CHAPTER 107

MINING AND METAL RECOVERY

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Cross−reference: See also chs. 293 and 295 for provisions relating to metallic mining, nonmetallic mining reclamation, and oil and gas exploration and production.

SUBCHAPTER I

GENERAL REQUIREMENTS

107.001 Definitions. In this subchapter:

(1) "Exploration mining lease" means any lease, option to lease, option to purchase or similar conveyance entered into for the purpose of determining the presence, location, quality or quantity of nonferrous metallic minerals or for the purpose of mining, developing or extracting nonferrous metallic minerals, or both under ch. 293. Any lease, option to lease, option to purchase or similar conveyance entered into by a mining company is rebuttably presumed to be an exploration mining lease.

(3) "Mining company" means any person or agent of a person who has a prospecting or mining permit under s. 293.45 or 293.49.

History: 1977 c. 253; 1979 c. 353; 1995 a. 227; 2013 a. 1.

107.01 Rules governing mining rights. Where there is no contract between the parties or terms established by the landlord to the contrary the following rules and regulations shall be applied to mining contracts and leases for the digging of nonferrous metallic minerals:

(1) No license or lease, verbal or written, made to a miner shall be revocable by the maker thereof after a valuable discovery or prospect has been struck unless the miner shall forfeit the miner's right by negligence such as establishes a forfeiture according to mining usages.

(2) The discovery of a crevice or range containing nonferrous metallic minerals shall entitle the discoverer to the nonferrous metallic minerals pertaining thereto, subject to the rent due the discoverer's landlord, before as well as after the nonferrous metallic minerals are separated from the freehold; but such miner shall not be entitled to recover any nonferrous metallic minerals or the value thereof from the person digging on the miner's range in good faith and known to be mining thereon until the miner shall have given notice of the miner's claim; and the miner shall be entitled to the nonferrous metallic minerals dug after such notice.

(3) Usages and customs among miners may be proved in explanation of mining contracts to the same extent as usage may be proved in other branches of business.

History: 1975 c. 41 s. 51; 1993 a. 492; 2013 a. 1.

107.02 Mining statement; penalty. When there is no agreement between the parties to any mining lease, license or permit, to mine or remove nonferrous metallic minerals from any lands in this state, regulating the method of reporting the amount of nonferrous metallic minerals taken, the person mining and removing the nonferrous metallic minerals shall keep proper and correct books, and therefrom to make and deliver by or before the fifteenth day of each month to the lessor, owner or person entitled thereto, a detailed statement covering the operations of the preceding month. The statement shall show the total amount of tons or pounds of each kind of nonferrous metallic minerals produced; if sold, then to whom sold, giving the date of sale, date of delivery to any railroad company, naming the company, and the station where delivered or billed for shipment; the name and address of the purchaser; the price per ton at which sold and the total value of each kind of nonferrous metallic minerals so sold. The books shall be always open to any owner, lessor, licensor or stockholder, if the owner, lessor or licensor is a corporation, and to any person or stockholder interested in any such mining operations, for the purpose of inspection and taking copies thereof or abstracts therefrom. Any person and every officer, agent or employee of any thereof, who violates this section, or who makes any false or incomplete entries on any such books or statements, shall be fined not less than $100 or imprisoned in the county jail for not more than 3 months or both.

History: 1979 c. 89; 2013 a. 1.

107.03 Conflicting claims. In case of conflicting claims to a crevice or range bearing nonferrous metallic minerals the court may continue any action to enforce a claim or grant any necessary time for the purpose of allowing parties to prove up their mines or diggings if it satisfactorily appears necessary to the ends of justice. In such case the court or judge may appoint a receiver and provide that the mines or diggings be worked under the receiver's direction, subject to the order of the court, in such manner as best ascertains the respective rights of the parties. The nonferrous metallic minerals raised by either party pending the dispute shall be delivered to the receiver, who may, by order of the court or judge, pay any rent or other necessary expenses therefrom.

History: 1977 c. 449; 2013 a. 1.

107.04 Lessee's fraud; failure to work mine. Any miner who conceals or disposes of any nonferrous metallic minerals or mines or diggings for the purpose of defrauding the lessor of rent or who neglects to pay any rent on nonferrous metallic minerals raised by the miner for 3 days after the notice thereof and claim of the rent, shall forfeit all right to his or her mines, diggings or range; and the landlord after the concealment or after 3 days have expired from the time of demanding rent, may proceed against the miner to recover possession of the mines or diggings in circuit court as in the case of a tenant holding over after the termination of the lease. If a miner neglects to work his or her mines or diggings according to the usages of miners, without reasonable excuse, he or she shall likewise forfeit the mines or diggings and the landlord may proceed against the miner in like manner to recover possession of the mines or diggings.

