

For LRB

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

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

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

(c) "Federal wetlands" means a wetland that is subject to federal jurisdiction under 33 USC 1344.

(d) "Fill material" has the meaning given in 33 CFR 323.2(e), as the meaning exists on July 1, 2012.

(e) "Mitigation" means the restoration, enhancement, preservation, or creation of wetlands to offset adverse impacts to other wetlands.

(f) "Mitigation bank" means a system of accounting for wetland loss and compensation that includes one or more sites where wetlands are restored, enhanced, created, or preserved to provide credits to be subsequently applied or purchased in order to offset adverse impacts to other wetlands.

(g) "On-site location" means a location that is within one-half mile of an outer boundary of a mining site.

(h) "Practicable" means reasonably available and capable of being implemented after taking into consideration cost, site availability, available technology, logistics and proximity to the proposed project site, in light of the overall project and scope of the project.

yes this is necessary

same as (1)(b)(g)

same as (1)(b)(k)

281.36(1)(cp)

Comment [JDB1]: s. 281.36 definition of fill material should be incorporated per drafter's note on page 4, 5.h.

Comment [JDB2]: On page 4, 5.a., the drafter notes that "functional values" is not followed by "and water quality" in s. 281.36. Revisions have been made to address.

Comment [JDB3]: On page 4, 5.b. the drafter notes that "impact" is not defined in s. 281.36. Edits have been made throughout for consistency with s. 281.36 and the use of "impacts."

Deleted: (c). "Functional values and water quality" means the water quality related wetland functional values and uses specified in sub. (6) (a) 1. to 7

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(d). "Impact" means a permanent, temporary, cumulative, secondary, direct or indirect result that is attributable to a discharge to which the wetland water quality standards apply

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Comment [JDB4]: Mitigation should include "preservation" as in s. 281.36 per the drafters note on page 4, 5.c.

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Comment [JDB5]: Edits made to definition to address drafter note on page 4, 5.d.

Comment [JDB6]: Off-site location can be either inside or outside the boundary of a mining site per drafter's note on page 5, 7.

Comment [JDB7]: Edits made to definition to address drafter note on page 4, 5. E.

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Deleted: purposes and the needs of bulk sampling or a mining operation

- with respect to definitions in this section, if the definition proposed in this document is substantially similar to the definition under s. 281.36(1), use the current-law definition.

hold off on this addition and additions of this term in this section for now.

remove, don't include reference to "Riparian restoration projects" in wetlands section.

(i) "Riparian restoration project" means a project that will restore or enhance the natural beneficial uses and value of a watercourse.

(j) "Water basin" means the Lake Michigan basin, the Lake Superior basin, or the Mississippi River basin or other water basin established by the department.

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(k) "Water management unit" means a subdivision of a water basin that is established on a hydrological basis by the department.

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(l) "Water quality standards" means the wetland water quality standards specified under sub. (5) and other water quality standards set under rules promulgated by the department under s. 281.15 applicable to a mining operation or bulk sampling.

Comment [JDB8]: Definition of "watershed" has been removed for consistency with s. 281.36 per drafter note on page 4, 5.f.

Deleted: (k) "Watershed" means an area of land where all of the water drains into a common waterway

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Deleted: a water quality standard specified under sub. (6)

(m) "Wetland functional values" means the water quality related functional values and uses specified in sub. (6)(a)1.-7.

(2) SCOPE. This section applies to any approval that involves an evaluation of impact to wetlands, that is associated with mining or bulk sampling, including approvals pursuant to sub. (4)(b).

Comment [JDB9]: On page 3, 1., the drafter recommended removing the reference to water quality certifications. The scope of approvals subject to this section should include: wetland individual permits, WQC for Corps permits issued with respect to federal wetlands, and other DNR approvals that require an evaluation of impacts to wetlands. The intent is that this section be used to permit discharges and fills to wetlands (e.g., as 281.36 for non mining projects) and for reviews of impacts to wetlands that occur pursuant to other DNR approvals. See Wis. Admin. Code § NR 103.06 for a partial list of DNR approvals that would be subject to reviews for impacts upon wetlands. To the extent that the waterway at issue is subject to federal jurisdiction, then the DNR's review must also satisfy its water quality certification requirements under Wis. Admin. Code ch. NR 299.

(3) WETLAND DETERMINATIONS AND DELINEATIONS. For purposes of this section, wetland determinations and wetland boundary delineations shall be consistent with the U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual and any final regional supplement to the manual. The department may rely on wetland determinations and wetland boundary delineations made by other agencies and consultants. If the applicant for a wetland permit or for any other approval for an activity involving impacts to wetlands has provided information to the department that is identified in the manual or any final regional supplement as being sufficient to make a wetland determination or a delineation of boundaries, the department

On page 3, 3., the drafter noted that the wetland general permitting provisions would not apply. It would be appropriate to provide for the ability to obtain a wetland general permit and appropriate provisions should be incorporated into this section. The scope should also include wetland general permits under s. 281.36(3g); however, the provisions under this section of sub. (3) should apply, and potentially subs. (5) and (7) to the extent that sub. (5) and (7) do not conflict with the terms of the General Permit itself.

(3) wetland delineations
(5) evaluation of impacts
(7) scope of evaluation

may visit the mining site to conduct surveys or gather additional site-specific quantitative data provided that the department does not discontinue the processing of the application to do so. ^{An} applicant for an approval under this section may be an owner, lessee or a holder of an easement of land in order to request that the department provide a wetland identification or delineation.

limit

Notwithstanding s. 23.321(2)(c), the department may provide a wetland confirmation of the boundaries of a wetland as delineated by a 3rd person before the date on which the department enters into a memorandum of agreement under s. 23.321(2m).

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Comment [JDB10]: Edits made to section to address drafter note on page 4, 5.g. Intent is to be consistent with Corps delineations.

(4) **WETLAND PERMIT.** (a) *Permit required.* No person may discharge dredged material or fill material associated with a mining operation or bulk sampling into a wetland unless the discharge is authorized under a wetland permit issued under this section or a wetland general permit issued under s. 281.36(3g). The department may not issue any approval under this section unless it determines that the discharge authorized pursuant to the approval will comply with all applicable water quality standards.

(b) *Federal certification.* For purposes of this section, a wetland permit issued under this section constitutes water quality certification as required by 33 USC 1341 (a). This section shall also apply to any action which may result in a discharge to waters of the state that involves ^{evaluation of impacts to wetlands as required by rules promulgated under subch. II of ch. 281} to implement 33 USC 1341(a).

