and operations for the extraction of nonferrous
20 metallic minerals to substantiate that the proposed mining waste site design,
21 including associated contingency plans and monitoring and response plans, will
22 allow for the operation and closure of the mining waste site in a manner that will not
23 substantially adversely affect groundwater and surface water quality in accordance
24 with applicable standards.

1 10. If the applicant proposes to expand an existing mining waste site, an
2 evaluation of the existing mining waste site design and operation.
3 (p) Preliminary water budgets for the periods before construction, during
4 construction, and after closure of the mining waste site, each addressing
5 climatological situations depicting dry, wet, and average precipitation and
6 evaporation conditions, based on climatological records. In preparing the water
7 budget, the applicant shall consider precipitation, slurry water input and return,
8 evaporation, surface runoff, evapotranspiration, the moisture holding capacity of
9 soil and mining waste, and the velocities and volumes of groundwater flow. In the
10 water budget, the applicant shall describe the estimated amount and quality of
11 seepage and discharge to surface water and groundwater.
12 (q) An analysis of the impact of the mining waste site on aesthetics and how
13 any impact can be minimized or offset to the extent practicable.
14 (r) Data regarding the safety factors of tailings basin embankments,
15 considering the following, on a case–by–case basis:
16 1. Geology of the mining waste site including type and homogeneity of the
17 foundation.
18 2. Materials and methods to be used for embankment construction.
19 3. Physical and chemical characteristics of the mining waste as deposited and
20 predicted changes through time.
21 4. The potential area to be affected in case of failure, considering land use and
22 the surrounding environment.
23 5. Requirements of the mine safety and health administration of the federal
24 department of labor.

1 (s) An economic analysis, including an engineer's cost estimate, for mining
2 waste site closure and long–term care.
3 (t) Identification and analysis of alternatives to the design and location of any
4 new proposed mining waste site and discussion of operation alternatives to the
5 extent they have a significant impact on design and location alternatives.
6 (u) An appendix that includes all of the following:
7 1. Boring logs, soil tests, well construction data, and water level
8 measurements.
9 2. A description of the methods and equations used in the analysis of the raw
10 data.
11 3. References.
12 **(6)** CONTENTS RELATING TO OPERATION. An applicant for a mining permit shall
13 submit as part of the mining waste site feasibility study and plan of operation
14 provisions relating to operation of the mining waste site including all of the following:
15 (a) Engineering plans consisting of all of the following:
16 1. An existing site conditions plan sheet indicating site conditions before
17 development to the extent not provided under sub. (5).
18 2. A base grade plan sheet indicating mining waste site base grades or the
19 appearance of the mining waste site if it were excavated in its entirety to the base
20 elevation, before installation of any engineering modifications and before disposal
21 of any mining wastes.
22 3. An engineering modifications plan sheet indicating the appearance of the
23 mining waste site after installation of engineering modifications.

1 4. A final site topography plan sheet indicating the appearance of the site at
2 closing including the details necessary to prepare the mining waste site for
3 reclamation and long–term care.

4 5. A series of phasing plan sheets showing initial mining waste site
5 preparations for each subsequent major phase or new area where substantial mining
6 waste site preparation must be performed, along with a list of construction items and
7 quantities projected to be necessary to prepare the phase indicated.

8 6. A site monitoring plan sheet showing the location of all devices for the
9 monitoring of leachate quality, leachate production, and groundwater quality and
10 levels in both the natural zone of saturation and that developed within the mining
11 waste site, along with a table indicating the parameters to be monitored for and the
12 frequency of monitoring before and during mining waste site development.

13 7. A long–term care plan sheet showing the completion of closure and
14 indicating those items anticipated to be performed during the period of long–term
15 care for the mining waste site, along with a discussion of the procedures to be used
16 for the inspection and maintenance of runoff control structures, settlement, erosion
17 damage, leachate control facilities, and leachate and groundwater monitoring and
18 a table listing those items and the anticipated schedule for monitoring and
19 maintenance.

20 8. If applicable, the following information on the plan sheets under subds. 1.
21 to 7.:

22 a. A survey grid with baselines and monuments to be used for field control.

23 b. Limits of filling for each major mining waste type or fill area.

24 c. All drainage patterns and surface water drainage control structures both
25 within the actual fill area and at the perimeter of the mining waste site, including

1 any berms, ditches, sedimentation basins, pumps, sumps, culverts, pipes, inlets,
2 velocity breaks, sodding, erosion matting, vegetation, or other methods of erosion
3 control.

4 d. The method of placing mining waste within each phase.

5 e. Ground surface contours at the time represented by the drawing, indicating
6 spot elevations for key features.

7 f. Areas to be cleared, grubbed, and stripped of topsoil.

8 g. Borrow areas for liner materials, granular materials for filter beds, berms,
9 roadway construction, and cover materials.

10 h. All soil stockpiles, including soils to be used for cover, topsoil, liner materials,
11 filter bed materials, and other excavation.

12 i. Access roads and traffic flow patterns to and within the active fill area.

13 j. All temporary and permanent fencing.

14 k. The methods of screening such as berms, vegetation, or special fencing.

15 L. Leachate collection, control, and treatment systems, including any pipes,
16 manholes, trenches, berms, collection sumps or basins, pumps, risers, liners, and
17 liner splices.

18 m. Leachate and groundwater monitoring devices and systems.

19 n. Disposal areas for severe weather operations.

20 o. Support buildings, utilities, gates, and signs.

21 p. Handling areas for the segregation of various types of mining waste.

22 q. Construction notes and references to details.

23 r. On the appropriate plan sheet, the location of each cross–section under subd.
24 9., with the section labeled using the mining waste site grid system.

1 9. A series of mining waste site cross–sections, drawn perpendicular and
2 parallel to the mining waste site baseline at a maximum distance of 500 feet between
3 cross–sections and at points of important construction features, each cross–section
4 showing, where applicable: existing and proposed base and final grades; soil borings
5 and monitoring wells that the section passes through or is adjacent to; soil types,
6 bedrock, and water table; leachate control, collection, and monitoring systems;
7 quantity of mining waste and area filled by each major mining waste type; drainage
8 control structures; access roads and ramps on the mining waste site perimeter and
9 within the active fill area; the filling sequence or phases; and other appropriate site
10 features.

11 10. Drawings and typical sections for, as appropriate, drainage control
12 structures, tailings distribution systems, access roads, fencing, leachate control
13 systems and monitoring devices, buildings, signs, and other construction details.

14 (b) A plan for initial site preparations, including a discussion of the field
15 measurements, photographs to be taken, and sampling and testing procedures to be
16 used to verify that the in–field conditions encountered were the same as those
17 defined in the mining waste site feasibility study and plan of operation and to
18 document that the mining waste site was constructed according to the engineering
19 plans and specifications submitted for department approval.

20 (c) A description of typical daily operations, including a discussion of the
21 timetable for development; methods for determining mining waste types disposed of
22 or excluded; typical mining waste handling techniques; hours of operation; traffic
23 routing; drainage and erosion control; windy, wet, and cold weather operations; fire
24 protection equipment; methods for dust control; method of placing mining waste

1 materials; monitoring; closure of filled areas; leachate control methods; and critical
2 backup equipment.
3 (d) An analysis of the financial responsibility for closure and long–term care
4 from the time of closing of the mining waste site to termination of the obligation to
5 maintain proof of financial responsibility for long–term care.
6 (e) A description of procedures for backfilling all soil borings and monitoring
7 wells when they are abandoned.
8 (f) A contingency plan to prevent or minimize damage to human health or the
9 environment in the event of an accidental or emergency discharge or other condition
10 that does not comply with conditions of the mining permit or other applicable
11 standards. The applicant shall ensure that the plan does all of the following:
12 1. Follows the spill prevention, control, and countermeasures plan in
13 regulations promulgated under 33 USC 1321.
14 2. Indicates, for the monitoring programs required under sub. (5) (o) 8., the
15 levels of substances that if exceeded require the operator to activate the contingency
16 plan.
17 3. Includes a provision for more concentrated and frequent monitoring in the
18 area of any excessive measurement.
19 4. Describes possible accidental or emergency discharges or other unplanned
20 events and identifies the corresponding corrective action or alternative action to be
21 implemented should the criteria for action be exceeded.
22 5. Specifies the action to be taken if an analysis of groundwater samples
23 requires a response.
24 (g) A list of the groundwater and surface water quality parameters for which
25 the applicant will monitor under s. 295.643 and a description of the methods for

1 groundwater and surface water sample collection, preservation, and analysis that
2 will be used.

