

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. 295.60⁸ (9)[✓], 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

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

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

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

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

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

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

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

- 1 1. Tourism.
- 2 2. Employment.
- 3 3. Schools and medical care facilities.
- 4 4. Private and public social services.
- 5 5. The tax base.
- 6 6. The local economy.

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

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

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

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

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

24 (d) The public notice, informational hearing, and comment provisions in s.
25 295.57, the provision concerning the effective date of approvals in s. 295.58 (6), and

1 the provisions for review in s. 295.77^{(1) and (2)} apply to an environmental impact statement
2 prepared under this subsection. If the department revises and redistributes an
3 environmental impact statement or portion of an environmental impact statement
4 prepared under this subsection, the department shall distribute the environmental
5 impact statement or portion of the environmental impact statement as provided in
6 s. 295.57, but the period for public comment is 30 days, rather than 45 days.

7 (e) The department shall conduct its environmental review process jointly with
8 any federal or local agency that consents to a joint environmental review process.
9 The department may adopt any environmental analysis prepared by another state
10 agency or by a federal or local agency. The department may enter into a written
11 agreement with any of those agencies that have a major responsibility related to or
12 that are significantly affected by the proposed mining. In the written agreement, the
13 parties shall define the responsibility of each agency in the development of a single
14 environmental impact statement on the proposed mining and outline the procedures
15 to be used in the regulatory process. The department shall be the lead agency for any
16 environmental review process involving other state agencies. To the extent that any
17 federal or local agency's environmental review process conflicts with the provisions
18 of this section or s. 295.57, the department shall follow the provisions of this section
19 and s. 295.57 and may only coordinate its environmental review to the extent
20 consistent with the provisions of this section and s. 295.57. The department shall
21 comment on any federal agency's environmental assessment or environmental
22 impact statement associated with a mining project in accordance with s. NR 150.30,
23 Wis. Adm. Code.

24 (5) RELATIONSHIP TO OTHER LAWS. This section and s. 295.57 govern the
25 department's obligations under ss. 1.11 and 1.12 with respect to a mining project.

1 Sections 23.11 (5) and 23.40 and ss. NR 2.085, 2.09, and 2.157, Wis. Adm. Code, do
2 not apply with respect to a mining project. The rest of ch. NR 2, Wis. Adm. Code, only
3 applies with respect to a mining project to the extent that it does not conflict with this
4 section and s. 295.57. Sections NR 150.24 and 150.25, Wis. Adm. Code, do not apply
5 with respect to a mining project. The rest of ch. 150, Wis. Adm. Code, only applies
6 with respect to a mining project to the extent that it does not conflict with this section
7 and s. 295.57.

8 **295.56 Exemptions.** (1) The department may grant an exemption, as
9 provided in this section, from any of the requirements of this subchapter applicable
10 to any of the following:

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

13 (b) A mining permit.

14 (c) Any other approval.

15 (2) (a) An applicant shall submit a request for an exemption in writing and
16 shall describe the grounds for the exemption and provide documentation identifying
17 the conditions requiring the exemption, the reasons for the exemption, and the
18 reasonableness of the exemption.

19 (b) An applicant may obtain an exemption only if the applicant submits the
20 request no later than the 180th day after the application for the mining permit is
21 administratively complete under s. 295.57 (2), unless the condition that is the basis
22 for the requested exemption is not known to the applicant before that day, in which
23 case the deadline is extended to the 20th day before the deadline under s. 295.57 (7)

24 (a).

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

7 1. The exemption will not result in significant adverse environmental impacts.

8 2. The exemption will result in significant adverse environmental impacts, but
9 the applicant will offset those impacts through ^amitigation ^{program} as provided in s. 295.60, ⁽⁸⁾
10 through the measures provided in s. 295.605, or through the conservation measures
11 provided in s. 295.61.

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

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

20 **295.57 Application procedure.** (1) SUBMISSION. (a) An applicant shall
21 submit the application for a mining permit as provided in s. 295.47.

22 (b) The department shall protect as confidential any information, other than
23 effluent data, contained in an application for a mining permit, upon a showing that
24 the information is entitled to protection as a trade secret, as defined in s. 134.90 (1)
25 (c), and any information relating to production or sales figures or to processes or

1 production unique to the applicant or that would tend to adversely affect the
2 competitive position of the applicant if made public.

3 (2) DETERMINATION OF ADMINISTRATIVE COMPLETENESS. (a) The department shall
4 review an application for a mining permit and, within 30 days after the application
5 is submitted, shall determine either that the application is complete or that
6 additional information is needed. If the department determines that the application
7 is complete, the department shall notify the applicant in writing of that fact within
8 the 30-day period and the date on which the department sends the notice is the day
9 on which the application is administratively complete.

10 (b) If the department determines under par. (a) that an application is
11 incomplete, the department shall notify the applicant in writing and may make one
12 request for additional information during the 30-day period specified in par. (a).
13 Within 10 days after receiving additional requested information from the applicant,
14 the department shall notify the applicant in writing as to whether it has received all
15 of the requested information. The day on which the department sends the 2nd notice
16 under this paragraph is the day on which the application is administratively
17 complete.

18 (c) If the department fails to meet the 30-day time limit under par. (a) or the
19 10-day time limit under par. (b), the application is administratively complete on the
20 last day of the 30-day time limit or 10-day time limit.

21 (d) The department may request additional information needed to process a
22 mining application from the applicant after the application is administratively
23 complete, but the department may not delay the determination of administrative
24 completeness based on a request for additional information.

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1 **(3) NOTICE OF ADDITIONAL APPROVALS.** Within 30 days after the mining permit
2 is administratively complete under sub. (2), the department shall notify the
3 applicant in writing of any approval required for the construction or operation of the
4 mining site that was not previously identified by the department.