(c) *Avoidance or minimization of impacts.* For purposes of issuing a wetland permit for a discharge subject to par. (a) or evaluating impacts to wetlands for any approval requiring an evaluation of impacts to wetlands associated with bulk sampling or a mining operation, an applicant shall include an analysis of the practicable alternatives that will avoid and minimize the adverse impacts of the discharge on wetland functional values and that will not result in any

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functional values of PULK

other significant adverse environmental consequences. If the impacts have been avoided or minimized to the extent practicable, any remaining impacts to wetlands may not be a basis for the department's denial of a wetland permit, or any other approval requiring an evaluation of impacts to wetlands, provided that any remaining significant adverse impacts to wetlands are offset under a mitigation program under sub. (9).

Deleted: the department shall first determine whether any impact to the wetland caused by the mining operation or bulk sampling can be avoided or minimized to the extent practicable.

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(d) Review by the department. 1. The department shall review the analysis of the practicable alternatives presented in the application under par. (c). The department shall limit its review to those practicable alternatives that are located at the site of the discharge and that are located contiguous to the mining site if the applicant has demonstrated that the proposed project causing the discharge will result in a demonstrable economic public benefit.

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2. In its review under (d)1., the department shall consider all of the following factors when it assesses the impacts to wetland functional values: the direct impacts of the proposed project to wetland functional values; the cumulative impacts attributable to the proposed project that may occur to wetland functional values based on past impacts or reasonably anticipated impacts caused by similar projects in the area affected by the project; potential secondary impacts of the proposed project to wetland functional values; the impact on wetland functional values resulting from the mitigation program required under sub. (9); and the net positive or negative environmental impact of the proposed project.

Deleted: An applicant for a wetland permit shall submit a siting analysis to the department for review. In reviewing the siting analysis, the department shall recognize all of the following:
a. The limitations associated with the proposed location of the ferrous mineral deposits to be mined or associated with bulk sampling.
b. The need for the mining waste sites and any processing facilities to be contiguous to the location of the ferrous mineral deposits to be mined.
c. The presumption that wetlands will be impacted.

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Deleted: The siting analysis shall be limited to an analysis of alternative configurations associated with the areas of the proposed ferrous mineral deposits to be mined at the mining site and with the areas that are contiguous to those deposits.

Comment [JDB11]: Edits made to address drafter note on page 4, 5.i. The permit standard has been revised for more consistency with s. 281.36.

(5) EVALUATION OF IMPACTS. In issuing approvals under this section, the department shall determine the impact of a proposed 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.

Deleted: If it is impracticable to avoid an impact to, or the use of, a wetland, the applicant shall

Deleted: identify in the siting analysis, and the department shall review, those configurations that would result in impacts to the fewest acres of wetlands to the extent practicable. The department shall determine which configuration will minimize the impacts to the fewest acres.
4. After the department makes the determination under subd. 3., the department shall evaluate the impact of the mining operation to the functional values and water quality of the wetland.

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(6) WETLAND WATER QUALITY STANDARDS. The following ~~wetland~~ water quality standards apply to any wetland permit issued under this section or for evaluating impacts to wetlands for any approval requiring an evaluation of impacts to wetlands associated with a mining operation or bulk sampling:

(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. (9). For purposes of this section, functional values and uses 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.
6. Habitat for resident and transient wildlife species, including mammals, birds, reptiles, and amphibians, for breeding, resting, nesting, escape cover, travel corridors, and food.

7. Recreational, cultural, educational, scientific, and natural scenic beauty values and uses.

(b) All of the following shall be minimized in order to avoid significant adverse impacts for the purpose of maintaining or enhancing the wetland functional values identified under par. (a), and any minimization of the following must be taken into account in the department's evaluation of significant adverse impacts:

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1. The use of liquids, fill, or other solids or gases.
2. The presence of floating or submerged debris, oil, or other material.
3. The use of materials producing color, odor, taste, or unsightliness.
4. The presence of concentrations or combinations of substances that are toxic or harmful to human, animal, or plant life.

5. Adverse effects on hydrological conditions necessary to support the biological and physical characteristics that are naturally present in wetlands. For purposes of this subdivision, the hydrological conditions include all of the following:

- a. Water currents and erosion and sedimentation patterns.
 - b. Water temperature variations.
 - c. The chemical, nutrient, and dissolved oxygen regime of the wetland.
 - d. The movement of aquatic fauna.
 - e. The pH of the wetland.
 - f. Water levels or elevations.
6. Adverse effects on existing habitat and populations of animals and vegetation found in wetlands.

(7) SCOPE OF EVALUATION. For purposes of issuing a wetland permit under this section or for evaluating impacts to wetlands for any approval requiring an evaluation of impacts to wetlands associated with bulk sampling or a mining operation, the department shall evaluate whether an activity will result in a significant adverse impact to wetland functional values by doing all of the following:

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(a) 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.

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(b) Taking into consideration the floristic province in which the mining site is located.

(8) APPROVAL BY DEPARTMENT. (a) The department shall make a finding and issue a wetland permit under this section for a wetland and any approval that involves an evaluation of impact to wetlands, if the department determines that all of the following will apply:

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Per LK

"and the applicant's mitigation program submitted under sub. (a) 11"

(1) The proposed project represents the least environmentally damaging practicable alternative taking into consideration practicable alternatives that avoid wetland impacts.

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(2) All practicable measures to minimize the adverse impacts to wetland functional values will be taken.

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(3) The proposed project will not result in significant adverse impact to wetland functional values, in significant adverse impact to water quality, or in other significant adverse environmental consequences.

Deleted: Any significant adverse impact to functional values and water quality that remains is offset through a mitigation program under sub. (9)

(b) For purposes of issuing an approval under this section, the department shall review the federal compensatory mitigation requirements proposed as part of the federal permit

Comment [JDB12]: On page 3, 2, the drafted notes that the distinction between federal and nonfederal wetlands has been eliminated. This is acceptable generally; however, incorporation of the compensatory mitigation that will be part of the Corps permitting process must be considered with respect to federal wetlands.