3 (7) REQUIRED DEMONSTRATIONS. Through the mining waste site feasibility study
4 and plan of operation, the applicant shall demonstrate that all of the following apply
5 or will apply with respect to the operation of the mining waste site, excluding the area
6 from which ferrous minerals will be extracted and that is backfilled with mining
7 waste:

8 (a) No mining waste will be deposited in such a way that the mining waste or
9 leachate from the mining waste will result in a violation of any applicable surface
10 water quality criteria or standards, applicable wetland water quality standards, or
11 applicable groundwater quality standards.

12 (b) Surface water drainage will be diverted away from and off the active fill
13 area.

14 (c) Access to the mining waste site will be restricted through the use of fencing,
15 natural barriers, or other methods approved by the department.

16 (d) The entire perimeter of the mining waste site will be made accessible for
17 inspection and for earth moving equipment required for emergency maintenance.

18 (e) Any area to be used for the disposal of mining waste and any borrow areas
19 will first be stripped of all topsoil to ensure that adequate amounts are available for
20 reclamation and closure activities.

21 (f) Effective means will be taken to control dust resulting from the mining
22 waste site.

23 (g) Provisions will be made for back–up equipment in the event of the
24 breakdown of critical operating equipment.

1 (h) The design and operation specifications for mining waste site facilities
2 include contingency measures, which may include emergency power supplies,
3 redundant equipment, or temporary holding facilities, to deal with emergency
4 conditions.

5 (hm) Any mining waste site designed with a liner or situated in soils with
6 sufficiently low permeability to either partially or completely contain leachate is
7 designed with a leachate management system that can effectively remove leachate,
8 prevent surface seepage, and promote adequate settlement to permit final
9 reclamation.

10 (i) All surface water drainage ditches, culverts, and other drainage control
11 structures are designed for a rainfall event measured in terms of the depth of the
12 rainfall occurring within a 24–hour period and having an expected recurrence
13 interval of once in 100 years.

14 (j) The final slopes of the completed mining waste site will be no greater than
15 50 percent, unless the mining waste site is specifically designed for a final use
16 compatible with other slopes.

17 (k) The final cover design for the mining waste site is based on the results of
18 the mining waste characterization and engineering needs identified in studying the
19 mining waste site feasibility.

20 (L) Provisions are made for collection and treatment of leachate for all areas
21 designed to contain leachate.

22 (m) The mining waste site is located and designed, and will be constructed and
23 operated, so that any liner system or naturally occurring soil barrier is compatible
24 with all mining waste that is disposed of or stored in the mining waste site.

1 (n) For any dam, sufficient freeboard, measured from the inside of the top of
2 the dam, to contain a rainfall event measured in terms of the depth of the rainfall
3 occurring within a 24–hour period and having an expected recurrence interval of
4 once in 100 years and to prevent overtopping by waves during such a rainfall event
5 or a minimum of 2 feet of freeboard, whichever is greater, will be provided.

6 (o) Drainage or filter bed material has been selected and designed to promote
7 drainage, reduce the potential for piping, and be stable under leaching conditions.

8 (p) Material used in earth embankments or drainage or filter beds will be free
9 of vegetation, organic soils, frozen soils, and other extraneous matter that could
10 affect the compactibility, density, permeability, or shear strength of the finished
11 embankment.

12 (q) Embankment materials and drainage or filter bed materials will be
13 compacted to 90 percent of the maximum dry density as determined by the standard
14 proctor compaction test, ASTM D698, or to a greater density as necessitated by the
15 embankment height, and the materials will be compacted in appropriate layers as
16 determined through the slope stability analysis, except that compaction and
17 crushing of waste rock for use outside an earth core is not required.

18 (r) Emergency spill containment areas will be provided near the tailings
19 pipeline in case of power or pipeline failure.

20 (s) Tailings pipelines will be self–draining to the tailings area or to an
21 emergency spill containment area.

22 (t) The mining waste site is located in the same watershed as the surface
23 facilities for the mining unless it is not practicable to locate the mining waste site in
24 the same watershed as the surface facilities for the mining, as determined on a site
25 specific basis.

1 (u) The disposal of the mining waste will minimize the discharge of
2 environmental pollutants to groundwater to the extent practicable.
3 (w) Tailings pipelines are as short as practicable.
4 (x) Upstream rainfall catchment areas are minimized.
5 (y) The outside of the top of any dam is higher than the inside of the top of the
6 dam so that runoff from the top is forced to the inside of the dam.
7 (z) The mining waste site design includes staged reclamation, if practicable.
8 **(8)** LIMITATION ON REGULATION OF CERTAIN MINING WASTE. The department may
9 not regulate the use of mining waste in reclamation or in the construction of any
10 facility or structure on a mining site except through the department's review of the
11 mining plan and reclamation plan and the approval of the application for the mining
12 permit.
13 **(9)** APPLICABILITY OF OTHER LAWS. Subchapters I to V and VIII of ch. 289 and
14 rules promulgated under those subchapters do not apply to a mining waste site, to
15 the disposal of mining waste in a mining waste site, or to mining wastes used in the
16 reclamation or construction of facilities and structures on the mining site.
17 **295.53 Environmental impact statement.** **(1)** CONSULTANTS. The
18 department may enter into contracts for environmental consultant services under
19 s. 23.41 to assist in the preparation of an environmental impact statement or to
20 provide assistance to applicants.
21 **(2)** NOTICE. After the department receives an application for a mining permit,
22 it shall notify the public and affected agencies that an environmental impact
23 statement will be prepared for the proposed mine and that the process of identifying
24 major issues under s. NR 150.21 (3), Wis. Adm. Code, is beginning.

1 **(3)** ENVIRONMENTAL IMPACT REPORT. (a) An applicant shall prepare an
2 environmental impact report for the mining project. In the environmental impact
3 report, the applicant shall provide a description of the proposed mining project, the
4 present environmental conditions in the area and the anticipated environmental
5 impacts of the proposed mining project, the present socioeconomic conditions in the
6 area and the anticipated socioeconomic impacts of the proposed mining project,
7 details of any wetlands mitigation program under s. 295.60 (8), any measures for
8 navigable waters under s. 295.605 (4), any proposed changes to the forest
9 designations specified in sub. (4) (c), and the alternatives to the proposed mining
10 project. As the applicant provides more information or makes modifications to the
11 proposed mining project, the department may revise the requirements it specified
12 under s. 295.465 (1) (b) to ensure the potential environmental effects can be
13 identified in the department's environmental impact statement.

14 (b) The department shall assist the applicant in meeting the deadlines for
15 ultimate submission and review of any scientific analyses consistent with this
16 subchapter. If a particular scientific analysis is not completed as of the date the
17 environmental impact report is required to be submitted, the applicant shall identify
18 in the environmental impact report the scope of the analysis and anticipated date
19 that it will be submitted.

20 (c) 1. The applicant shall submit the environmental impact report with the
21 application for the mining permit.

22 3. Upon receipt of the environmental impact report, the department shall
23 review the environmental impact report and, if the department finds that the
24 environmental impact report does not contain information reasonably necessary for

the department to evaluate the proposed mining project and its environmental effects, the department may request additional information from the applicant.