5 **(3m) RECEIPT OF CERTAIN APPROVALS.** If a storm water discharge permit under
6 s. 283.33 (1) (a) or a water quality certification under rules promulgated under subch.
7 II of ch. 281 to implement 33 USC 1341 (a) is needed for a mining operation, the
8 person applying for the mining permit may apply for and be issued the permit or
9 certification.

10 **(4) PUBLIC INFORMATION AND NOTICE.** (a) The department shall make available
11 for review in the city, village, or town in which the proposed mining site is located,
12 information concerning the proposed mining, including all of the following:

13 1. The application for the mining permit, including the mining plan,
14 reclamation plan, and mining waste site feasibility study and plan of operation.

15 2. Any of the following relating to an approval other than the mining permit:

16 a. The application.

17 b. A draft approval.

18 c. Information or summaries relating to the approval.

19 3. The environmental impact statement, environmental impact report, and any
20 additional supporting information used in the department's evaluation of the
21 proposed mining.

22 4. The department's analyses and preliminary determinations relating to any
23 approval.

24 (b) The department shall distribute a notice that describes the availability of
25 the information under par. (a); the opportunity for written public comment, including

1 an invitation for the submission of written comments by any person within 45 days
2 after the notice is published; and the date, time, and location of the public
3 informational hearing and that includes any additional information that a law
4 concerning any approval requires to be provided. The department shall publish the

5 notice as a Class (1) notice under ch. 985. The department shall also send the notice
6 to all of the following: 1 INS. 107-5 B

7 1. The clerk of any city, village, town, or county with zoning jurisdiction over
8 the proposed mining site.

9 2. The clerk of any city, village, town, or county within whose boundaries any
10 portion of the proposed mining site is located.

11 3. The clerk of any city, village, or town, contiguous to any city, village, or town
12 within whose boundaries any portion of the proposed mining site is located.

13 4. The main public library of each city, village, town, or county with zoning
14 jurisdiction over the proposed mining site or within whose boundaries any portion
15 of the proposed mining site is located.

16 5. Any regional planning commission for the area within which the proposed
17 mining site lies.

18 6. Any state agency that the department knows is required to grant a permit
19 or other authorization necessary for the construction or operation of the proposed
20 mining project.

21 7. The federal environmental protection agency, U.S. Army Corps of Engineers,
22 and states potentially affected by the proposed discharge if a water discharge permit
23 under ch. 283 or a wetland permit that constitutes a water quality certification as
24 required by 33 USC 1341 (1) a is to be considered at the public informational hearing.

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1 8. The federal environmental protection agency and appropriate agencies in
2 other states that may be affected if an air pollution control permit under ch. 285 is
3 to be considered at the public informational hearing.

4 9. If a water withdrawal permit under s. 295.61 for a withdrawal of surface
5 water is to be considered at the public informational hearing, the persons specified
6 in s. 30.18 (4) (a).

7 10. If an individual permit under s. 30.12 for a structure through which water
8 transferred from the Great Lakes basin would be returned to the source watershed
9 through a stream tributary to one of the Great Lakes is to be considered at the public
10 informational hearing, the governing body of each city, village, and town through
11 which the stream flows or that is adjacent to the stream downstream from the point
12 at which the water would enter the stream.

13 11. Any person upon request. *INS. 108-13 ✓*

14 12. The applicant.

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

18 (c) The department shall coordinate the public comment period for the mining
19 permit with the public comment period for any other approval for the mining
20 operation, except that if an application for an approval is filed too late to allow public
21 comment within the public comment period for the mining permit, the department
22 shall issue separate notice, as described in par. (b), for the approval after the
23 application is filed.

24 (5) INFORMATIONAL HEARING. The department shall hold a public informational
25 hearing before it approves or denies an application for a mining permit and not less

1 than 30 days after publishing the ^{or} date of the publication of the
 2 notice under sub. (4) (b). The department shall hold
 3 the public informational hearing in the county where the majority of the proposed
 4 mining site is located. The department shall hold a single public informational
 5 hearing covering the mining permit, all other approvals, and the environmental
 6 impact statement, except that if an application for an approval is filed too late to
 7 allow the application to be considered at the public informational hearing for the
 8 mining permit, the department shall hold a separate public informational hearing
 9 on the approval in the county where the majority of the proposed mining site is
 10 located not less than 30 days after publishing the ^{date of the publication of the} notice under sub. (4) (b) for the
 11 approval. The public informational hearing under this subsection is not a contested
 12 case hearing under ch. 227. At the hearing, the department shall take testimony on
 13 all of the following with regard to any proposed withdrawal of groundwater or
 14 surface water:

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- 14 (a) The public rights in any body of water and the related environment that may
- 15 be injured by the proposed withdrawal of groundwater or surface water.
- 16 (b) The public benefits provided by increased employment, economic activity,
- 17 and tax revenues from the proposed mining operation.
- 18 (c) The direct and indirect social and economic costs and benefits of the
- 19 proposed mining operation.
- 20 (d) Whether the proposed withdrawal of groundwater or surface water will
- 21 consume nonsurplus water.
- 22 (e) The rights of competing users of the groundwater or surface water.
- 23 (f) Any other water withdrawal issues identified by the department as relevant
- 24 to the decision of whether to issue or deny a permit.

1 (6) SUMMARY. After considering the comments received under subs. (4) and (5)
2 and before acting on the application for the mining permit, the department shall
3 prepare a summary of the comments and the department's response to the
4 comments.