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application and shall determine whether it has reasonable assurance that the federal compensatory mitigation requirements will offset any significant impacts to wetlands to satisfy the standards in (8)(a)(3) for impacts to federal wetlands. The department shall recognize all federal compensatory mitigation requirements as eligible for satisfying this requirement. If the department determines that reasonable assurance exists, the department may not impose any additional conditions within an approval. If the department determines that reasonable assurance does not exist, then it may impose conditions in the portion of the approval beyond those imposed as part of the federal compensatory mitigation requirements only as necessary to comply with the standards in sub. (8)(a)(3) for impacts to federal wetlands. Any conditions imposed by the department may be satisfied through a mitigation program as provided in sub. (9). In imposing any conditions, the department may not increase the number of acres to be mitigated under the federal compensatory mitigation requirements applicable to the federal wetland.

(9) **MITIGATION PROGRAM.** (a) *Contents.* A mitigation program to offset impacts to wetlands shall contain proposed projects under par. (d), a schedule for implementing the projects and if the program is applicable to a federal wetland, ^{a statement of} all federal compensatory mitigation ^{measures} requirements associated with the federal wetland. These projects may be performed by a person other than the applicant, subject to the department's approval of the projects and schedule. These projects may include riparian restoration projects. *e Per LK*

Comment [JDB13]: The drafter's note on page 4, 5.j. indicates that the mitigation program differs from s. 281.36(3r). The intent is to allow all types of projects that can offset impacts to wetlands, not just projects involving the creation, preservation, restoration or enhancement of wetlands.

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(b) *Option of applicant.* An applicant submitting a mitigation program under par. (a) may submit options to offset impacts to wetlands. These options may include any combination of the types of projects specified in par. (d). In preparing the mitigation program, the applicant

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shall identify and consider projects that could be conducted within the same watershed in which the mining site is located.

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(c) *Ratios for mitigation.* The amount of offsets for impacts to wetlands required may not exceed 1.5 acres for each acre of adversely impacted wetland. For purpose of credits in a mitigation bank, each acre that is subject to mitigation shall count as at least one credit.

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(d) *Sequence; types of projects.* If it is not practicable or ecologically preferable to offset impacts to wetlands at an on-site location or if there is no on-site location that will provide sufficient acreage, the department shall allow the applicant to offset impacts to wetlands at a site other than an on-site location, subject to par. (e). A mitigation program under par. (a) may be accomplished through any of the following types of projects:

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1. Implementation of a project to offset impacts to wetlands,
2. Purchase of mitigation credits from a mitigation bank for a site in a mitigation

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bank, including a mitigation bank established under s. 281.36, that is located anywhere in the state, subject to par. (e).

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

4. Participation in the in lieu fee subprogram, if such a subprogram is established under s. 281.36 (3r) (e).

(e) *Ceded territory.* If a mining operation is located in whole or in part within the ceded territory, any mitigation of the part within the ceded territory, including mitigation accomplished through the purchase of mitigation bank credits and the in lieu fee subprogram that is authorized or required by the department, shall occur within the ceded territory.

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(10) MINING PERMIT. Any wetland permit issued under this section, including all of the conditions imposed as part of the wetland permit, and any other approval that involves an evaluation of impacts to wetlands associated with bulk sampling or a mining operation shall be included in the mining permit.

Out per LK entry in 2011 legislation
Comment [JDB14]: This should also include any s. 281.36(3g) general permit

(11) CONSERVATION EASEMENTS. (a) A person who is the holder of a wetland permit or any other approval that involves an evaluation of impacts to wetlands that authorizes mitigation to be implemented by the holder of the wetland permit issued under this section, or the holder of any other approval that involves an evaluation of impacts to wetlands, at an on-site location shall grant a conservation easement under s. 700.40 to the department, or shall execute a comparable legal instrument, to ensure that the wetland that is subject to the mitigation will not be destroyed or substantially degraded by any subsequent proprietor of or holder of interest in the property on which the wetland is located. The department shall suspend the mining permit if the holder of the approval fails to grant the easement within the time limit set forth in the mining permit. If the holder subsequently grants the conservation easement to the department, the department shall reinstate the mining permit.

Comment [JDB15]: On page 5, 5.k, the drafter's note asks whether "comparable legal instruments" should be included. Edits have been made to include.

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

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

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

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

(12) **EXEMPTIONS.** (a) *Artificial wetlands.* Except as prohibited under federal law as applicable to federal wetlands, all of the following artificial wetlands that are associated with a mining operation or bulk sampling are exempt from the wetland permitting provisions and mitigation provisions under this section, from any other approval requiring an evaluation of impacts to wetlands and under any other law relating to impacts on wetlands:

Comment [JDB16]: Edits made to address drafter's note on page 5, 5.L.
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1. An artificial wetland that is a sedimentation or stormwater detention basin or associated conveyance feature operated and maintained only for sediment detention and flood storage purposes.

Comment [JDB17]: The change from "statute or rule" to "law" is acceptable; however, this might need to be state law per the drafter's note on page 5, 6.

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

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

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

(b) *Other exempted activities.* Except as prohibited under federal law as applicable to federal wetlands, all of the following activities that are associated with a mining operation or bulk sampling are exempt from the wetland permitting provisions and mitigation provisions under this section, from any other approval requiring an evaluation of impacts to wetlands and any other law relating to impacts on wetlands if the applicant minimizes any adverse effect on the environment as a result of any of these activities:

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

2. Construction or maintenance of irrigation ~~ditches~~.

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3. Construction or maintenance of farm roads, forest roads, or temporary mining

roads that is performed in accordance with best management practices, as determined by the department.

4. Maintenance of drainage ditches.

(13) RELATIONSHIP TO OTHER LAWS. None of the following apply to a mining operation or bulk ~~sampling~~.

(a) Section 281.36, except as otherwise specifically provided in this section.

(b) Any rule promulgated under s. 281.36, except as otherwise specifically provided in this section.

Comment [JDB18]: On page 4, 4., the drafter notes that this section was rewritten. The revised language is acceptable; however, additional provisions have been added for clarity.

(c) Any other rule promulgated by the department that relates to wetlands or that requires an evaluation of impacts to wetlands that conflicts with this section.

(d) Rules promulgated under subch. II to ch. 281 to implement 33 USC 1341(a) shall apply to the extent they do not conflict with this section.

(e) Section 23.321(2m) applies to the extent it does not conflict with this section.