(d) The department shall accept original data from an environmental impact report for use in the environmental impact statement and need not verify all original data provided by the applicant to accept the data as accurate. The department shall use original data from an environmental impact report in the environmental impact statement if the data contains the information identified under s. 295.465 (1) (b) and any of the following conditions is met:

1. The department, its consultant, or a cooperating state or federal agency collects sufficient data to perform a limited statistical comparison with data from the environmental impact report that demonstrates that the data sets are statistically similar within a reasonable confidence limit.

2. An expert who is employed by, or is a consultant to, the department or is employed by, or is a consultant to, a cooperating state or federal agency determines that the data is within the range of expected results.

3. The department, its consultant or a cooperating state or federal agency determines that the methodology used in the environmental impact report is scientifically and technically adequate for the tests being performed.

(4) PROCEDURE FOR ENVIRONMENTAL IMPACT STATEMENT. (a) The department shall prepare an environmental impact statement for every application for a mining permit. In preparing the environmental impact statement, the department shall comply with s. 1.11 (2) and s. NR 150.22 (2), Wis. Adm. Code.

(b) The department shall include in the environmental impact statement a description of the significant long–term and short–term impacts, including impacts after the mining has ended, on all of the following:

1. Tourism.

2. Employment.

3. Schools and medical care facilities.

4. Private and public social services.

5. The tax base.

6. The local economy.

7. Archaeological sites.

(c) The department and other state agencies shall address the application for a mining permit, for any approval, and for any action relating to the mining project involving other state agencies in one comprehensive analysis in the environmental impact statement prepared by the department, including any environmental analysis required by the department with regard to any of the following:

1. The withdrawal of land entered as county forest land under s. 28.11 and any modification of, or amendment to, a county forest land use plan necessitated by the withdrawal of the land.

2. The withdrawal of land entered as forest cropland under s. 77.10.

3. The withdrawal of land designated as managed forest land under subch. VI of ch. 77 and any modification of, or amendment to, a managed forest land management plan necessitated by the withdrawal of the land.

4. The transfer of land for which amounts were awarded by the department, including under s. 23.09 (17m), 26.38, 28.11 (5r), or 77.895, to fund the acquisition of, or to fund activities conducted on, forest land and any modification of, or amendment to, a forest stewardship management plan or other plan necessitated by the transfer of the land.

1 (d) The public notice, informational hearing, and comment provisions in s.
2 295.57, the provision concerning the effective date of approvals in s. 295.58 (6), and
3 the provisions for review in s. 295.77 (1) and (2) apply to an environmental impact
4 statement prepared under this subsection. If the department revises and
5 redistributes an environmental impact statement or portion of an environmental
6 impact statement prepared under this subsection, the department shall distribute
7 the environmental impact statement or portion of the environmental impact
8 statement as provided in s. 295.57, but the period for public comment is 30 days,
9 rather than 45 days.
10 (e) The department shall conduct its environmental review process jointly with
11 any federal or local agency that consents to a joint environmental review process.
12 The department may adopt any environmental analysis prepared by another state
13 agency or by a federal or local agency. The department may enter into a written
14 agreement with any of those agencies that have a major responsibility related to or
15 that are significantly affected by the proposed mining. In the written agreement, the
16 parties shall define the responsibility of each agency in the development of a single
17 environmental impact statement on the proposed mining and outline the procedures
18 to be used in the regulatory process. The department shall be the lead agency for any
19 environmental review process involving other state agencies. To the extent that any
20 federal or local agency's environmental review process conflicts with the provisions
21 of this section or s. 295.57, the department shall follow the provisions of this section
22 and s. 295.57 and may only coordinate its environmental review to the extent
23 consistent with the provisions of this section and s. 295.57. The department shall
24 comment on any federal agency's environmental assessment or environmental

1 impact statement associated with a mining project in accordance with s. NR 150.30,
2 Wis. Adm. Code.

3 **(5)** RELATIONSHIP TO OTHER LAWS. This section and s. 295.57 govern the
4 department's obligations under ss. 1.11 and 1.12 with respect to a mining project.
5 Sections 23.11 (5) and 23.40 and ss. NR 2.085, 2.09, and 2.157, Wis. Adm. Code, do
6 not apply with respect to a mining project. The rest of ch. NR 2, Wis. Adm. Code, only
7 applies with respect to a mining project to the extent that it does not conflict with this
8 section and s. 295.57. Sections NR 150.24 and 150.25, Wis. Adm. Code, do not apply
9 with respect to a mining project. The rest of ch. 150, Wis. Adm. Code, only applies
10 with respect to a mining project to the extent that it does not conflict with this section
11 and s. 295.57.

12 **295.56 Exemptions. (1)** The department may grant an exemption, as
13 provided in this section, from any of the requirements of this subchapter applicable
14 to any of the following:

15 (a) A mining permit application, including the mining plan, reclamation plan,
16 and mining waste site feasibility study and plan of operation.

17 (b) A mining permit.

18 (c) Any other approval.

19 **(2)** (a) An applicant shall submit a request for an exemption in writing and
20 shall describe the grounds for the exemption and provide documentation identifying
21 the conditions requiring the exemption, the reasons for the exemption, and the
22 reasonableness of the exemption.

23 (b) An applicant may obtain an exemption only if the applicant submits the
24 request no later than the 180th day after the application for the mining permit is
25 administratively complete under s. 295.57 (2), unless the condition that is the basis

1 for the requested exemption is not known to the applicant before that day, in which
2 case the deadline is extended to the 20th day before the deadline under s. 295.57 (7)
3 (a).

4 (c) The department shall issue a decision on a request for an exemption no later
5 than the 15th day after the day on which it received the request under par. (a).
6 Subject to par. (b) and except as provided in par. (d), the department shall grant the
7 exemption if it is consistent with the purposes of this subchapter and will not violate
8 any applicable environmental law outside of this subchapter and if both of the
9 following apply:

10 1. The exemption will not result in significant adverse environmental impacts
11 on the mining site or, if the exemption will result in significant adverse
12 environmental impacts on the mining site, the applicant will offset those impacts
13 through a mitigation program, as provided in s. 295.60 (8), through the measures
14 provided in s. 295.605, or through the conservation measures provided in s. 295.61.

15 2. The exemption will not result in significant adverse environmental impacts
16 off of the mining site.

17 (d) 1. The department shall deny a request for an exemption if granting the
18 exemption would violate federal law.

19 2. If federal law imposes a standard for an exemption that differs from the
20 standard in par. (c) and that cannot be modified by state law, and if that standard has
21 been approved by the federal government for use by the state through a delegation
22 agreement, federally approved state implementation plan, or other program
23 approval, then the department shall determine whether to grant the request for the
24 exemption using the federal standard.

1 **295.57 Application procedure. (1)** SUBMISSION. (a) An applicant shall
2 submit the application for a mining permit as provided in s. 295.47.
3 (b) The department shall protect as confidential any information, other than
4 effluent data, contained in an application for a mining permit, upon a showing that
5 the information is entitled to protection as a trade secret, as defined in s. 134.90 (1)
6 (c), and any information relating to production or sales figures or to processes or
7 production unique to the applicant or that would tend to adversely affect the
8 competitive position of the applicant if made public.
9 **(2)** DETERMINATION OF ADMINISTRATIVE COMPLETENESS. (a) The department shall
10 review an application for a mining permit and, within 30 days after the application
11 is submitted, shall determine either that the application is complete or that
12 additional information is needed. If the department determines that the application
13 is complete, the department shall notify the applicant in writing of that fact within
14 the 30–day period and the date on which the department sends the notice is the day
15 on which the application is administratively complete.
16 (b) If the department determines under par. (a) that an application is
17 incomplete, the department shall notify the applicant in writing and may make one
18 request for additional information during the 30–day period specified in par. (a).
19 Within 10 days after receiving additional requested information from the applicant,
20 the department shall notify the applicant in writing as to whether it has received all
21 of the requested information. The day on which the department sends the 2nd notice
22 under this paragraph is the day on which the application is administratively
23 complete.