5 (7) DEADLINE FOR ACTING ON MINING PERMIT APPLICATION. (a) No more than 420
6 days after the day on which the application for a mining permit is administratively
7 complete under sub. (2), the department shall approve the application, and issue a
8 mining permit, or deny the application, in accordance with s. 295.58, unless the
9 department and the applicant agree to extend the deadline. The department and the
10 applicant may agree to not more than one extension and that extension may not
11 exceed 60 days. The department and the applicant may enter into an extension only
12 if one of the following applies:

13 1. An extension is necessary to enable the department and the U.S. Army Corps
14 of Engineers to jointly prepare their environmental impact statements.

15 2. New information or a change to the mining proposal necessitates additional
16 time to review the application.

17 (b) If the department does not comply with the deadline under par. (a),
18 including any extension agreed to by the applicant, the department shall refund the
19 fees under s. 295.73 (3) (a) and (d) that were paid by the applicant.

20 (c) If the department does not comply with the deadline under par. (a),
21 including any extension agreed to by the applicant, the applicant may bring an action
22 for mandamus ^{INSE-A 110-22} to compel the department to approve or deny the application.

23 Notwithstanding s. 814.04 (1), in an action under this paragraph the court shall
24 award the applicant its costs, including reasonable attorney fees, if it determines
25 that the department did not comply with the deadline under par. (a).

1 (8) DEADLINE FOR ACTING ON OTHER APPROVALS. (a) Except as provided in par.
2 (c), if an applicant files an application for an approval other than a mining permit
3 no later than 60 days after the day on which the application for the mining permit
4 is administratively complete under sub. (2), the department shall approve the
5 application, and issue the approval, or deny the application no later than the
6 deadline under sub. (7) (a), including any extension agreed to by the applicant.

7 (b) Except as provided in par. (c) if an applicant files an application for an
8 approval other than a mining permit more than 60 days after the day on which the
9 application for the mining permit is administratively complete under sub. (2), the
10 deadline for acting on the application is extended beyond the deadline under sub. (7)
11 (a), including any extension agreed to by the applicant, by the number of days beyond
12 the 60th day after the day on which the application for the mining permit is
13 administratively complete that the applicant files the application for the approval.

The deadlines in pars.

14 (c) Paragraphs (a) and (b) do not apply to the application for an air pollution
15 control permit under s. 285.62. *Insert 111-15*

16 (d) The department shall incorporate an approval other than a mining permit
17 into a single document with the mining permit, unless the application for the
18 approval was filed more than 60 days after the day on which the application for the
19 mining permit is administratively complete under sub. (2).

20 (8m) SUBMISSION OF TECHNICAL REVIEW TO GREAT LAKES REGIONAL BODY. If an
21 applicant files an application under s. 281.346 for an approval for a withdrawal of
22 surface water or groundwater that is subject to regional review or council approval,
23 the department shall provide its technical review, as defined in s. 281.346 (1) (u), to
24 the regional body, as defined in s. 281.346 (1) (q), no later than 90 days after the
25 applicant files the application for the approval.

1 (9) APPLICABLE PROCEDURE. The provisions of this section and ss. 295.58 (5) and
2 (6) and 295.77^{(1) and (2)} concerning public notice, comment, and hearing; issuance of
3 department decisions; effective date of department decisions; and review of
4 department decisions; and the duration of approvals apply to any approval,
5 notwithstanding any provisions related to those matters in s. 44.40 or 169.25, subch.
6 I or VI of ch. 77, ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291, or rules promulgated
7 under those provisions, except as provided in s. 281.343 (7r) and except that if a
8 withdrawal of surface water or groundwater is subject to regional review or council
9 approval under s. 281.346, the applicable provisions related to regional review or
10 council approval apply.

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

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

17 2. That the waste site feasibility study and plan of operation complies with s.
18 295.51.

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

21 3m. That the proposed mining is likely to meet or exceed the regulations that
22 apply to municipal floodplain zoning ordinances contained in the uniform rules
23 promulgated by the department for preparation and implementation of municipal
24 floodplain zoning ordinances.

1 4. That the proposed mining is not likely to result in substantial adverse
2 impacts to public health, safety, or welfare.

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

5 6. That the applicant has applied for all necessary zoning approvals applicable
6 to the proposed mining.

7 (b) The department shall approve or deny an application for a mining permit
8 in writing and shall include the reasons for its decision with clarity and in detail.
9 The department may modify the applicant's proposed mining plan, reclamation plan,
10 or mining waste site feasibility study and plan of operation in order to meet the
11 requirements of this subchapter, and, as modified, approve the application. The
12 approval of the application for a mining permit constitutes the approval of the
13 mining plan, reclamation plan, and waste site feasibility study and plan of operation.
14 In its decision on the application for a mining permit, the department shall include
15 a final decision on compliance with s. 1.11 and the requirements of s. 295.53,
16 discussing all of the following:

17 1. Whether the department has considered the environmental impact
18 statement and comments received on it.

19 2. Whether the department has complied with ss. 1.11 and 295.53.

20 3. Whether, consistent with social, economic, and other essential
21 considerations, the department has adopted all practicable means within its
22 authority to avoid or minimize any harm to the environment and, if not, why not.

23 (2) CRITERIA FOR DENIAL. The department shall deny the mining permit if it
24 finds any of the following:

25 (a) That the site is unsuitable for mining.

1 (b) That the proposed mining may reasonably be expected to create any of the
2 following situations:

3 1. Hazards resulting in irreparable, substantial physical damage to any of the
4 following that cannot be prevented under the requirements of this subchapter,
5 avoided to the extent practicable by removal from the area of hazard, or ^{offset} mitigated
6 by purchase or by obtaining the consent of the owner:

7 a. A dwelling house.