Comments to Drafter's Notes in Impacts to Wetlands

1. The s. 281.36 definition of "fill material" should be incorporated per the drafter's note on page 4, 5.h.
2. On page 4, 5.a. the drafter notes that "functional values" is not followed by "and water quality" in s. 281.36. Revisions have been made to the section to address this concern.
3. On page 4, 5.b. the drafter notes that "impact" is not defined in s. 281.36. Edits have been made throughout for consistency with s. 281.36 and the use of "impacts."
4. "Mitigation" should include "preservation" as in s. 281.36 per the drafter's note on page 4, 5.c.
5. Edits made to definition of "mitigation bank" to address drafter note on page 4, 5.d.
6. On-site location can be either inside or outside the boundary of a mining site per drafter's note on page 5, 7.
7. Edits made to definition of "practicable" to address drafter note on page 4, 5.e.
8. Definition of "watershed" has been removed for consistency with s. 281.36 per drafter note on page 4, 5.f.
9. On page 3, 1., the drafter recommended removing the reference to water quality certification. The scope of approvals subject to this section should include: wetland individual permits, WQC for Corps permits issued with respect to federal wetlands, and other DNR approvals that require an evaluation of impacts to wetlands. The intent is that this section be used to permit discharges and fills to wetlands (e.g., as in s. 281.36) and for reviews of impacts to wetlands that occur pursuant to other DNR approvals. See Wis. Admin. Code s. NR 103.06 for a partial list of DNR approvals that would be subject to reviews for impacts on wetlands. To the extent that the water at issue is subject to federal jurisdiction, then the DNR's review must also satisfy its water quality certification requirements under Wis. Admin. Code ch. NR 299.
10. On page 3, 3., the drafter noted that the wetland general permitting provisions would not apply. It would be appropriate to provide for the ability to obtain a wetland general permit and appropriate provisions should be incorporated into this section. The scope should include wetland general permits under s. 281.36(3g); however, the provisions under this section of sub. (3) should apply, and potentially subs. (5) and (7) to the extent that those sections do not conflict with the terms of a General Permit.
11. Edits made to sub. (3) to address drafter note on page 4., 5.g. The intent is that DNR delineations be consistent with Corps delineations.
12. Edits made to address drafter note on page 4., 5.i. in sub(4). The permit standard has been revised for consistency with s. 281.36

13. On page 3, 2. the drafter notes that the distinction between federal and nonfederal wetlands has been eliminated. This is generally acceptable; however, edits were made to sub. (8)(b) to incorporate the federal compensatory mitigation requirements into DNR's review with respect to federal wetland impacts.

14. The drafter's note on page 4,5.j. indicates that the mitigation program differs from s. 281.36(3r). The intent in this section is to allow for all types of projects that can offset impacts to wetlands, not just projects involving the preservation, creation, restoration or enhancement of wetlands.

15. An edit was made to sub. (10) to reflect that a s. 281.36(3g) permit if issued should also be part of the mining permit.

16. On page 5, 5.k. the drafter's note asks whether "comparable legal instruments" should be included. Edits have been made to include this concept.

17. Edits have been made to sub. (12), exemptions, to address the drafter's note on page 5, 5.L.

18. The drafter noted on page 5, 6. a change from "statute or rule" to "law" in sub. (12)(a) - this is acceptable.

19. On page 4, 4. The drafter notes that this section was rewritten. The revised language is acceptable; however, a few additional provisions have been added for clarity.

Tradewell, Becky

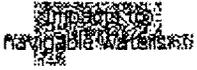
From: Konopacki, Larry
Sent: Sunday, December 23, 2012 12:42 PM
To: Bott, Eric; Esser, Jennifer
Cc: Henning, Anna; Tradewell, Becky
Subject: GTAC requests (4) (wetlands)



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Tradewell, Becky

From: Konopacki, Larry
Sent: Sunday, December 23, 2012 12:42 PM
To: Bott, Eric; Esser, Jennifer
Cc: Henning, Anna; Tradewell, Becky
Subject: GTAC requests (5) (navigable waters)



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For LRB

From Larry Konopka
12/27/12 P.M.

295.605 Impacts to navigable waters. (1) DEFINITION. In this section, "navigable water activity" means an activity for which a permit, ~~contract, or other approval is required or requested~~ under s. 30.12, 30.123, 30.19, 30.195, or 30.20.

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(2) PERMIT OR CONTRACT REQUIRED. No person may engage in any navigable water activity for which a permit or contract is required that is associated with bulk sampling or a mining operation unless the person has been issued a permit or entered into a contract as provided under sub. (4).

(3) APPLICATION; RIPARIAN STATUS. (a) For purposes of approvals under ss. 30.12, 30.123, 30.19, 30.195 and 30.20, a person who is not the owner of a piece of riparian property may exercise a riparian right held by the owner of the piece of riparian property if any of the following apply:

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1. The person leases the piece of riparian property from the owner.
2. The person holds an easement on the piece of riparian property and the easement authorizes the person to exercise that riparian right.

Comment [JDB1]: On page 5, 5th full paragraph, the drafter notes that changes have been made to the riparian language. We agree with the changes within 295.605(3)(a)1. and 2.

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

Deleted: permit or contract

(4) REQUIREMENTS. (a) *Generally.* The department shall issue a permit, or enter into a contract, for a navigable water activity associated with bulk sampling or a mining operation if the navigable water activity meets all of the following requirements:

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

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

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

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

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

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

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

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

4. Measures to enhance flood storage.

5. A Mitigation Program as provided under s. 295.60(9).

6. Conservation measures as provided in s. 295.61.

(bn) *Plan review; finding.* In reviewing the plan, the department may require that measures that are in addition to, or in conjunction with, one or more of the measures specified in par. (b) 1. to 6. be included in the plan. After reviewing the plan and application, if the department finds that the requirements under par. (a) will be met by implementing some or all of the measures contained in the plan, the department shall determine which measures shall be

required, shall approve a schedule for implementation, and shall issue the permit or enter into the contract.

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

(5) PERMIT CONDITIONS. The department may impose conditions in a permit for a navigable water activity that it determines to be necessary to ensure that the navigable water activities subject to the permit meet the requirements under sub. (4) (a).

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

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

Comment [JDB2]: On page 5, 6th full-paragraph, the drafter notes that changes may wish to be made due to 2011 Act 167. A change was made in s. 295.605(6) to provide the ability for subsequent permits or contracts to be issued pursuant to the revised permit procedures within Wis. Stat. § 30.208.

Changes were also made to s. 295.605(1), (2) and (3) to distinguish between permits and contracts that will need to be issued pursuant to the requirements of (4) versus general permits or exemptions, which would be issued pursuant to underlying requirements within Wis. Stat. ch. 30. The intent is to allow for an applicant for bulk sampling or a mining operation to apply for and obtain any general permit, exemption determination, permit or contract required even if the applicant is not a riparian, provided that s. 295.605(3)(a)1. and 2. Are met.