1 (c) If the department fails to meet the 30–day time limit under par. (a) or the
2 10–day time limit under par. (b), the application is administratively complete on the
3 last day of the 30–day time limit or 10–day time limit.
4 (d) The department may request additional information needed to process a
5 mining application from the applicant after the application is administratively
6 complete, but the department may not delay the determination of administrative
7 completeness based on a request for additional information.
8 **(3)** NOTICE OF ADDITIONAL APPROVALS. Within 30 days after the mining permit
9 is administratively complete under sub. (2), the department shall notify the
10 applicant in writing of any approval required for the construction or operation of the
11 mining site that was not previously identified by the department.
12 **(3m)** RECEIPT OF CERTAIN APPROVALS. If a storm water discharge permit under
13 s. 283.33 (1) (a) or a water quality certification under rules promulgated under subch.
14 II of ch. 281 to implement 33 USC 1341 (a) is needed for a mining operation, the
15 person applying for the mining permit may apply for and be issued the permit or
16 certification.
17 **(4)** PUBLIC INFORMATION AND NOTICE. (a) The department shall make available
18 for review in the city, village, or town in which the proposed mining site is located,
19 information concerning the proposed mining, including all of the following:
20 1. The application for the mining permit, including the mining plan,
21 reclamation plan, and mining waste site feasibility study and plan of operation.
22 2. Any of the following relating to an approval other than the mining permit:
23 a. The application.
24 b. A draft approval.
25 c. Information or summaries relating to the approval.

1 3. The environmental impact statement, environmental impact report, and any
2 additional supporting information used in the department's evaluation of the
3 proposed mining.
4 4. The department's analyses and preliminary determinations relating to any
5 approval.
6 (b) The department shall distribute a notice that describes the availability of
7 the information under par. (a); the opportunity for written public comment, including
8 an invitation for the submission of written comments by any person within 45 days
9 after the date of the publication of the notice; and the date, time, and location of the
10 public informational hearing and that includes any additional information that a law
11 concerning any approval requires to be provided. The department shall publish the
12 notice as a class 1 notice under ch. 985 and shall publish notice on the department's
13 Internet site. The date on which the department first publishes the notice on its
14 Internet site shall be considered the date of the publication of the notice required to
15 be published under this paragraph. The department shall also send the notice to all
16 of the following:
17 1. The clerk of any city, village, town, or county with zoning jurisdiction over
18 the proposed mining site.
19 2. The clerk of any city, village, town, or county within whose boundaries any
20 portion of the proposed mining site is located.
21 3. The clerk of any city, village, or town, contiguous to any city, village, or town
22 within whose boundaries any portion of the proposed mining site is located.
23 4. The main public library of each city, village, town, or county with zoning
24 jurisdiction over the proposed mining site or within whose boundaries any portion
25 of the proposed mining site is located.

1 5. Any regional planning commission for the area within which the proposed
2 mining site lies.
3 6. Any state agency that the department knows is required to grant a permit
4 or other authorization necessary for the construction or operation of the proposed
5 mining project.
6 7. The federal environmental protection agency, U.S. Army Corps of Engineers,
7 and states potentially affected by the proposed discharge if a water discharge permit
8 under ch. 283 or a wetland permit that constitutes a water quality certification as
9 required by 33 USC 1341 (a) is to be considered at the public informational hearing.
10 8. The federal environmental protection agency and appropriate agencies in
11 other states that may be affected if an air pollution control permit under ch. 285 is
12 to be considered at the public informational hearing.
13 9. If a water withdrawal permit under s. 295.61 for a withdrawal of surface
14 water is to be considered at the public informational hearing, the persons specified
15 in s. 30.18 (4) (a).
16 10. If an individual permit under s. 30.12 for a structure through which water
17 transferred from the Great Lakes basin would be returned to the source watershed
18 through a stream tributary to one of the Great Lakes is to be considered at the public
19 informational hearing, the governing body of each city, village, and town through
20 which the stream flows or that is adjacent to the stream downstream from the point
21 at which the water would enter the stream.
22 11. Any person upon request. The department's notice under this subdivision
23 may be given through an electronic notification system established by the
24 department.
25 12. The applicant.

1 13. Any other person to whom the department is required to give notice of any
2 proposed determination, application, or hearing concerning an approval under the
3 laws relating to the issuance of any approval or under s. 1.11.

4 (c) The department shall coordinate the public comment period for the mining
5 permit with the public comment period for any other approval for the mining
6 operation, except that if an application for an approval is filed too late to allow public
7 comment within the public comment period for the mining permit, the department
8 shall issue separate notice, as described in par. (b), for the approval after the
9 application is filed.

10 **(5)** INFORMATIONAL HEARING. The department shall hold a public informational
11 hearing before it approves or denies an application for a mining permit and not less
12 than 30 days after the date of the publication of the notice under sub. (4) (b). The
13 department shall hold the public informational hearing in the county where the
14 majority of the proposed mining site is located. The department shall hold a single
15 public informational hearing covering the mining permit, all other approvals, and
16 the environmental impact statement, except that if an application for an approval
17 is filed too late to allow the application to be considered at the public informational
18 hearing for the mining permit, the department shall hold a separate public
19 informational hearing on the approval in the county where the majority of the
20 proposed mining site is located not less than 30 days after the date of the publication
21 of the notice under sub. (4) (b) for the approval. The department shall publish the
22 notice on its Internet site not more than 10 days after the application is considered
23 to be complete under sub. (8) (b) 1. The public informational hearing under this
24 subsection is not a contested case hearing under ch. 227. At the hearing, the

1 department shall take testimony on all of the following with regard to any proposed
2 withdrawal of groundwater or surface water:
3 (a) The public rights in any body of water and the related environment that may
4 be injured by the proposed withdrawal of groundwater or surface water.
5 (b) The public benefits provided by increased employment, economic activity,
6 and tax revenues from the proposed mining operation.
7 (c) The direct and indirect social and economic costs and benefits of the
8 proposed mining operation.
9 (d) Whether the proposed withdrawal of groundwater or surface water will
10 consume nonsurplus water.
11 (e) The rights of competing users of the groundwater or surface water.
12 (f) Any other water withdrawal issues identified by the department as relevant
13 to the decision of whether to issue or deny a permit.
14 **(6)** SUMMARY. After considering the comments received under subs. (4) and (5)
15 and before acting on the application for the mining permit, the department shall
16 prepare a summary of the comments and the department's response to the
17 comments.
18 **(7)** DEADLINE FOR ACTING ON MINING PERMIT APPLICATION. (a) No later than the
19 deadline specified by the applicant under s. 295.47 (1) (am) or, if the applicant does
20 not specify a deadline under s. 295.47 (1) (am), no more than 420 days after the day
21 on which the application for a mining permit is administratively complete under sub.
22 (2), the department shall approve the application, and issue a mining permit, or deny
23 the application, in accordance with s. 295.58, unless the department and the
24 applicant agree to extend the deadline. The department and the applicant may agree
25 to not more than one extension and that extension may not exceed 60 days. The

1 department and the applicant may enter into an extension only if one of the following
2 applies:
3 1. An extension is necessary to enable the department and the U.S. Army Corps
4 of Engineers to jointly prepare their environmental impact statements.
5 2. New information or a change to the mining proposal necessitates additional
6 time to review the application.
7 (b) If the department does not comply with the deadline under par. (a),
8 including any extension agreed to by the applicant, the department shall refund the
9 fees under s. 295.73 (3) (a), (d), and (e) that were paid by the applicant.
10 (c) If the department does not comply with the deadline under par. (a),
11 including any extension agreed to by the applicant, the applicant may bring an action
12 for mandamus in the circuit court for the county in which the majority of the proposed
13 mining site is located to compel the department to approve or deny the application.
14 Notwithstanding s. 814.04 (1), in an action under this paragraph the court shall
15 award the applicant its costs, including reasonable attorney fees, if it determines
16 that the department did not comply with the deadline under par. (a).
17 **(8)** DEADLINE FOR ACTING ON OTHER APPROVALS. (a) Except as provided in par.
18 (c), if an applicant files an application for an approval other than a mining permit
19 no later than 60 days after the day on which the application for the mining permit
20 is administratively complete under sub. (2) or more than 60 days after that day but
21 in time to allow the application to be considered at the public informational hearing
22 for the mining permit under sub. (5), the department shall approve the application,
23 and issue the approval, or deny the application no later than the deadline under sub.
24 (7) (a), including any extension agreed to by the applicant.