8 b. A public building.

9 c. A school.

10 d. A church.

11 e. A cemetery.

12 f. A commercial or institutional building.

13 g. A public road.

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

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

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

24 (d) Subject to sub. (3), that the applicant, principal shareholder of the
25 applicant, or a related person has within 10 years before the application is submitted

1 forfeited a mining reclamation bond that was posted in accordance with a permit or
2 other authorization for a mining operation in the United States, unless the forfeiture
3 was by agreement with the entity for whose benefit the bond was posted and the
4 amount of the bond was sufficient to cover all costs of reclamation.

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

- 10 1. The person convicted has been pardoned for all of the felonies.
- 11 2. The person convicted is a related person or an officer or director of the
12 applicant with whom the applicant terminates its relationship.
- 13 3. The applicant included in its permit application under s. 295.47 a plan to
14 prevent the occurrence in this state of events similar to the events that directly
15 resulted in the convictions.

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

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

1 **(3) EXCEPTION FROM DENIAL CRITERIA.** The department may not deny a mining
2 permit under sub. (2) (d) to (g) if the person subject to the convictions, forfeiture,
3 permanent revocation, bankruptcy, or dissolution is a related person but the
4 applicant shows that the person was not the parent corporation of the applicant, a
5 person that holds more than a 30 percent ownership in the applicant, or a subsidiary
6 or affiliate of the applicant in which the applicant holds more than a 30 percent
7 interest at the time of the convictions, forfeiture, permanent revocation, bankruptcy,
8 or dissolution.

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

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

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

16 (c) An approval issued for a mining project under ch. 23, 29, 30, 31, 169, 281,
17 283, 285, 289, or 291, except for a permit under ch. 283 or 285 that is subject to a
18 federal requirement limiting its duration, remains valid for the life of the mining
19 project, subject to the enforcement provisions applicable to the approval.

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

22 **(7) MERCHANTABLE BY-PRODUCTS.** In a mining permit, the department shall
23 require the operator to treat merchantable by-products as refuse if after 3 years from
24 the time the merchantable by-products result from or are displaced by mining the

1 material has not been transported off the mining site, unless removal is continuing
2 at a rate of more than 12,000 cubic yards per year.

3 (8) GENERAL CONTRACTOR OR AFFILIATE. No operator may engage a general
4 contractor or affiliate to operate a mining site if the general contractor or affiliate has
5 been convicted of more than one felony for violation of a law for the protection of the
6 natural environment arising out of the operation of a mining site in the United States
7 within 10 years before the issuance of the operator's mining permit, unless the
8 general contractor or affiliate receives the department's approval of a plan to prevent
9 the occurrence in this state of events similar to the events that directly resulted in
10 the convictions.

11 **295.59 Bonds and other security.** (1) SECURITY FOR RECLAMATION. (a) Upon
12 notification that an application for a mining permit has been approved by the
13 department but before beginning mining, the operator shall furnish one of the
14 following to the department:

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

18 2. Cash.

19 3. Certificates of deposit.

20 4. Government securities.

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

23 (c) The operator shall furnish the security required under par. (a) in the amount
24 equal to the estimated cost to the state of fulfilling the reclamation plan, other than
25 the cost of long-term care of the mining waste site, in relation to the portion of the

1 mining site that will be disturbed by the end of the following year. The department
2 shall determine the estimated cost of reclamation of each mining site on the basis of
3 relevant factors, including the character and nature of the lands to be reclaimed, the
4 future suitable use of the land involved, the topography of the mining site, the
5 methods of reclamation being employed, the depth and composition of overburden,
6 and the depth of the ferrous mineral deposit being mined.

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

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

- 21 (a) A bond.
22 (b) Cash.
23 (c) Certificates of deposit.
24 (d) Government securities.
25 (e) Insurance.

1 (3) WRITTEN AUTHORIZATION TO MINE. Upon approval of the operator's bonds or
2 other security under subs. (1) and (2m), mining application, and certificate of
3 insurance, the department shall issue written authorization to begin mining at the
4 permitted mining site in accordance with the approved mining plan, reclamation
5 plan, and mining waste site feasibility study and plan of operation.

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

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

21 **295.60 Impacts to wetlands.** (1) DEFINITIONS. In this section:

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

1 (b) "Ceded territory" means the territory in Wisconsin ceded by the Chippewa
2 Indians to the United States in the treaty of 1837, 7 Stat. 536, and the treaty of 1842,
3 7 Stat. 591.

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

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

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

11 (f) "Mitigation bank" means a system of accounting for wetland loss and
12 mitigation that includes one or more sites where wetlands are restored, enhanced,
13 or created to provide transferable credits to be subsequently applied to offset
14 significant adverse impacts to other wetlands.

15 (g) "On-site location" means a location that is within one-half mile of an outer
16 boundary of a mining site. ← INSERT 120-14

17 (h) "Practicable" means available and capable of being implemented after
18 taking into consideration cost, available technology, and logistics in light of the
19 overall project purposes and the needs of bulk sampling or a mining operation.

20 (i) "Water basin" means the Lake Michigan basin, the Lake Superior basin, or
21 the Mississippi River basin or other water basin established by the department. ← INSERT 120-21

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

24 (k) "Watershed" means an area of land where all of the water drains into a
25 common waterway.

1 (k) ~~(b)~~ "Wetland water quality standard" means a ^{wetland} water quality standard specified
2 under sub. ⁽⁵⁾ ~~(b)~~ or any other water quality standard set by
3 rule under 5.281.15

4 (2) SCOPE. This section applies to any approval that involves an evaluation of
5 any impact to wetlands that is associated with mining or bulk sampling.