History: 1977 c. 449; 2013 a. 1.

107.11 Account of nonferrous metallic minerals received. Every person operating a metal recovery system and every purchaser of nonferrous metallic minerals shall keep a substantially bound book, ruled into suitable columns, in which shall

be entered from day to day, as nonferrous metallic minerals are received, the following items: the day, month and year when received; the name of the person from whom purchased; the name of the person by whom hauled and delivered; name of the owner of the land from which the nonferrous metallic minerals were obtained, or if not known, the name of the diggings or some distinct description of the land. The bound book shall be kept at the furnace or at the usual place of business of such person or purchaser or his or her agent in this state, and shall be open to authorized representatives of the department of revenue at reasonable times for inspection and taking extracts.

History: 1977 c. 420; 2013 a. 1.

107.12 Penalty. If any person operating a metal recovery system or purchaser of nonferrous metallic minerals or the agent of any such person or purchaser doing business fails to keep such a book or to make such entries as required under s. 107.11 or unreasonably refuses to show the book for inspection or taking extracts or makes false entries in the book he or she shall forfeit $10 for each offense, one−half to the use of the prosecutor; and each day such failure or refusal continues shall be deemed a distinct and separate offense.

History: 1977 c. 420; 2013 a. 1.

107.15 Requirements for mineral exploration. (1) LEGISLATIVE PURPOSE. The purpose of this section is to further the public interest in informed decision−making by appropriate state agencies, including the office of the state geologist, which are responsible for mineral, geologic and other earth−related sciences by ensuring that those agencies have as much geological information as possible where such information is relevant to their functions and at the same time protecting proprietary rights in such information.

(2) DEFINITIONS. In this section:

(a) "Exploration" has the meaning designated in s. 293.01 (5).

(b) "Licensee" means any person licensed to conduct exploration activities by the department of natural resources under s. 293.21. If the person is a corporation or limited liability company, "licensee" includes the parent and any subsidiary or affiliates of the corporation or limited liability company engaged in mining or activities related to mining in this state.

(c) "Metalliferous minerals" means naturally occurring minerals which contain metal.

(d) "Mining" or "mining operation" has the meaning designated in s. 293.01 (9).

(e) "Prospecting" has the meaning designated in s. 293.01 (18).

(4) RELEASE OF GEOLOGIC DATA. (a) The licensee shall submit to the state geologist a report containing the following information on or before July 1 of the year following each year in which soil, rock, core or drill cutting samples are obtained by the licensee:

1. The name and address of the person conducting exploration and, if the person is a corporation or limited liability company, the names and addresses of the parent and any subsidiaries or domestic affiliates of the corporation or limited liability company engaged in exploration activities in this state;

2. The names and addresses of the owners of the lands in this state on which exploration activities have been conducted;

3. The specific location, inclination and the collar azimuth of completed drill holes;

4. The date core samples and drill cuttings which have been collected or prepared, were obtained;

5. The approximate elevation of the collars of drill holes;

6. The percent core recovery log; and

7. A noninterpretive lithologic description of all portions of core samples and, of all drill cuttings if any noninterpretive lithologic descriptions of drill cuttings are prepared, excluding mention of metalliferous minerals found in the samples and cuttings.

(b) The state geologist may require that designated representative and reasonable quantities of soil, rock, core or drill cutting samples obtained by a licensee during exploration be retained by the licensee and released to the state geologist for purposes of geologic study. The state geologist shall designate the samples and the quantities to be retained by the licensee and shall notify the licensee by December 31 of the year in which a report under par. (a) is submitted. The licensee shall release the samples no later than July 1 of the year following the year in which an exploration lease for the site where the samples were obtained has expired, but release shall be no later than 10 years after the commencement of drilling at the site.

(c) The state geologist or his or her designee may visually examine, at reasonable hours mutually agreed upon by the licensee and the state geologist, core samples or drill cuttings which are reported on under par. (a), except for those core samples or drill cuttings or portions of core samples or drill cuttings which the licensee deems proprietary or confidential.