Deleted: 30.208

Deleted:

See 12/27/12 from LAK

2:15 pm (FW: Question(s))

This needs to be beefed up to accomplish the intent

12/28/12

Meeting w/ Larry Konopacki to review
drafted language provided -

Impacts to navigable waters - 295.605

Sub.(1) - do not include approvals "requested"

Use the term "approval" throughout
295.605 instead of "permit or contract"

sub.(4)(c)

add commas after 30.195(2)(c) and 30.20
and after "or public's interests"

OK to add "including those" but do
not insert "public's rights, or the"

Larry explained that 30.206 applies as
it would apply under current law (gen permits)

1/3/13 -

Re: pg. 9, line 5 - request to change "subsection"
to "section" - 31.23(3)(e)

we explained, that ^{to Larry} if this provision is even
needed at all, it must be a x-ref
to subsection because subs. (1) and (2)
apply chapter-wide and are not specific
to = 31.23(3)

Larry agreed that the change should not
be made

Tradewell, Becky

From: Konopacki, Larry
Sent: Sunday, December 23, 2012 12:42 PM
To: Bott, Eric; Esser, Jennifer
Cc: Henning, Anna; Tradewell, Becky
Subject: GTAC requests (6) (water wathdrawals)



Larry A. Konopacki
Wisconsin Legislative Council
(608) 267-0683
larry.konopacki@legis.wisconsin.gov

For LRB

From Larry Kovopacki
12/27/12 p.m.

295.61 Withdrawals of surface waters and groundwater. (1) DEFINITIONS. In this

section:

- (a) "Authorized base level of water loss" has the meaning given in s. 281.35 (1) (b).
- (b) "Environmentally sound and economically feasible water conservation measures"

has the meaning given in s. 281.346 (1) (i).

- (c) "Great Lakes basin" has the meaning given in s. 281.35 (1) (d).
- (d) "High capacity well" has the meaning given in s. 281.34 (1) (b).
- (e) "Interbasin diversion" has the meaning given in s. 281.35 (1) (g).
- (em) "Riparian restoration project" means a project that will restore or enhance the

natural beneficial uses and value of a watercourse.

- (f) "Upper Mississippi River basin" has the meaning given in s. 281.35 (1) (j).
- (g) Unless the context otherwise requires, "use" includes dewatering.
- (h) "Water loss" has the meaning given in s. 281.35 (1) (L).
- (i) "Withdrawal" has the meaning given in s. 281.35 (1) (m).

- (2) PERMIT REQUIRED. No person may engage in any withdrawal or use of

surface water as part of a mining operation or bulk sampling unless the person has been issued a water withdrawal permit under this section. No person may engage in any withdrawal or use of groundwater as part of a mining operation or bulk sampling if the capacity and rate of withdrawal of all wells involved in the withdrawal of groundwater or the dewatering of mines exceeds 100,000 gallons each day unless the person has been issued a water withdrawal permit

under this section. This section also applies to approvals for the withdrawals or use of surface water or groundwaters associated with a system or plant under s. 281.41.

(3) PERMIT APPLICATION. (a) *Application.* Any person applying for a water withdrawal permit is required to submit only one application. A person who is not the owner of riparian property that is associated with the withdrawal of surface water or groundwater or is not the owner of property upon which it is intended that a high capacity well is proposed or is located may be authorized for the withdrawal or use of surface water or groundwater under this section if:

1. the person leases the riparian or other property associated with the withdrawal or use of surface water or groundwater from the owner;

2. the person holds an easement on the riparian property or other property associated with the withdrawal or use and such easement authorizes the withdrawal or use of surface water or groundwater;

3. with respect to a withdrawal or use of groundwater, the person is the designated representative of the person who owns the property upon which the high capacity well is or is proposed to be located. An application for a water withdrawal permit shall include any

information requested by the department under s. 295.45 (3).

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

Comment [JDB1]: Page 5, 5th full paragraph requests review of s. 295.61(3) to address riparian language. The language in s. 295.61(3) cannot be the same as the corresponding language proposed for s. 295.605(3), due to the differing ownership requirements for applications associated with surface versus groundwater.

Deleted: A

Deleted: person applying for such a permit need not be a riparian owner.

any high capacity well to be located so that need will be met. The department shall approve the location of each high capacity well as part of the permit issued under sub. (4).

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

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

1. The proposed withdrawal and uses of the water are substantially consistent with the protection of public health, safety, and welfare and will not be significantly detrimental to the public interest.
2. The proposed withdrawal and uses of the water will not have a significant adverse impact on the environment and ecosystem of the Great Lakes basin or the Upper Mississippi River basin.
3. The proposed withdrawal and use of the water will not be significantly detrimental to the quantity and quality of the waters of the state.
4. The proposed withdrawal and use of the water will not significantly impair the rights of riparian owners or the applicant obtains the consent of the riparian owners.
5. The proposed withdrawal and use of the water will not result in significant injury to public rights in navigable waters.

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

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

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

1. Environmentally sound and economically feasible water conservation measures.
2. Restoration of hydrologic conditions and functions of the source watershed, or if the withdrawal is from a stream tributary to one of the Great Lakes, restoration of the hydrologic conditions and functions of that stream.
3. Protection of important upland groundwater recharge areas.
4. Stabilization of shorelands.
5. Restoration or enhancement of the natural beneficial uses and values of a stream or river.
6. Implementation of any feasible methods to offset impacts to water quality or quantity.
7. Supplementation of additional water to water bodies to offset lower water levels.
8. Taking steps to improve public rights or interests in navigable waters, if navigable waters are subject to the permit.
9. A Mitigation Program as provided in s. 295.60(9).

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

11. A riparian restoration project.

12. Measures as provided in s. 295.605.

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

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

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

Deleted: nonriparian

(f) *Limits on permit denials.* If the department determines that one of the water withdrawal activities subject to an application for a water withdrawal permit does not meet the requirements for issuing the permit under par. (a) and will not be authorized under the permit, the failure to authorize the activity may not affect the department's determination as to whether

to approve or deny the permit for other water withdrawal activities that are subject to the application.