6 (2) ~~(8)~~ WETLAND DETERMINATIONS AND DELINEATIONS. For purposes of this section, ^{INSERT 121-4}
7 wetland determinations and wetland boundary delineations shall be consistent with
8 the U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual and any final
9 regional supplement to the manual. ^{INSERT 121-7} The department may rely on wetland

10 determinations and wetland boundary delineations made by other agencies and
11 consultants. If the applicant for a wetland permit or for any other approval for an
12 activity involving impacts to wetlands has provided information to the department
13 that is identified in the manual or any final regional supplement as being sufficient
14 to make a wetland determination or a delineation of boundaries, the department may
15 visit ^{a mining} the site to conduct surveys or gather additional site-specific quantitative data
16 provided that the department does not discontinue the processing of the application
17 to do so.

18 (4) ~~WETLAND PERMIT~~ (a) ^{REQUIRED FOR WETLANDS} ~~Permit required.~~ No person may discharge dredge or
19 fill material associated with a mining operation or bulk sampling into a wetland
20 unless the discharge is authorized under a wetland permit issued under this section
21 or a wetland ^{individual} general permit issued under 5.281.36(3g).

22 (b) ~~Federal certification.~~ For purposes of this section, a wetland permit issued
23 under this section constitutes water quality certification as required by 33 USC 1341
24 (a). ^{subject to par. (b)}

25 (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, the department shall first

1 determine whether any impact to the wetland caused by the mining operation or bulk
2 sampling can be avoided or minimized to the extent practicable. If the impacts have
3 been avoided or minimized to the extent practicable, any remaining impacts to
4 wetlands may not be a basis for a denial of a wetland permit provided that any
5 remaining significant adverse impacts are offset under a mitigation program under
6 sub. (9).

7 (d) *Siting analysis.* 1. An applicant for a wetland permit shall submit a siting
8 analysis to the department for review. In reviewing the siting analysis, the
9 department shall recognize all of the following:

10 a. The limitations associated with the proposed location of the ferrous mineral
11 deposits to be mined or associated with bulk sampling.

12 b. The need for the mining waste sites and any processing facilities to be
13 contiguous to the location of the ferrous mineral deposits to be mined.

14 c. The presumption that wetlands will be impacted.

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

18 3. If it is impracticable to avoid an impact to, or the use of, a wetland, the
19 applicant shall identify in the siting analysis, and the department shall review, those
20 configurations that would result in impacts to the fewest acres of wetlands to the
21 extent practicable. The department shall determine which configuration will
22 minimize the impacts to the fewest acres.

23 4. After the department makes the determination under subd. 3., the
24 department shall evaluate the impact of the mining operation to the functional
25 values and water quality of the wetland.

In issuing wetland individual permits under this section,

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~~(5) EVALUATION OF IMPACTS. The department shall determine the impact of a proposed activity upon the functional values and water quality of a wetland 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.~~

~~(6) WETLAND WATER QUALITY STANDARDS. The following wetland water quality standards apply to any wetland/permit issued under this section:~~

(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 ~~and uses~~ consist of all of the following:

← INSERT 123-8

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.

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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 functional values and water
8 quality identified under par. (a), and any minimization of the following must be taken
9 into 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.

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(7) SCOPE OF EVALUATION. For purposes of issuing a wetland permit under this section, the department shall evaluate whether an activity will result in a significant adverse impact to the functional values and water quality associated with a wetland by doing all of the following:

(a) Comparing the functional values and water quality 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.

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

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(8) APPROVAL BY DEPARTMENT. The department shall issue a wetland permit under this section for a wetland, if the department determines that all of the following will apply:

(a) All practicable measures will be taken to minimize any adverse impact to wetlands.

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

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~~(8)~~ (9) MITIGATION PROGRAM. (a) *Contents*. A mitigation program to ~~offset~~

for significant adverse impacts to functional values and water quality of wetlands shall

contain proposed projects for mitigation and a schedule for implementing the

projects. ^A These projects may be performed by a person other than the applicant,

subject to the department's approval of the projects and schedule.

(b) *Option of applicant*. An applicant submitting a program under par. (a) may

submit options for mitigation. These options may include any combination of the

types of mitigation specified in par. (d). In preparing the program, the applicant shall

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1 identify and consider mitigation that could be conducted within the same watershed
2 in which the mining site is located.

3 (c) *Ratios for mitigation.* The amount of mitigation required may not exceed
4 1.5 acres of mitigation for each acre of adversely impacted wetland. For purpose of
5 credits in a mitigation bank, each acre that is subject to mitigation shall count as at
6 least one credit.

7 (d) *Sequence; types of mitigation.* If it is not practicable or ecologically
8 preferable to conduct mitigation at an on-site location or if there is no on-site
9 location that will provide sufficient wetland acreage, the department shall allow the
10 applicant to conduct mitigation at a site other than an on-site location, subject to par.

11 (e). Mitigation under a program under par. (a) may be accomplished through any of
12 the following types:

*by an applicant or other person
approved by the department.*

13 1. Implementation of a project for mitigation
14 2. Purchase of mitigation credits from a mitigation bank for a site in a
15 mitigation bank that is located anywhere in the state, subject to par. (e).

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

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

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

*that will be required to compensate for
adverse impacts
to wetlands
located in the
ceded territory*

1 (10) MINING PERMIT. Any wetland permit issued under this section, including
 2 all of the conditions imposed as part of the wetland permit, shall be included in the
 3 mining permit.