(d) No later than upon the termination of mining or the abandonment of a site subsequent to prospecting, or 10 years from the date core samples or drill cuttings were originally obtained, the licensee shall submit to the state geologist, if not previously submitted, the following noninterpretive geologic information and samples:

1. The name and address of the person conducting exploration and, if the person is a corporation or limited liability company, the names and addresses of the parent and any subsidiaries or domestic affiliates of the corporation or limited liability company engaged in exploration, prospecting or mining in this state;

2. The names and addresses of the owners of the lands in this state on which exploration activities have been conducted;

3. The specific location, inclination and the collar azimuth of completed drill holes;

4. A noninterpretive lithologic description of all portions of core samples and, of all drill cuttings if any noninterpretive lithologic descriptions of drill cuttings are prepared, excluding mention of the quantity of metalliferous minerals found in the samples and cuttings;

5. Geologic maps of a lithologic nature of a scale smaller than one inch equals 200 feet normally prepared as a permanent record of an exploration, prospecting or mining operation;

6. The date core samples and drill cuttings were obtained;

7. The approximate elevation of the collars of drill holes;

8. The percent core recovery log; and

9. Upon the request of the state geologist, a representative sample of any core samples or drill cuttings which have been collected.

(e) The information submitted to the state geologist under par. (a) or (d) may not be used by any person as the basis for any claim of civil liability which is unrelated to metalliferous mineral mining. Any person submitting information in good faith and in compliance with this section shall not be held responsible for any consequences of the use of or reliance upon such information.

(f) Exploration data and samples submitted under par. (a) or (b), or both, shall be kept confidential until December 31 of the 3rd year following the date of submission. The confidentiality of the data and samples obtained during prospecting or mining shall extend to the time of the abandonment of a site subsequent to prospecting, the termination of mining if mining occurs, or 10 years after the core samples or drill cuttings were obtained, whichever is earliest.

(5) FEES. The state geologist shall charge a reasonable fee to persons requesting copies of any written information collected or prepared under this section. A person employed by a state agency shall not be charged for such information if the information requested is necessary for the performance of the person's duties.

(6) PENALTIES. (a) Any person who knowingly or willfully fails to comply with the reporting requirements of this section shall be fined up to $50,000.

(b) In addition to the penalty prescribed in par. (a), any person who fails to submit information which is required to be submitted under this section shall forfeit $10 for each day after the date on which the information should have been submitted until the information is provided.

(c) Any person who knowingly or willfully violates the confidentiality requirements of this section shall be fined not less than $50 nor more than $50,000, or be imprisoned for not less than one month nor more than 6 months, or both. This paragraph shall not prevent the use of the confidential information:

1. For assessment purposes under s. 36.25 (6); or

2. By the secretary of the department of natural resources for purposes of specific environmental analysis and permit application evaluation and by the secretary of the department of revenue provided that the confidential information shall not be released by either the department of revenue or the department of natural resources, that the departments of revenue and natural resources shall establish procedures to keep any confidential information confidential, and that the responsible person or persons in each department shall be subject to the penalty specified under this paragraph for the unauthorized release of confidential information.

History: 1977 c. 422, 447; 1979 c. 142; 1981 c. 87; 1993 a. 112; 1995 a. 227.

The public disclosure of confidential mining exploration data and core samples is an unconstitutional taking of property without just compensation. Noranda Exploration, Inc. v. Ostrom, 113 Wis. 2d 612, 335 N.W.2d 596 (1983).

107.20 Maximum term for exploration mining leases. **(1)** Any provision of an exploration mining lease entered into after April 25, 1978, granting an option or right to determine the presence, location, quality or quantity of nonferrous metallic minerals shall be limited to a term not exceeding 10 years from the date on which the exploration mining lease is recorded in the office of the register of deeds of the county where the property is located, except that any provision of an exploration mining lease entered into after April 25, 1978, granting an option or right to determine the quality and quantity of nonferrous metallic minerals under a prospecting permit shall be limited to a term not exceeding 10 years from the date that the lessee applies for a prospecting permit under s. 293.35, if the lessee applies for the prospecting permit within 10 years from the date on which the exploration mining lease is recorded in the office of the register of deeds of the county where the property is located.

(2) Any provision of an exploration mining lease entered into after April 25, 1978, granting an option or right to develop or extract nonferrous metallic minerals shall be limited to a term not exceeding 50 years from the date on which the exploration mining lease is recorded in the office of the register of deeds of the county where the property is located.

History: 1977 c. 253; 1981 c. 87; 1995 a. 227; 2013 a. 1.

107.25 Right to cancel exploration mining leases; recording. **(1)** RIGHT TO CANCEL. An exploration mining lease entered into after April 25, 1978 may be canceled by the lessor as follows:

(a) If the lessor is not a public body, the lessor may cancel an exploration mining lease by notifying the lessee within 10 calendar days after the lease is recorded.