1 (b) 1. If an applicant files an application for an approval other than a mining
2 permit too late to allow the application to be considered at the public informational
3 hearing for the mining permit under sub. (5) but before the department issues the
4 decision to grant or deny the application for the mining permit, the application for
5 the approval is considered to be complete on the 30th day after the department
6 receives the application, unless, before that day, the department provides the
7 applicant with written notification that the application is not complete, stating the
8 reason for the determination and describing the specific information necessary to
9 make the application complete. If the department provides such a notice, the
10 applicant shall supplement the application by providing the specified information.
11 The application is considered to be complete when the applicant provides the
12 information.

13 2. Except as provided in subd. 3., the department shall approve the application
14 for an approval described in subd. 1., and issue the approval, or deny the application
15 after the separate public informational hearing for the approval required under sub.
16 (5) and no later than 75 days after the application for the approval is considered to
17 be complete under subd. 1.

18 3. Except as provided in par. (c), the department shall approve or deny the
19 application for an approval described in subd. 1. that is an individual permit for
20 which federal law requires the opportunity for public comment or the ability to
21 request a public hearing prior to issuance of the approval after the separate public
22 informational hearing required for the approval under sub. (5) and no later than 180
23 days after the application is considered to be complete under subd. 1.

1 (c) The deadlines in pars. (a) and (b) do not apply to the application for an air
2 pollution control permit under s. 285.62 for which the department receives an
3 objection from the federal environmental protection agency under s. 285.62 (6).
4 (d) The department shall incorporate an approval other than a mining permit
5 into a single document with the mining permit, unless the application for the
6 approval was filed more than 60 days after the day on which the application for the
7 mining permit is administratively complete under sub. (2).
8 **(8m)** SUBMISSION OF TECHNICAL REVIEW TO GREAT LAKES REGIONAL BODY. If an
9 applicant files an application under s. 281.346 for an approval for a withdrawal of
10 surface water or groundwater that is subject to regional review or council approval,
11 the department shall provide its technical review, as defined in s. 281.346 (1) (u), to
12 the regional body, as defined in s. 281.346 (1) (q), no later than 90 days after the
13 applicant files the application for the approval.
14 **(9)** APPLICABLE PROCEDURE. (a) The provisions of this section and ss. 295.58 (5)
15 and (6) and 295.77 concerning public notice, comment, and hearing; issuance of
16 department decisions; effective date of department decisions; and review of
17 department decisions; and the duration of approvals apply to any approval for which
18 the application is filed before the department issues the decision to grant or deny the
19 application for the mining permit, notwithstanding any provisions related to those
20 matters in s. 44.40 or 169.25, subch. I or VI of ch. 77, ch. 23, 29, 30, 31, 169, 281, 283,
21 285, 289, or 291, or rules promulgated under those provisions, except as provided in
22 s. 281.343 (7r) and except that if a withdrawal of surface water or groundwater is
23 subject to regional review or council approval under s. 281.346, the applicable
24 provisions related to regional review or council approval apply.

1 (b) The provisions of ss. 295.58 (5) and (6) and 295.77 concerning review of
2 department decisions and the duration of department decisions apply to any
3 approval for which the application is filed after the department issues the mining
4 permit, notwithstanding any provisions related to those matters in s. 44.40 or
5 169.25, subch. I or VI of ch. 77, ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291, or
6 rules promulgated under those provisions, except as provided in s. 281.343 (7r).

7 **295.58 Mining; department grant or denial of permit.** (1) CRITERIA FOR
8 APPROVAL. (a) Except as provided in sub. (2) and except with respect to property
9 specified in s. 41.41 (11), the department shall issue a mining permit if it finds all of
10 the following:

11 1. That the mining plan and reclamation plan are reasonably certain to result
12 in reclamation of the mining site consistent with this subchapter.

13 2. That the waste site feasibility study and plan of operation complies with s.
14 295.51.

15 3. That the applicant has committed to conducting the proposed mining in
16 compliance with the mining permit and any other approvals issued for the mining.

17 3m. That the proposed mining is likely to meet or exceed the requirements of
18 any municipal floodplain zoning ordinance applicable to the proposed mining under
19 s. 295.607 (3) to the extent that the ordinance has not been made inapplicable to the
20 proposed mining by a local agreement under s. 295.443 (1m).

21 4. That the proposed mining is reasonably certain not to result in substantial
22 adverse impacts to public health, safety, or welfare.

23 5. That the proposed mining will result in a net positive economic impact in the
24 area reasonably expected to be most impacted by the mining.

1 6. That the applicant has applied for all necessary zoning approvals applicable
2 to the proposed mining.
3 (b) The department shall approve or deny an application for a mining permit
4 in writing and shall include the reasons for its decision with clarity and in detail.
5 The department may modify the applicant's proposed mining plan, reclamation plan,
6 or mining waste site feasibility study and plan of operation in order to meet the
7 requirements of this subchapter, and, as modified, approve the application. The
8 approval of the application for a mining permit constitutes the approval of the
9 mining plan, reclamation plan, and waste site feasibility study and plan of operation.
10 In its decision on the application for a mining permit, the department shall include
11 a final decision on compliance with s. 1.11 and the requirements of s. 295.53,
12 discussing all of the following:
13 1. Whether the department has considered the environmental impact
14 statement and comments received on it.
15 2. Whether the department has complied with ss. 1.11 and 295.53.
16 3. Whether, consistent with social, economic, and other essential
17 considerations, the department has adopted all practicable means within its
18 authority to avoid or minimize any harm to the environment and, if not, why not.
19 **(2)** CRITERIA FOR DENIAL. The department shall deny the mining permit if it
20 finds any of the following:
21 (a) That the site is unsuitable for mining.
22 (b) That the proposed mining may reasonably be expected to create any of the
23 following situations:
24 1. Hazards resulting in irreparable, substantial physical damage to any of the
25 following that cannot be prevented under the requirements of this subchapter,

avoided to the extent practicable by removal from the area of hazard, or offset by purchase or by obtaining the consent of the owner:

a. A dwelling house.

b. A public building.

c. A school.

d. A church.

e. A cemetery.

f. A commercial or institutional building.

g. A public road.

2. Irreparable substantial environmental damage to lake or stream bodies despite adherence to the requirements of this subchapter. This subdivision does not apply to an activity that the department has authorized under statute, except that the destruction or filling in of a lake bed may not be authorized unless it is authorized under s. 295.60, 295.605, or 295.61.

3. Landslides or substantial deposition from the proposed mining operation in stream or lake beds which cannot feasibly be prevented and which have not been authorized under s. 295.60 or 295.605.

(c) That the applicant has violated, and continues to fail to comply with, this subchapter.

(d) Subject to sub. (3), that the applicant, principal shareholder of the applicant, or a related person has within 10 years before the application is submitted forfeited a mining reclamation bond that was posted in accordance with a permit or other authorization for a mining operation in the United States, unless the forfeiture was by agreement with the entity for whose benefit the bond was posted and the amount of the bond was sufficient to cover all costs of reclamation.

1 (e) Subject to sub. (3), that the applicant, a related person, or an officer or
2 director of the applicant has, within 10 years before the application is submitted,
3 been convicted of more than one felony for violations of laws for the protection of the
4 natural environment arising out of the operation of a mining site in the United
5 States, unless one of the following applies:

6 1. The person convicted has been pardoned for all of the felonies.

7 2. The person convicted is a related person or an officer or director of the
8 applicant with whom the applicant terminates its relationship.