4 (11) CONSERVATION EASEMENTS. (a) A person who is the holder of a wetland
 5 permit that authorizes mitigation to be implemented by the holder of the wetland
 6 permit issued under this section at an on-site location shall grant a conservation
 7 easement under s. 700.40 to the department to ensure that the wetland that is
 8 subject to the mitigation will not be destroyed or substantially degraded by any
 9 subsequent proprietor of or holder of interest in the property on which the wetland
 10 is located. The department shall suspend the mining permit if the holder of the
 11 mining permit fails to grant the easement within the time limit set forth in the
 12 mining permit. If the holder subsequently grants the conservation easement to the
 13 department, the department shall reinstate the mining permit.

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

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

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

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

23 (12) EXEMPTIONS. (a) *Artificial wetlands.* All of the following artificial
 24 wetlands that are associated with a mining operation are exempt from the wetland

1 permitting provisions and mitigation provisions under this section and under any
2 other law relating to impacts on wetlands:

← INS 128-2

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

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

8 3. An artificial wetland that is ^{an} actively maintained farm drainage ^{or} ~~and~~ roadside
9 ^{ditch} ~~ditches~~.

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

11 (b) *Other exempted activities.* All of the following activities that are associated
12 with a mining operation or bulk sampling are exempt from the wetland permitting
13 ~~provisions and mitigation provisions under this section and any other law relating~~
14 ~~to impacts on wetlands~~ if the applicant minimizes any adverse effect on the
15 environment as a result of any of these activities:

← INS 128-15

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

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

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

← INSERT 128-21

22 (11) ~~(7)(13)~~ RELATIONSHIP TO OTHER LAWS. None of the following apply to a mining
23 operation or bulk sampling:

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

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

3 (c) Any other rule promulgated by the department that relates to wetlands that
4 conflicts with this section. *an approval* ✓

5 **295.605 Impacts to navigable waters.** (1) DEFINITION. In this section,
6 “navigable water activity” means an activity for which a permit or contract is
7 required under s. 30.12, 30.123, 30.19, 30.195, or 30.20.

8 (2) PERMIT OR CONTRACT ^{Approval CS} REQUIRED. No person may engage in any navigable
9 water activity associated with bulk sampling or mining unless the person has been
10 issued a permit or entered into a contract ^{granted an approval} as provided under sub. (4).

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

14 1. The person leases the piece of riparian property from the owner.

15 2. The person holds an easement on the piece of riparian property and the
16 easement authorizes the person to exercise that riparian right.

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

21 (4) REQUIREMENTS. (a) *Generally.* The department shall issue a permit, or enter
22 into a contract ^{grant an approval} for a navigable water activity if the navigable water activity meets
23 all of the following requirements:

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

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

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

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

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

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

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

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

15 4. Measures to enhance flood storage.

16 5. ^A Mitigation ^{program} (as provided under s. 295.60) (8)

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

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

24 schedule for implementation, and shall issue the permit or enter into the contract.

grant the approval

1 (c) *Applicability of requirements.* The requirements that are specified in par.

2 (a) 1. to 4. are in lieu of any requirements required for ~~permits~~ ^{approvals} under ss. 30.12 (3m)

3 (c), 30.123 (8) (c), 30.19 (4) (c), ~~and 30.195 (2) (c), and are in lieu of any requirements~~

4 ~~for contracts under s. 30.20~~ ^{including those} that relate to the state's or public's interests, and shall

5 be used, in conjunction with the measures required under par. (b), in any evaluation

6 by the department pursuant to 33 USC 1341. ^{CS} ~~Approval~~

7 (5) ~~PERMIT~~ ^{an approval} CONDITIONS. The department may impose conditions in a permit for

8 a navigable water activity that it determines to be necessary to ensure that the

9 navigable water activities subject to the ~~permit~~ ^{approval} meet the requirements under sub.

10 (4) (a).

11 (6) RELATIONSHIP TO OTHER LAWS. (a) Chapter 30 and any rules promulgated

12 under that chapter apply to any navigable water activity subject to this section to the

13 extent that they do not conflict with this section, except as provided in par. (b).

14 (b) Sections ~~30.208,~~ ^e 30.209 and 30.2095 and any rules promulgated under

15 those sections, do not apply to any navigable water activity that is subject to this

16 section.

17 **295.607 Shoreland and floodplain zoning.** (1) (a) In this section:

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

20 2. "Shoreland zoning ordinance" means a shoreland zoning ordinance or
21 regulation adopted under s. 59.692, 61.351, 62.231, or 281.31.

22 (2) (a) The department may not prohibit a development or construction activity
23 to be located in an area that would otherwise be prohibited under a shoreland zoning
24 ordinance if the development or construction activity is authorized by the
25 department as part of a mining operation covered by a mining permit under s. 295.58.

1 (b) A development or construction activity located in an area that would
2 otherwise be prohibited under a shoreland zoning ordinance does not violate the
3 applicable ordinance if the development or construction activity is authorized by the
4 department as part of a mining operation covered by a mining permit under s. 295.58.
5 No shoreland zoning variance is required for a development or construction activity
6 located as provided under this paragraph.

7 (3) A municipal floodplain zoning ordinance under s. 87.30 may not prohibit
8 development or construction activity authorized by the department as part of a
9 mining operation covered by a mining permit under s. 295.58, except to the extent
10 necessary for the municipality to which the floodplain zoning ordinance applies to
11 maintain eligibility for participation in the National Flood Insurance Program.

12 **295.61 Withdrawals of surface waters and groundwater. (1)**

13 DEFINITIONS. In this section:

14 (a) “Authorized base level of water loss” has the meaning given in s. 281.35 (1)

15 (b).

16 (b) “Environmentally sound and economically feasible water conservation
17 measures” has the meaning given in s. 281.346 (1) (i).

18 (c) “Great Lakes basin” has the meaning given in s. 281.35 (1) (d).