(5) PERMIT CONDITIONS. (a) The department may impose reasonable conditions in a water withdrawal permit that, except as provided in par. (b), may not interfere with the mining operation or bulk sampling or limit the amount of water needed for the mining operation or bulk sampling and that relate to any of the following:

1. The location of the withdrawal or use.
2. The authorized base level of water loss from the withdrawal or use.
3. The dates on which or seasons during which withdrawal or use of the water may occur.

4. The purposes for the withdrawal or use of the water.
5. The amount and quality of return flow required and the place of the discharge.
6. The requirements for reporting volumes and rates of withdrawal and any other data specified by the department.

7. Any other conditions that the department determines are necessary to protect the environment and the public health, safety, and welfare and to ensure the conservation and proper management of the waters of the state.

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

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

do not make these changes - leave as per 762/PI

Comment [JDB2]: This appears to be covered by 4(cm). If not any conditions imposed within the permit due to an impairment of a privately owned high capacity well should be established pursuant to the provisions of (4)(cm) with the additional ability to compensate the owner if the other options are not possible.

Deleted: (b) If the department determines that a high capacity well that would be covered by a

Deleted: water withdrawal permit may impair a privately owned high capacity well, the department shall include in the water withdrawal permit conditions that will ensure that the privately owned high capacity well will not be impaired, unless the private high capacity well owner agrees to the impairment.

receiving the request the department shall approve the request and amend the permit to incorporate the modification.

3. a. If the request for a modification under subd. 1. results in an increase in an existing withdrawal resulting in a water loss averaging more than 2,000,000 gallons per day in any 30-day period above the operator's authorized base level of water loss, the department shall determine whether it is required, using the environmental review process in its rules promulgated under s. 1.11, to prepare an environmental assessment or environmental impact statement and, if so, shall prepare an environmental assessment or an environmental impact statement. If the department determines that, using the environmental review process in its rules promulgated under s. 1.11, the operator must prepare an environmental impact report, the department may only request information in the environmental impact report that relates to decisions that the department makes under this section related to the permit and the department shall limit its analysis to an evaluation of the request for the modification.

Deleted: under ch. NR 150, Wis. Adm. Code

Deleted: under ch. NR 150, Wis. Adm. Code

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

Comment [JDB3]: Pursuant to Pages 5-6 of the drafters note, please incorporate the new provisions of Act 167 relating to notice by publication on the department's Internet Web site, electronic notification system and that the date of public notice should be the date of publication on the department's Internet Web site in each place within this section where a class 1 notice is referenced.

↳ this is consistent with instructions from last week.

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

(b) 1. The department may propose modifications to any of the conditions in the water withdrawal permit determined to be necessary to ensure compliance with the standards in sub. (4). If it proposes a modification, the department shall determine whether it is required, using the environmental review process in its rules promulgated under s. 1.11, to prepare an environmental assessment or environmental impact statement and, if so, shall prepare an environmental assessment or an environmental impact statement. If the department determines that, using the environmental review process in its rules promulgated under s. 1.11, the operator must prepare an environmental impact report, the department may only request information in the environmental impact report that relates to decisions that the department makes under this section related to the permit and the department shall limit its analysis to an evaluation of the proposed modification.

Comment [JDB4]: The provisions of Wis. Stat. §281.35(6)(c) provide that DNR may propose modifications determined to be necessary to ensure continued compliance with §281.35 or other applicable statutes or rules. There needs to be a standard by which DNR can modify a permit under this section.

Deleted: under ch. NR 150, Wis. Adm. Code

Deleted: under ch. NR 150, Wis. Adm. Code

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

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

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

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

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

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

(c) Except for those rules promulgated under sections 281.343 and 281.346, any other rule promulgated by the department associated with a water withdrawal or use that conflicts with this section does not apply.

(8) DAMAGE CLAIMS. (a) As used in this subsection, "person" does not include a city, village, or town.

(b) A person claiming damage to the quantity or quality of the person's private water supply caused by bulk sampling or mining may file a complaint with the department and, if there is a need for an immediate alternative source of water, with the city, village, or town where the private water supply is located. The department shall conduct an investigation and if the

department concludes that there is reason to believe that the bulk sampling or mining is interrelated to the condition giving rise to the complaint, it shall schedule a hearing.

(c) The city, village, or town in which is located the private water supply that is the subject of a complaint under par. (a) shall, upon request, supply necessary amounts of water to replace the water formerly obtained from the damaged private supply. Responsibility to supply water begins at the time the complaint is filed and ends at the time the decision of the department made at the conclusion of the hearing is implemented.

(d) If the department concludes after the hearing that bulk sampling or mining is the principal cause of the damage to the private water supply, it shall issue an order to the operator requiring the provision of water to the person found to be damaged in a like quantity and quality to that previously obtained by the person and for a period of time that the water supply, if undamaged, would be expected to provide a beneficial use, requiring reimbursement to the city, village, or town for the cost of supplying water under par. (c), if any, and requiring the payment of compensation for any damages unreasonably inflicted on the person as a result of damage to the person's water supply. The department shall order the payment of full compensatory damages up to \$75,000 per claimant. The department shall issue its written findings and order within 60 days after the close of the hearing. Any judgment awarded in a subsequent action for damages to a private water supply caused by bulk sampling or mining shall be reduced by any award of compensatory damages previously made under this subsection for the same injury and paid by the operator. The department shall change the dollar amount under this paragraph annually, beginning with 1978, according to the method under s. 70.375 (6). Pending the final decision on any appeal from an order issued under this paragraph, the operator shall provide

water as ordered by the department. The existence of the relief under this section is not a bar to any other statutory or common law remedy for damages.

(e) If the department concludes after the hearing that bulk sampling or mining is not the cause of any damage, reimbursement to the city, village, or town for the costs of supplying water under par. (c), if any, is the responsibility of the person who filed the complaint.

(f) Failure of an operator to comply with an order under par. (d) is grounds for suspension or revocation of a mining permit or any approval required for bulk sampling.

(9) COSTS REIMBURSED. (a) Costs incurred by a city, village, or town in monitoring the effects of bulk sampling or mining on surface water and groundwater resources, in providing water to persons claiming damage to private water supplies under sub. (8) (c), or in retaining legal counsel or technical consultants to represent and assist the city, village, or town appearing at the hearing under sub. (8) (b) are reimbursable through the investment and local impact fund under s. 15.435.

(b) Any costs paid to a city, village, or town through the investment and local impact fund under par. (a) shall be reimbursed to the fund by the city, village, or town if the city, village, or town receives funds from any other source for the costs incurred under par. (a).