(b) If the lessor is a public body as defined in s. 66.1331 (3) (i), the lessor may cancel an exploration mining lease by notifying the lessee within 90 calendar days after the lease is recorded.

(c) The lessor may cancel an exploration mining lease if 10 years have elapsed from the date on which the lease was recorded in the office of the register of deeds of the county where the property is located and the lessee has not formally applied, under s. 293.35 or 293.37, for either a permit to prospect or a permit to mine. In the event that the lessee formally applies for a prospecting permit under s. 293.35 or a mining permit under s. 293.37 within the 10−year period, but does not receive a mining permit under s. 293.49 within the 10−year period following the date of application for the prospecting permit or mining permit, the lessor's right to cancel is revived.

(d) The lessor's right to cancel an exploration mining lease provided in this subsection cannot be waived and any provision to the contrary in such a lease is void.

(e) Paragraphs (a) and (b) do not apply to exploration mining leases of any lands which were the site of a metalliferous mineral mine which was in operation during all or part of the 5−year period prior to April 25, 1978.

(2) NOTIFICATION OF CANCELLATION. A lessor shall notify the lessee of cancellation by registered mail addressed to the lessee. Notice is considered to be given at the time the letter is mailed. The lessor shall also provide written notice of the cancellation to the register of deeds which shall be recorded. The recorded notice shall be in legible form, as determined by the register of deeds and must clearly identify the exploration mining lease document being canceled, the lessor and lessee, the property subject to the lease and the date the lease was originally recorded.

(3) STATEMENT OF RIGHT TO CANCEL. An exploration mining lease shall contain a printed statement in capital and lowercase letters of not less than 12−point boldface type of the lessor's right to cancel as provided in this section and the address to which the notice of cancellation should be mailed.

(4) RECORDING. An exploration mining lease which is not recorded in the office of the register of deeds of the county in which the land is located, within 30 days after it is signed by the lessor, is void.

History: 1977 c. 253; 1981 c. 87; 1983 a. 189 s. 329 (14); 1995 a. 227; 1999 a. 150 s. 672.

SUBCHAPTER II

INJURIES TO PERSONS OR PROPERTY

NOTE: Chapter 353, laws of 1979, which created this subchapter, contains notes explaining the bill.

107.30 Definitions. In this subchapter:

(1) "Concentrates" means the mineral−rich, finished, primary products of a concentrator.

(2) "Concentrator" means a plant where ore is separated into concentrates and tailings.

(3) "Concentrator tailings" means waste material resulting from the washing, concentration or treatment of crushed ore.

(4) "Department" means the department of safety and professional services.

(5) "Environmental pollution" means the physical, chemical or biological alteration of quality of any air, water or land resources of the state which makes the same injurious to public health, harmful to agriculture, commercial or recreational use or deleterious to fish, birds, animals or plant or human life.

(6) "Materials in process" means those materials, other than salvageable by−products, which must be temporarily stored in a controlled manner. These materials include stockpiled development ore other than that in a mine or concentrator, mine backfill and reclaim water. The materials also include intermediate concentrates and intermediate refining and smelting products which require further processing, such as ore concentrates which must be agglomerated prior to marketing.

(7) "Mine excavations" means either shaft or pit excavations from which minerals have been extracted in prospecting or mining.

(8) "Mining" or "mining operation" means all or part of the process involved in the mining of metallic minerals, other than for exploration or prospecting, including commercial extraction, agglomeration, beneficiation, construction of roads, removal of overburden, and the production of refuse.

(9) "Mining company" means any person who, either directly or through subsidiaries, affiliates, contractors or other business arrangements, engages in prospecting, mining, refining or smelting.

(10) "Mining damage appropriation" means the appropriation under s. 20.165 (2) (a).

(11) "Mining site" means the surface or subsurface area disturbed by a mining operation, including the surface or subsurface area from which the minerals or refuse or both have been removed, the surface or subsurface area covered by the refuse, all lands disturbed by the construction or improvement of haulageways, and any surface or subsurface areas in which structures, equipment, materials and any other things used in the mining operation are situated.

(12) "Mining waste" means wastes directly resulting from or displaced by prospecting or mining and from the cleaning, preparation, separation or purification of minerals or metals during prospecting, mining, concentrating, refining or smelting operations and includes but is not limited to concentrator tailings, refinery and smelter residue, refining and smelting process emissions, mining overburden and waste treatment sludges, materials in process and salvageable by−products.