9 3. The applicant included in its permit application under s. 295.47 a plan to
10 prevent the occurrence in this state of events similar to the events that directly
11 resulted in the convictions.

12 (f) Subject to sub. (3), that the applicant or a related person has, within 10 years
13 before the application is submitted, declared bankruptcy or undergone dissolution
14 that resulted in the failure to reclaim a mining site in the United States in violation
15 of a state or federal law and that failure has not been remedied and is not being
16 remedied.

17 (g) Subject to sub. (3), that, within 10 years before the application is submitted,
18 a mining permit or other authorization for mining issued to the applicant or a related
19 person was permanently revoked because of a failure to reclaim a mining site in the
20 United States in violation of state or federal law and that failure has not been and
21 is not being remedied.

22 **(3)** EXCEPTION FROM DENIAL CRITERIA. The department may not deny a mining
23 permit under sub. (2) (d) to (g) if the person subject to the convictions, forfeiture,
24 permanent revocation, bankruptcy, or dissolution is a related person but the
25 applicant shows that the person was not the parent corporation of the applicant, a

1 person that holds more than a 30 percent ownership in the applicant, or a subsidiary
2 or affiliate of the applicant in which the applicant holds more than a 30 percent
3 interest at the time of the convictions, forfeiture, permanent revocation, bankruptcy,
4 or dissolution.

5 **(4)** STATEMENT. The department shall send a statement as to whether the
6 applicant has satisfied the requirements of this subchapter to the applicant and to
7 the other persons specified in s. 295.57 (4) (b) 1. to 9.

8 **(5)** DURATION OF APPROVALS. (a) A mining permit is valid for the life of the
9 mining project, subject to the enforcement provisions under s. 295.79.

10 (b) An approval under s. 295.60 or 295.61 remains valid for the life of the mining
11 project, subject to the enforcement provisions under s. 295.79.

12 (c) An approval issued for a mining project under ch. 23, 29, 30, 31, 169, 281,
13 283, 285, 289, or 291, except for a permit under ch. 283 or 285 that is subject to a
14 federal requirement limiting its duration, remains valid for the life of the mining
15 project, subject to the enforcement provisions applicable to the approval.

16 **(6)** EFFECTIVE DATE OF APPROVALS. A mining permit and any other approval is
17 issued upon mailing and is final and effective upon issuance.

18 **(7)** MERCHANTABLE BY-PRODUCTS. In a mining permit, the department shall
19 require the operator to treat merchantable by–products as refuse if after 3 years from
20 the time the merchantable by–products result from or are displaced by mining the
21 material has not been transported off the mining site, unless removal is continuing
22 at a rate of more than 12,000 cubic yards per year.

23 **(8)** GENERAL CONTRACTOR OR AFFILIATE. No operator may engage a general
24 contractor or affiliate to operate a mining site if the general contractor or affiliate has
25 been convicted of more than one felony for violation of a law for the protection of the

natural environment arising out of the operation of a mining site in the United States within 10 years before the issuance of the operator's mining permit, unless the general contractor or affiliate receives the department's approval of a plan to prevent the occurrence in this state of events similar to the events that directly resulted in the convictions.

295.59 Bonds and other security. (1) SECURITY FOR RECLAMATION. (a) Upon notification that an application for a mining permit has been approved by the department but before beginning mining, the operator shall furnish one of the following to the department:

1. A bond, furnished by a surety company licensed to do business in this state, conditioned on faithful performance of all of the requirements of this subchapter and all rules adopted by the department under this subchapter.

2. Cash.

3. Certificates of deposit.

4. Government securities.

(b) The department shall pay to the operator interest received on certificates of deposit or government securities furnished under par. (a).

(c) The operator shall furnish the security required under par. (a) in the amount equal to the estimated cost to the state of fulfilling the reclamation plan, other than the cost of long–term care of the mining waste site, in relation to the portion of the mining site that will be disturbed by the end of the following year. The department shall determine the estimated cost of reclamation of each mining site on the basis of relevant factors, including the character and nature of the lands to be reclaimed, the future suitable use of the land involved, the topography of the mining site, the

1 methods of reclamation being employed, the depth and composition of overburden,
2 and the depth of the ferrous mineral deposit being mined.

3 **(2)** CERTIFICATE OF INSURANCE. The operator shall submit a certificate of
4 insurance certifying that the applicant has in force a liability insurance policy issued
5 by an insurer authorized to do business in this state or, in lieu of a certificate of
6 insurance, evidence that the applicant has satisfied state or federal self–insurance
7 requirements, covering all mining operations of the operator in this state and
8 affording personal injury and property damage protection in a total amount
9 determined to be adequate by the department but not more than $1,000,000 and not
10 less than $50,000.

11 **(2m)** PROOF OF FINANCIAL RESPONSIBILITY FOR LONG–TERM CARE OF MINING WASTE
12 SITE. An operator shall maintain proof of financial responsibility ensuring the
13 availability of funds for compliance with the long–term care requirements specified
14 in the waste site feasibility study and plan of operation for a period of 40 years after
15 closing of the mining waste site. The operator shall furnish the proof of financial
16 responsibility to the department in one of the following forms:

17 (a) A bond.

18 (b) Cash.

19 (c) Certificates of deposit.

20 (d) Government securities.

21 (e) Insurance.

22 **(3)** WRITTEN AUTHORIZATION TO MINE. Upon approval of the operator's bonds or
23 other security under subs. (1) and (2m), mining application, and certificate of
24 insurance, the department shall issue written authorization to begin mining at the

1 permitted mining site in accordance with the approved mining plan, reclamation
2 plan, and mining waste site feasibility study and plan of operation.

3 **(4)** RECLAMATION BOND FOR MORE THAN ONE MINING SITE. Any operator who
4 obtains mining permits from the department for 2 or more mining sites may elect,
5 at the time that the mining permit for the 2nd or any subsequent mining site is
6 approved, to post a single bond under sub. (1) in lieu of separate bonds for each
7 mining site. An operator who chooses to post a single bond under this subsection
8 shall post a bond in an amount equal to the estimated cost to the state determined
9 under sub. (1) of reclaiming all mining sites the operator has under mining permits.
10 When an operator elects to post a single bond in lieu of separate bonds previously
11 posted on individual mining sites, the department may not release the separate
12 bonds until the department accepts the new bond.

13 **(5)** REVIEW OF AMOUNTS. If an operator disagrees with the amount of the bonds
14 or other security that the department requires under this section, the operator may
15 seek review under s. 295.77 (3) of the amount required. The operator may post a bond
16 or other security in the amount required by the department and begin mining
17 without forfeiting its right to seek review.

18 **295.60 Impacts to wetlands. (1)** DEFINITIONS. In this section:

19 (a) "Artificial wetland" means a landscape feature where hydrophytic
20 vegetation may be present as a result of human modifications to the landscape or
21 hydrology and for which there is no prior wetland or stream history.

22 (b) "Ceded territory" means the territory in Wisconsin ceded by the Chippewa
23 Indians to the United States in the treaty of 1837, 7 Stat. 536, and the treaty of 1842,
24 7 Stat. 591.

1 (c) "Federal wetland" means a wetland that is subject to federal jurisdiction
2 under 33 USC 1344.
3 (d) "Fill material" has the meaning given in 33 CFR 323.2 (e), as the meaning
4 exists on July 1, 2012.
5 (e) "Mitigation" means the restoration, enhancement, creation, or preservation
6 of wetlands to compensate for adverse impacts to other wetlands.
7 (f) "Mitigation bank" means a system of accounting for wetland loss and
8 compensation that includes one or more sites where wetlands are restored,
9 enhanced, created, or preserved to provide credits to be subsequently applied or
10 purchased in order to compensate for adverse impacts to other wetlands.
11 (g) "On–site location" means a location that is on a mining site or within
12 one–half mile of an outer boundary of a mining site.
13 (h) "Practicable" means reasonably available and capable of being
14 implemented after taking into consideration cost, site availability, available
15 technology, logistics, and proximity to the proposed project site, in light of the overall
16 purpose and scope of the project.
17 (i) "Water basin" means the Lake Michigan basin, the Lake Superior basin, or
18 the Mississippi River basin or other water basin established by the department.
19 (j) "Water management unit" means a subdivision of a water basin that is
20 established on a hydrological basis by the department.
21 (k) "Water quality standard" means a wetland water quality standard specified
22 under sub. (5) or any other water quality standard set by rule under s. 281.15.
23 (L) "Wetland impact evaluation" means an evaluation of impacts to a wetland.
24 **(1m)** APPLICABILITY. Subsections (2) to (11) do not apply to a wetland individual
25 permit or other approval that requires a wetland impact evaluation if the operator

1 files the application for the wetland individual permit or other approval after the
2 department issues the mining permit for the mining operation.