(c) If an order under sub. (8) (d) requiring the operator to provide water or to reimburse the city, village, or town for the cost of supplying water is appealed and is not upheld, the court shall order the cost incurred by the operator in providing water or in reimbursing the city, village, or town pending the final decision to be reimbursed from the investment and local impact fund under s. 15.435.

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

RET LRB

12/28/12 Discussion with Larry Konopacki about the instructions for water withdrawals - s. 298.61 (2) - the requested exemption gives no indication of the laws under which DNR might promulgate the rules they refer to. This is like "notwithstanding any other law," which is not proper drafting. Larry said not to make the change because of the lack of specificity.

Tradewell, Becky

From: Konopacki, Larry
Sent: Sunday, December 23, 2012 12:43 PM
To: Bott, Eric; Esser, Jennifer
Cc: Henning, Anna; Tradewell, Becky
Subject: GTAC requests (7) (their comments)



Comments2-wetl...

Larry A. Konopacki
Wisconsin Legislative Council
(608) 267-0683
larry.konopacki@legis.wisconsin.gov

Comments to Drafter's Notes in Impacts to Navigable Waters

On page 5, 5th full paragraph, the drafter notes that changes have been made to the riparian language. We agree with the changes within s. 295.605(3)(a)1. and 2.

On page 5, 6th full paragraph, the drafter notes that changes may wish to be made due to 2011 Act 167. A change was made in s. 295.605(6) to provide the ability for subsequent permits or contracts to be issued pursuant to the revised permit procedures within Wis. Stat. s. 30.208. Changes were also made to s. 295.605(1), (2) and (3) to distinguish between permits and contracts that will need to be issued pursuant to the requirements of (4) versus general permits or exemptions, which would be issued pursuant to underlying requirements within Wis. Stat. ch. 30. The intent is to allow for an applicant for bulk sampling or a mining operation to apply for and obtain any general permit, exemption determination, permit or contract required even if the applicant is not a riparian, provided that s. 295.605(3)(a)1. and 2 are met.

Comments to Drafter's Notes in Bulk Sampling

On page 2, first full paragraph, the drafter asks whether ch. 31 should be referenced within (4), (7), (9) and (10). We agree and have incorporated that edit.

On page 2, 2nd full paragraph, the drafter asks whether s. 70.375(4)(h) should be amended to refer to the cost of premiums for bonds required in this draft? Yes, please amend s. 70.375(4)(h) accordingly.

On pages 5-6, the drafter notes that 2011 Act 167 requires DNR to give notice by publication on its Web site and allows DNR to provide for notices through an electronic notification system. The drafter asks whether these additional publication methods should apply where ever the draft requires a Class I notice. Yes, notice by publication on the department's Internet Web site and, if available, through an electronic notification system should be provided for. We agree that ss. 295.45(10)(b), 295.46(2)(a), 295.61(6)(a)3.b. and (b) 2. and 295.69(2)(b) and any other sections that provide for Class I notice should include these provisions. We have provided edits to reflect these provisions within this section. When such provisions are included, however, a statement should be added indicating that the date on which public notice is provided is the date on which the department first publishes notice on its Internet site.

On page 3, first full paragraph, the drafter notes that the full language in s. 295.45(10g)(b) has been corrected to cover all individual permits for which federal law requires the opportunity for public comment or the ability to request a public hearing. We agree with this correction.

Comments to Drafter's Notes in Withdrawals of Surface Waters and Groundwater

Page 5, 5th full paragraph requests review of s. 295.61(3) to address riparian language. The language in s. 295.61(3) cannot be the same as corresponding language in s. 295.605(3), due to the differing ownership requirements for applications associated with surface versus groundwater.

Comment to s. 295.61(5)(b) – this provision has been removed, as any conditions imposed within the permit due to an impairment of a privately owned high capacity well should be established pursuant to the provisions of (4)(cm).

Pursuant to pages 5-6 of the drafter’s note, please incorporate the new provisions of Act 167 relating to notice by publication on the department’s Internet Web site, electronic notification system and that the date of public notice should be the date of publication on the department’s Internet Web site in each place within this section where a Class I notice is referenced.

An edit was made to s. 295.61(6)(b)1. The provisions of Wis. Stat. s. 281.35(6)(c) provide that DNR may propose modifications determined to be necessary to ensure continued compliance with s. 281.35 or other applicable statutes or rules. There needs to be a standard by which DNR can modify a permit under this section.

Comments to Drafter's Notes in Impacts to Wetlands

1. The s. 281.36 definition of "fill material" should be incorporated per the drafter's note on page 4, 5.h.
2. On page 4, 5.a. the drafter notes that "functional values" is not followed by "and water quality" in s. 281.36. Revisions have been made to the section to address this concern.
3. On page 4, 5.b. the drafter notes that "impact" is not defined in s. 281.36. Edits have been made throughout for consistency with s. 281.36 and the use of "impacts."
4. "Mitigation" should include "preservation" as in s. 281.36 per the drafter's note on page 4, 5.c.
5. Edits made to definition of "mitigation bank" to address drafter note on page 4, 5.d.
6. On-site location can be either inside or outside the boundary of a mining site per drafter's note on page 5, 7.
7. Edits made to definition of "practicable" to address drafter note on page 4, 5.e.
8. Definition of "watershed" has been removed for consistency with s. 281.36 per drafter note on page 4, 5.f.
9. On page 3, 1., the drafter recommended removing the reference to water quality certification. The scope of approvals subject to this section should include: wetland individual permits, WQC for Corps permits issued with respect to federal wetlands, and other DNR approvals that require an evaluation of impacts to wetlands. The intent is that this section be used to permit discharges and fills to wetlands (e.g., as in s. 281.36) and for reviews of impacts to wetlands that occur pursuant to other DNR approvals. See Wis. Admin. Code s. NR 103.06 for a partial list of DNR approvals that would be subject to reviews for impacts on wetlands. To the extent that the water at issue is subject to federal jurisdiction, then the DNR's review must also satisfy its water quality certification requirements under Wis. Admin. Code ch. NR 299.
10. On page 3, 3., the drafter noted that the wetland general permitting provisions would not apply. It would be appropriate to provide for the ability to obtain a wetland general permit and appropriate provisions should be incorporated into this section. The scope should include wetland general permits under s. 281.36(3g); however, the provisions under this section of sub. (3) should apply, and potentially subs. (5) and (7) to the extent that those sections do not conflict with the terms of a General Permit.
11. Edits made to sub. (3) to address drafter note on page 4., 5.g. The intent is that DNR delineations be consistent with Corps delineations.
12. Edits made to address drafter note on page 4., 5.i. in sub(4). The permit standard has been revised for consistency with s. 281.36

13. On page 3, 2. the drafter notes that the distinction between federal and nonfederal wetlands has been eliminated. This is generally acceptable; however, edits were made to sub. (8)(b) to incorporate the federal compensatory mitigation requirements into DNR's review with respect to federal wetland impacts.