19 (d) “High capacity well” has the meaning given in s. 281.34 (1) (b).

20 (e) “Interbasin diversion” has the meaning given in s. 281.35 (1) (g).

21 (em) “Riparian restoration project” means a project that will restore or enhance
22 the natural beneficial uses and value of a watercourse.

23 (f) “Upper Mississippi River basin” has the meaning given in s. 281.35 (1) (j).

24 (g) Unless the context otherwise requires, “use” includes dewatering.

25 (h) “Water loss” has the meaning given in s. 281.35 (1) (L).

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

2 (2) PERMIT REQUIRED. No person may engage in any withdrawal or use of surface
3 water as part of a mining operation or bulk sampling ^{Inset 133-3} unless the person has been
4 issued a water withdrawal permit under this section. No person may engage in any
5 withdrawal or use of groundwater as part of a mining operation or bulk sampling if
6 the capacity and rate of withdrawal of all wells involved in the withdrawal of
7 groundwater or ⁱⁿ the dewatering of mines exceeds 100,000 gallons each day ^{Inset 133-7} unless the
8 person has been issued a water withdrawal permit under this section.

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

13 (3).

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14 (b) *Siting analysis*. If withdrawal of water at a mining operation or for bulk
15 sampling will involve one or more high capacity wells, the department shall require
16 an applicant for a water withdrawal permit to submit a siting analysis for the
17 purpose of determining the location of the high capacity wells. The analysis shall
18 include alternate proposed locations for each high capacity well. In evaluating a
19 submitted analysis, the department shall recognize there is a need for mining waste
20 sites and processing facilities, including wastewater and sludge storage or treatment
21 lagoons, to be contiguous to the location of the ferrous mineral deposit, and shall
22 allow any high capacity well to be located so that need will be met. The department
23 shall approve the location of each high capacity well as part of the permit issued
24 under sub. (4).

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

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

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

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

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

18 4. The proposed withdrawal and use of the water will not significantly impair
19 the rights of riparian owners or the applicant obtains the consent of the riparian
20 owners.

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

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

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

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

7 1. Environmentally sound and economically feasible water conservation
8 measures.

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

12 3. Protection of important upland groundwater recharge areas.

13 4. Stabilization of shorelands.

14 5. Restoration or enhancement of the natural beneficial uses and values of a
15 stream or river.

16 6. Implementation of any feasible methods to offset impacts to water quality
17 or quantity.

18 7. Supplementation of additional water to water bodies to offset lower water
19 levels.

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

22 9. ^A Mitigation ^{program} as provided in s. 295.60 (8) ✓

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

1 11. A riparian restoration project.

2 12. Measures as provided in s. 295.605.

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

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

17 (e) Use of nonriparian waters. ^{on nonriparian property} Water withdrawn in accordance with a water
18 withdrawal permit may be used on nonriparian property.

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

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

5 1. The location of the withdrawal or use.

6 2. The authorized base level of water loss from the withdrawal or use.

7 3. The dates on which or seasons during which withdrawal or use of the water
8 may occur.

9 4. The purposes for the withdrawal or use of the water.

10 5. The amount and quality of return flow required and the place of the
11 discharge.

12 6. The requirements for reporting volumes and rates of withdrawal and any
13 other data specified by the department.

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

17 (b) If the department determines that a high capacity well that would be
18 covered by a water withdrawal permit may impair a privately owned high capacity
19 well, the department shall include in the water withdrawal permit conditions that
20 will ensure that the privately owned high capacity well will not be impaired, unless
21 the private high capacity well owner agrees to the impairment.

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

24 2. If the request for a modification under subd. 1. does not result in an increase
25 in an existing withdrawal resulting in a water loss averaging more than 2,000,000

1 gallons per day in any 30-day period above the operator's authorized base level of
2 water loss, within 30 days of receiving the request the department shall approve the
3 request and amend the permit to incorporate the modification.

4 3. a. If the request for a modification under subd. 1. results in an increase in
5 an existing withdrawal resulting in a water loss averaging more than 2,000,000
6 gallons per day in any 30-day period above the operator's authorized base level of
7 water loss, the department shall determine whether it is required, under ch. NR 150,

8 Wis. Adm. Code to prepare an environmental assessment or environmental impact
9 statement and, if so, shall prepare an environmental assessment or an
10 environmental impact statement. If the department determines that, under ch. NR
11 150, Wis. Adm. Code, the operator must prepare an environmental impact report, the
12 department may only request information in the environmental impact report that
13 relates to decisions that the department makes under this section related to the
14 permit and the department shall limit its analysis to an evaluation of the request for
15 the modification.

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

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

4 (b) 1. The department may propose modifications to any of the conditions in the
5 water withdrawal permit. ^{Insert 139-5} If it proposes a modification, the department shall
6 ^{Insert 139-6} determine whether it is required, ~~under ch. NR 150, Wis. Adm. Code,~~ ^{Insert 139-6} to prepare an
7 environmental assessment or environmental impact statement and, if so, shall
8 prepare an environmental assessment or an environmental impact statement. If the
9 department ^{Insert 139-9} determines ^{Insert 139-9} that, ~~under ch. NR 150, Wis. Adm. Code,~~ the operator must
10 prepare an environmental impact report, the department may only request
11 information in the environmental impact report that relates to decisions that the
12 department makes under this section related to the permit and the department shall
13 limit its analysis to an evaluation of the proposed modification.