3 **(2)** WETLAND DETERMINATIONS AND DELINEATIONS. For purposes of this section,
4 wetland determinations and wetland boundary delineations shall be consistent with
5 the U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual and any final
6 regional supplement to the manual. Any owner or lessee of land, or a holder of an
7 easement in land, may request that the department provide a wetland determination
8 or wetland boundary delineation for an application for a wetland individual permit
9 under this section or for another approval for which a wetland impact evaluation is
10 required. The department may rely on wetland determinations and wetland
11 boundary delineations made by other agencies and consultants. If the applicant has
12 provided information to the department that is identified in the manual or any final
13 regional supplement as being sufficient to make a wetland determination or a
14 delineation of boundaries, the department may visit a mining site to conduct surveys
15 or gather additional site–specific quantitative data provided that the department
16 does not discontinue the processing of the application to do so.

17 **(3)** SCOPE; DISCHARGES; OTHER IMPACTS. (a) *Scope.* Except as otherwise provided
18 under this section, this section applies to wetland individual permits and any other
19 approvals for which wetland impact evaluations are required.

20 (b) *Discharges of dredged or fill material.* No person may discharge dredged
21 material or fill material associated with a mining operation or bulk sampling unless
22 the discharge is authorized under a wetland individual permit issued under this
23 section or under a wetland general permit issued under s. 281.36 (3g). The
24 department may not issue a wetland individual permit unless it makes a finding
25 under sub. (6) (a) that the discharge will comply with all applicable water quality

1 standards. Section 281.36 (3g) and (11), and the rules promulgated under s. 281.36
2 (3g) and (11), apply to authorizations to proceed under general permits.
3 Notwithstanding s. 281.36 (3g) (h) 2., a person receiving authorization to proceed
4 under a wetland general permit for a mining activity other than bulk sampling may
5 not proceed until a mining permit is issued.

6 (c) *Other impacts.* For an approval which requires a wetland impact evaluation
7 for an activity other than a discharge of dredged material or fill material, the
8 approval may not be issued unless the department determines that the activity will
9 comply with all applicable water quality standards.

10 (4) REVIEW BY DEPARTMENT. (a) *Avoidance or minimization of impacts.* When
11 applying for a wetland individual permit or for another approval for which a wetland
12 impact evaluation is required, an applicant shall include in the application an
13 analysis of the practicable alternatives that will avoid and minimize the adverse
14 impacts on wetland functional values and that will not result in any other significant
15 adverse environmental consequences.

16 (b) *Practicable alternatives.* The department shall review the analysis of
17 practicable alternatives included in the application under par. (a). The department
18 shall limit its review to those practicable alternatives that are located at the site of
19 the discharge or other activity and that are located adjacent to that site if the
20 applicant has demonstrated that the proposed project causing the discharge or other
21 activity will result in a demonstrable economic public benefit.

22 (c) *Assessing impacts.* In its review under this subsection, the department shall
23 consider all of the following factors when it assesses the impacts to wetland
24 functional values;

1. The direct impacts of the proposed discharge or other activity to wetland functional values.

2. The cumulative impacts attributable to the proposed discharge or other activity that may occur to wetland functional values based on past impacts or reasonably anticipated impacts caused by similar discharges or activities in the area affected by the discharge or activity.

3. Potential secondary impacts of the proposed discharge or other activity to wetland functional values.

4. The impact on functional values resulting from the mitigation program under sub. (8)

5. The net positive or negative environmental impact of the mining operation.

(d) *Assessing impacts; geographical scope.* In its review under this subsection, the department shall evaluate whether the discharge or other activity will result in a significant adverse impact to wetland functional values by doing all of the following:

1. Comparing the functional values of the wetland with other wetlands located within the boundaries of the mining site or within the same water management unit as the mining site and with other waters of the state that are located in the same water management unit.

2. Taking into consideration the floristic province in which the mining site is located.

(e) *Method for assessing impacts.* In issuing a wetland individual permit under this section or in conducting a wetland impact evaluation, the department shall determine the impact of a proposed discharge or other activity upon the wetland functional values by using wetland ecological evaluation methods that are jointly

accepted by the U.S. Army Corps of Engineers and the department and that are appropriate to the affected wetland.

(f) *General permits.* Paragraphs (a) to (e) do not apply to authorizations to proceed under a general permit issued under s. 281.36 (3g).

(5) WETLAND WATER QUALITY STANDARDS. The following wetland water quality standards apply to any wetland individual permit issued under this section or to any wetland impact evaluation:

(a) Adverse impacts to the functional values and water quality of wetlands and adverse impacts to other waters of the state that are influenced by wetlands shall be minimized, and any significant adverse impacts remaining after minimization shall be subject to a mitigation program under sub. (8). For purposes of this section, functional values consist of all of the following:

1. Storm and flood water storage and retention and the moderation of water level fluctuation extremes.

2. Hydrologic functions including the maintenance of dry season streamflow, the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, and the flow of groundwater through a wetland.

3. Filtration or storage of sediments, nutrients, or toxic substances that would otherwise adversely impact the quality of waters of the state.

4. Shoreline protection against erosion through the dissipation of wave energy and water velocity and anchoring of sediments.

5. Habitat for aquatic organisms in the food web including fish, crustaceans, mollusks, insects, annelids, and planktonic organisms and the plants and animals upon which these aquatic organisms feed and depend upon for their needs in all life stages.

1 6. Habitat for resident and transient wildlife species, including mammals,
2 birds, reptiles, and amphibians, for breeding, resting, nesting, escape cover, travel
3 corridors, and food.
4 7. Recreational, cultural, educational, scientific, and natural scenic beauty
5 values and uses.
6 (b) All of the following shall be minimized in order to avoid significant adverse
7 impacts for the purpose of maintaining or enhancing the wetland functional values
8 identified under par. (a), and any minimization of the following must be taken into
9 account in the department's evaluation of significant adverse impacts:
10 1. The use of liquids, fill, or other solids or gases.
11 2. The presence of floating or submerged debris, oil, or other material.
12 3. The use of materials producing color, odor, taste, or unsightliness.
13 4. The presence of concentrations or combinations of substances that are toxic
14 or harmful to human, animal, or plant life.
15 5. Adverse effects on hydrological conditions necessary to support the biological
16 and physical characteristics that are naturally present in wetlands. For purposes
17 of this subdivision, the hydrological conditions include all of the following:
18 a. Water currents and erosion and sedimentation patterns.
19 b. Water temperature variations.
20 c. The chemical, nutrient, and dissolved oxygen regime of the wetland.
21 d. The movement of aquatic fauna.
22 e. The pH of the wetland.
23 f. Water levels or elevations.
24 6. Adverse effects on existing habitat and populations of animals and
25 vegetation found in wetlands.