14. The drafter's note on page 4,5.j. indicates that the mitigation program differs from s. 281.36(3r). The intent in this section is to allow for all types of projects that can offset impacts to wetlands, not just projects involving the preservation, creation, restoration or enhancement of wetlands.

15. An edit was made to sub. (10) to reflect that a s. 281.36(3g) permit if issued should also be part of the mining permit.

16. On page 5, 5.k. the drafter's note asks whether "comparable legal instruments" should be included. Edits have been made to include this concept.

17. Edits have been made to sub. (12), exemptions, to address the drafter's note on page 5, 5.L.

18. The drafter noted on page 5, 6. a change from "statute or rule" to "law" in sub. (12)(a) - this is acceptable.

19. On page 4, 4. The drafter notes that this section was rewritten. The revised language is acceptable; however, a few additional provisions have been added for clarity.

Tradewell, Becky

From: Konopacki, Larry
Sent: Friday, December 28, 2012 4:06 PM
To: Tradewell, Becky
Cc: Henning, Anna
Subject: odds and ends (1)

Hi Becky,

Could you also make the following changes to LRB 762/P1? Of course, I'd be interested in your thoughts if you don't think these are appropriate:

- 100- See Robins note in file*
- ✓* On p. 9, line 5, change "subsection" to "section"
 - ✓* On p. 77, line 7, change "mitigation" to "offsetting"
 - Ret ✓* On p. 89, line 13, change "mitigated" to "offset"
 - ✓* On p. 111, line 14 and 15, replace these lines with "(c) The deadlines under paragraphs (a) and (b) do not apply to an application for an air pollution control permit for which the department receives an objection from the federal environmental protection agency under s. 285.62 (6)."

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Tradewell, Becky

From: Konopacki, Larry
Sent: Thursday, January 03, 2013 4:34 PM
To: Tradewell, Becky; Gibson-Glass, Mary; Kite, Robin
Cc: Henning, Anna
Subject: GOP draft -1/3/12

Hi all, we heard back from Jen Esser. They asked for the following with respect to the mining draft:

- ✓ - Please make no changes to the waste characterization methodology at this time, ie: leave as in LRB 00762 (#15 of the "drafting Instructions" document). Continue to work on this part for a possible future amendment after introduction of the bill.
- ✓ - Please continue to leave out any minimum well separation along the MIB (#28 of the "drafting Instructions" document).
- ✓ - Please do not include changes to the permit timeline and substantive permitting procedure for approvals applied for after the mining permit decision is issued. Continue to work on this part for a possible future amendment after introduction of the bill.
- Please specify that the venue for any judicial review proceeding under the bill is the same as is provided for the mandamus action.

That's all. Thanks.

Larry

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Tradewell, Becky

From: Konopacki, Larry
Sent: Friday, January 04, 2013 1:11 PM
To: Tradewell, Becky
Cc: Henning, Anna
Subject: RE: GOP bill - thoughts on contested case hearing section

Becky, Anna and I think that explicit language should be added per your note on page 2 about the contested case hearings being combined.

Otherwise, with the addition of the judicial review venue change we received yesterday, this appears to accomplish everything that we were asked to do.

Thanks!

Larry

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Gibson-Glass, Mary

From: Konopacki, Larry
Sent: Saturday, January 05, 2013 6:05 PM
To: Gibson-Glass, Mary
Cc: Tradewell, Becky; Henning, Anna
Subject: GOP mining bill - Wetlands

Hi Mary, the wetlands section looks fantastic. Great job! The reorganization took me a while to sort through, but it was unquestionably worthwhile. I have a couple of questions/comments for our discussion tomorrow morning:

In the insert in s. 281.36 (3g) (h) 2. (page 1, line 17), the reference to s. 295.60 (2) (b) should be to (3) (b).

diff. of approval Should the "scope" provision be more developed? It seems to me that the section should apply to "a wetland individual permit under this section and any other approval associated with a mining operation or bulk sampling for which a wetland impact evaluation is required." (since I wrote this a couple hours ago, I've changed my mind, but I still want to see what you are thinking about this.)

project In your new s. 295.60 (4) (b) (page 3, line 24 of the insert), I think that we need to include "the proposed project causing the discharge or other activity"

diff. of approval Should the definition of "wetland impact evaluation" include "an evaluation of impacts to wetlands associated with a mining operation or bulk sampling"? *leave as is for*

RCT **Don't we have to tie the three approval findings to applications for "other" approvals, too?

project I think that the use of the word "project" instead of "discharge" in the approval findings should be considered, unless you accept the following suggestion:

? **I also think that we have to put par. (4) (c) back in, albeit in a more appropriate place than it was in previous versions of the bill. Probably at the end of the new sub. (6). This would also allow us to remove some of the references to mitigation that you added to the three approval factors.

may not deny Remove par. (b) from page 6, line 3 of insert?

? *p. 7.* On page 6, line 20 of the insert, I think that we need to specify that this only applies to consequences that the department determines are not already compensated for by the federal mitigation measures.

? It looks like you left out the language added to (4) (b) on page 4 of the wetlands markup – can you help me to understand what was requested here? *addition to "fed. certification" language*

? Can some of the changes to Insert 125-8 in the wetlands markup, p. 8, be added? *leave as is*

? Even if we don't use the suggested language in the wetlands markup, can we come up with a better way to state what is in (8) (d) 1.?

Under former versions of sub. (9), the requirement for subsequent protection only appears to apply to wetlands "at an on-site location." This is not included in the new language. What is the significance of this phrase in the former versions? *do not limit on-site*

Let's make the changes to the exemptions on the top of the wetlands markup page 12, since they match current law.

Thanks, and again, great work!

Larry

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From: Gibson-Glass, Mary
Sent: Friday, January 04, 2013 4:31 PM
To: Konopacki, Larry
Subject:

Here it is, there is only one insert

Mary Gibson-Glass
Senior Legislative Attorney
Legislative Reference Bureau
608 267 3215

<< File: 13-0762/P2insMG >>