^{INS. 139-14}
14 2. The department shall publish a class 1 notice, under ch. 985, of the
15 availability of information about a proposed modification under this paragraph, the
16 opportunity to comment within 30 days after the ^{date of the publication} notice is published, and the ^{of the} ~~notice~~
17 opportunity to request a public informational hearing. The department shall also
18 provide the notice to the applicant, the persons specified in s. 30.18 (4) (a), and if the
19 modification involves a structure through which water transferred from the Great
20 Lakes basin would be returned to the source watershed through a stream tributary
21 to one of the Great Lakes, the governing body of each city, village, and town through
22 which the stream flows or that is adjacent to the stream downstream from the point
23 at which the water would enter the stream. ^{INS. 139-23}

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

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

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

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

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

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

14 (b) A person claiming damage to the quantity or quality of the person's private
15 water supply caused by bulk sampling or mining may file a complaint with the
16 department and, if there is a need for an immediate alternative source of water, with
17 the city, village, or town where the private water supply is located. The department
18 shall conduct an investigation and if the department concludes that there is reason
19 to believe that the bulk sampling or mining is interrelated to the condition giving rise
20 to the complaint, it shall schedule a hearing.

21 (c) The city, village, or town in which is located the private water supply that
22 is the subject of a complaint under par. (a) shall, upon request, supply necessary
23 amounts of water to replace the water formerly obtained from the damaged private
24 supply. Responsibility to supply water begins at the time the complaint is filed and

1 ends at the time the decision of the department made at the conclusion of the hearing
2 is implemented.

3 (d) If the department concludes after the hearing that bulk sampling or mining
4 is the principal cause of the damage to the private water supply, it shall issue an order
5 to the operator requiring the provision of water to the person found to be damaged
6 in a like quantity and quality to that previously obtained by the person and for a
7 period of time that the water supply, if undamaged, would be expected to provide a
8 beneficial use, requiring reimbursement to the city, village, or town for the cost of
9 supplying water under par. (c), if any, and requiring the payment of compensation
10 for any damages unreasonably inflicted on the person as a result of damage to the
11 person's water supply. The department shall order the payment of full compensatory
12 damages up to \$75,000 per claimant. The department shall issue its written findings
13 and order within 60 days after the close of the hearing. Any judgment awarded in
14 a subsequent action for damages to a private water supply caused by bulk sampling
15 or mining shall be reduced by any award of compensatory damages previously made
16 under this subsection for the same injury and paid by the operator. The department
17 shall change the dollar amount under this paragraph annually, beginning with 1978,
18 according to the method under s. 70.375 (6). Pending the final decision on any appeal
19 from an order issued under this paragraph, the operator shall provide water as
20 ordered by the department. The existence of the relief under this section is not a bar
21 to any other statutory or common law remedy for damages.

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

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

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

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

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

19 **295.62 Mining waste site construction and completion reports.** (1) An
20 operator shall construct a mining waste site substantially in accordance with the
21 approved mining waste site feasibility study and plan of operation.

22 (2) The operator shall inspect the mining waste site before it is used and ensure
23 that all associated structures are in substantial compliance with the mining waste
24 site feasibility study and plan of operation. The operator shall have a professional
25 engineer, registered as such under ch. 443, document mining waste site construction

1 and render an opinion as to whether the mining waste site has been constructed in
2 substantial conformance with the mining waste site feasibility study and plan of
3 operation. The engineer may use aerial or ground photographs to document the
4 inspection, but photographs do not in themselves constitute compliance with this
5 subsection. The operator shall maintain a complete file describing the items
6 inspected and their condition.

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

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

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

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

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

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

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

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

24 (c) If the request under par. (a) is to cancel any or all of the unmined part of a
25 mining site, the department shall ascertain, by inspection, if mining has occurred on

1 the land. If the department finds that no mining has occurred, the department shall
2 order release of the bond or other security posted for the land being removed from
3 the permitted mining site and cancel or amend the operator's written authorization
4 to conduct mining on the mining site. The department may not approve the removal
5 of land where mining has occurred from a permitted mining site, or release that land
6 from the bond or other security under this subsection, unless the operator has
7 completed reclamation to the satisfaction of the department.

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

17 (a) Location and boundary of the mining area.

18 (b) Any mine mill.

19 (c) Any open pit.

20 (d) Stockpiles of overburden.

21 (e) Stockpiles of waste rock.

22 (f) Ferrous ore stockpiles.

23 (g) Streams, lakes, and reservoirs.

24 (h) Tailings basins.

25 (i) Roads.

1 (j) Sequential numbers or letters or other method, as approved by the
2 department, permanently assigned to portions of the mining site that have been
3 abandoned before abandonment of the entire mining operation.

4 (k) Changes in the surface area disturbed by mining during the preceding year,
5 indicated by vertical crosshatching or other method approved by the department.

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

9 (m) Elevations of stockpiles and tailings basins.

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

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

15 (p) The date the map was prepared.

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

1 to the mining plan, reclamation plan, or mining waste site feasibility study and plan
2 of operation. The public notice, public comment, and public hearing procedures in
3 s. 295.57 apply to amended plans and applications under this subsection. The
4 department shall approve or deny the amended mining plan, reclamation plan, or
5 mining waste site feasibility study and plan of operation in accordance with s.
6 295.58, within 30 days following the close of the public comment period. The
7 applicant may continue to operate under the existing mining permit until the
8 amended mining permit is issued or denied.

9 **295.635 Required mining waste site inspections, record keeping,**
10 **reporting, and responses. (1) DEFINITIONS.** In this section:

11 (a) “Active dam” means a dam and associated settling area into which tailings
12 or wastewater are being introduced or that has not been reclaimed in a manner
13 approved by the department.

14 (b) “Inactive dam” means a dam and associated settling area that is no longer
15 being used for disposal of tailings or wastewater and that has been reclaimed in a
16 manner approved by the department.

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

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

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

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

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