1 **(6)** DECISION BY DEPARTMENT. (a) The department shall make a finding that a
2 a discharge of dredged material or fill material is in compliance with all applicable
3 water quality standards and shall issue a wetland individual permit if the
4 department determines that all of the following apply:
5 1. The proposed project of which the discharge is a part represents the least
6 environmentally damaging practicable alternative taking into consideration
7 practicable alternatives that avoid wetland impacts.
8 2. All practicable measures to minimize the adverse impacts to wetland
9 functional values will be taken.
10 3. The proposed discharge will not result in significant adverse impact to
11 wetland functional values, subject to par. (b); in significant adverse impact to water
12 quality; or in other significant adverse environmental consequences.
13 (b) Notwithstanding par. (a) 3., if significant adverse impacts to wetland
14 functional values will remain after the adverse impacts have been avoided and
15 minimized to the extent practicable, the department shall issue the permit if the
16 department determines that the remaining impacts will be compensated for under
17 a mitigation program under sub. (8).
18 (c) The department may not deny an approval for an activity for which a
19 wetland impact evaluation is required, other than a discharge of dredged material
20 or fill material, on the basis of the impacts from the activity on wetlands if the
21 department determines that all of the following apply:
22 1. The proposed project of which the activity is a part represents the least
23 environmentally damaging practicable alternative taking into consideration
24 practicable alternatives that avoid wetland impacts.

1 2. All practicable measures to minimize the adverse impacts to wetland
2 functional values will be taken.
3 3. The proposed activity will not result in significant adverse impact to wetland
4 functional values, subject to par. (d); in significant adverse impact to water quality;
5 or in other significant adverse environmental consequences.
6 (d) Notwithstanding par. (c) 3., if significant adverse impacts to wetland
7 functional values will remain after the adverse impacts have been avoided and
8 minimized to the extent practicable, the department may not deny the permit on the
9 basis of the impacts from the activity on wetlands if the department determines that
10 the remaining impacts will be compensated for under a mitigation program under
11 sub. (8).
12 (e) Paragraphs (a) to (d) do not apply to authorizations to proceed under a
13 general permit issued under s. 281.36 (3g).
14 (7) FEDERAL WETLANDS. (a) For a wetland individual permit under this section
15 which involves a federal wetland or for any other approval for which a wetland
16 impact evaluation for a federal wetland is required, any mitigation program
17 submitted by the applicant under sub. (8) shall include all the federal mitigation
18 measures proposed by the applicant. The department shall review the federal
19 mitigation measures and shall determine whether it has reasonable assurance that
20 these will compensate for any significant adverse impacts to wetland functional
21 values, any significant adverse impacts to water quality, and any other significant
22 adverse environmental consequences. The department shall recognize all federal
23 compensatory mitigation measures as being eligible for the purpose of making this
24 determination. If the department determines that reasonable assurance exists, the
25 department may not impose any additional conditions on the permit or other

1 approval. If the department determines that reasonable assurance does not exist,
2 it may impose conditions on the permit or other approval that are in addition to
3 required federal compensatory mitigation measures, but such conditions shall be
4 limited to those that are necessary to compensate for any significant adverse impacts
5 to wetland functional values, any significant adverse impacts to water quality, and
6 any other significant adverse environmental consequences that will remain after
7 completion of the federal mitigation measures. Any conditions imposed by the
8 department may be satisfied through a mitigation program as provided in sub. (8).
9 In imposing any conditions under this paragraph, the department may not require
10 that the number of acres to be mitigated be greater than the number that is required
11 under federal law.

12 (b) A wetland individual permit issued under this section that authorizes a
13 discharge of dredged or fill material in a federal wetland constitutes water quality
14 certification as required by 33 USC 1341 (a). Any other approval issued by the
15 department for which a wetland impact evaluation is required for a federal wetland
16 constitutes water quality certification under 33 USC 1341 (a) with respect to the
17 discharges or activities affecting the federal wetland.

18 **(8)** MITIGATION PROGRAM. (a) *Definition.* Notwithstanding s. 295.60 (1) (i), in
19 this section "water basin" means the Lake Michigan basin, the Lake Superior basin,
20 or the Mississippi River basin.

21 (am) *Contents.* A mitigation program to compensate for adverse impacts to
22 functional values of wetlands shall contain proposed projects for mitigation and a
23 schedule for implementing the projects. The department may not consider
24 mitigation in determining whether to grant authorization to proceed under a general

1 permit under s. 281.36 (3g). These projects may be performed by a person other than
2 the applicant, subject to the department's approval of the projects and schedule.
3 (b) *Option of applicant.* An applicant submitting a program under par. (am)
4 may submit options for mitigation. These options may include any combination of
5 the types of mitigation specified in par. (dm). In preparing the program, the
6 applicant shall identify and consider mitigation that could be conducted within the
7 same watershed in which the mining site is located.
8 (c) *Ratios for mitigation.* The amount of mitigation required may not exceed
9 1.5 acres of mitigation for each acre of adversely impacted wetland. For purpose of
10 credits in a mitigation bank, each acre that is subject to mitigation shall count as at
11 least one credit.
12 (d) *Sequence of mitigation.* If it is not practicable or ecologically preferable to
13 conduct mitigation at an on–site location or if there is no on–site location that will
14 provide sufficient wetland acreage, the department shall require that the applicant
15 conduct mitigation within the same watershed in which the wetland to be affected
16 is located, unless mitigation in the same watershed is not practicable or ecologically
17 preferable. If mitigation within the same watershed is not practicable or ecologically
18 preferable, the department shall require that the applicant conduct mitigation
19 within the same water basin in which the wetland to be affected is located. If
20 mitigation in the same water basin is not practicable or ecologically preferable, the
21 applicant may conduct mitigation at a site elsewhere in the state.
22 (dm) *Types of mitigation.* Mitigation under a program under par. (am) may be
23 accomplished through any of the following types:
24 1. Implementation of a project for mitigation by an applicant or other person
25 approved by the department.

1 2. Purchase of mitigation credits from a mitigation bank for a site in a
2 mitigation bank that is located anywhere in the state, subject to par. (e).
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 4. Participation in the in lieu fee subprogram, if such a subprogram is
8 established under s. 281.36 (3r) (e).
9 (e) *Ceded territory.* If a mining operation is located in whole or in part within
10 the ceded territory, any mitigation, including mitigation accomplished through the
11 purchase of mitigation bank credits and the in lieu fee subprogram that is authorized
12 or required by the department, that will be required to compensate for adverse
13 impacts to wetlands located in the ceded territory shall occur within the ceded
14 territory. If the department determines under par. (d) that mitigation will occur
15 within a certain watershed or water basin and if the watershed or water basin is not
16 located totally in the ceded territory, the mitigation shall occur within that part of
17 the watershed or water basin that is located in the ceded territory.
18 **(9)** SUBSEQUENT PROTECTION FOR WETLANDS. (a) If a wetland individual permit
19 issued under this section, or other approval that required a wetland impact
20 evaluation, authorizes a mitigation project, the person who is the holder of the permit
21 or approval shall grant a conservation easement under s. 700.40 to the department
22 or shall execute a comparable legal instrument to ensure that a wetland that is being
23 restored, enhanced, created, or preserved will not be destroyed or substantially
24 degraded by any subsequent proprietor of or holder of interest in the property on
25 which the wetland is located. The department shall suspend the mining permit if the

1 holder of the permit fails to grant the easement or execute this instrument within
2 the time limit set forth in the mining permit. If the holder subsequently grants the
3 conservation easement or executes the instrument, the department shall reinstate
4 the mining permit.

5 (b) Notwithstanding par. (a), the department shall modify or release a
6 conservation easement granted under par. (a) or shall void a comparable legal
7 instrument executed under par. (a) if all of the following apply:

8 1. The department determines that part or all of a wetland subject to the
9 mitigation project ceases to be a wetland.

10 2. The person who is required to grant the conservation easement or execute
11 the legal instrument did not contribute to the loss of the wetland specified in subd.
12 1.

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

16 **(10)** EXEMPTIONS. (a) *Artificial wetlands.* All of the following artificial
17 wetlands that are associated with a mining operation or bulk sampling are exempt
18 from the wetland individual permit and mitigation requirements under this section,
19 from the general permit requirements under s. 281.36 (3g), and from any
20 requirement for any other approval for which a wetland impact evaluation is
21 required:

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