(13) "Mining−related injury" means death or injury to person or property caused by:

(a) Environmental pollution from emissions, seepages, leakages or other discharges from mine excavations in this state or of or from mining waste in this state; or

(b) Substantial surface subsidence from mine excavations in this state.

(14) "Ore" means a mineral which may be mined and processed for sale.

(15) "Prospecting" means engaging in the examination of an area for the purpose of determining the quality and quantity of minerals, other than for exploration but including the obtaining of an ore sample, by such physical means as excavating, trenching, construction of shafts, ramps, and tunnels and other means, other than for exploration, which the department of natural resources, by rule, identifies, and the production of prospecting refuse and other associated activities. "Prospecting" does not include such activities when the activities are, by themselves, intended for and capable of commercial exploitation of the underlying ore body. The fact that prospecting activities and construction may have use ultimately in mining, if approved, does not mean that prospecting activities and construction constitute mining within the meaning of sub. (8), provided such activities and construction are reasonably related to prospecting requirements.

(16) "Prospecting site" means the lands on which prospecting is actually conducted as well as those lands on which physical disturbance will occur as a result of such activity.

(17) "Refinery and smelter residue" means waste material resulting from the refining or smelting of concentrates.

(18) "Refining" means the process by which metal or valuable mineral is extracted and purified from an ore or concentrate and includes but is not limited to hydrometallurgical operations such as leaching and pyrometallurgical operations such as fire refining, roasting and cindering.

(19) "Salvageable by−products" includes but is not limited to coarse tailings and other materials, other than concentrates, resulting from the mining operation which are useful and for which a market or use exists or is anticipated to exist.

(20) "Smelting" means any metallurgical operation in which metal is separated by fusion from those impurities with which it may be chemically combined or physically mixed such as in ores.

(21) "Subsidence" means the sinking down of a part of the earth's crust, including the surface, due to underground excavations or workings.

History: 1979 c. 353; 1995 a. 27, ss. 3776 and 9116 (5); 1995 a. 227; 2003 a. 33; 2011 a. 32; 2013 a. 1.

107.31 Claims against mining damage appropriation.

(1) ADMINISTRATION. The department shall establish by rule procedures for the submission, review, settlement and determination of claims against the mining damage appropriation under this section. The rules shall include procedures for the proration of awards made under this section when the awards exceed the balance in the mining damage appropriation.

(2) WHO MAY FILE CLAIM; NOTICE. (a) Any person may make a claim against the mining damage appropriation to recover damages for mining−related injuries.

(b) Within 10 days of receiving a claim submitted under par. (a), the department shall notify the mining company alleged to have caused the claimant's damages that the claim has been made. Any company alleged to have caused the claimant's damages may, at its sole discretion, become a party to the proceeding.

(3) RECOVERY OF DAMAGES UNDER STRICT LIABILITY. (a) When a claim under this section is not settled, an adjudicatory hearing shall be held. If after the hearing the department finds that the claimant has demonstrated by a preponderance of the evidence that claimant incurred damages from mining−related injuries, it shall make an award from the mining damage appropriation in an amount equal to the damages incurred, except as provided in sub. (4). Payment of the award shall not be delayed or limited in anticipation of any other recovery the claimant may receive by pursuing other remedies.

(b) Damages under this section shall be awarded without regard to fault, except as provided in par. (c).

(c) Contributorily negligent causation shall not bar recovery for a claim filed under this section by any person or his or her legal representative if such negligent causation was not greater than the causation of the mining company, but any award shall be diminished in proportion to the amount of negligent causation attributable to the person recovering.

(d) No award of nonpecuniary damages may be made for a claim under this section unless the claimant demonstrates by a preponderance of the evidence that the claimant is entitled to nonpecuniary damages and that there is a causal relationship between the injury for which pecuniary damages have been awarded and the injury for which nonpecuniary damages are claimed.

(4) LIMITATIONS ON AWARD. (a) Any amount otherwise recovered for the mining−related injury for which a claim is filed under this section shall reduce the amount awarded under this section by the amount otherwise recovered.

(b) No award for a claim under this section may exceed $150,000 for all injuries less any amount subtracted under par. (a) or sub. (3) (c).

(c) No award for loss of society and companionship, pain and suffering or mental anguish may exceed a total of $20,000 and, in any event, no award for nonpecuniary damages may exceed 50 percent of the amount awarded for pecuniary damages.

(d) No award may be made for punitive purposes.

(e) No award for a claim under this section may exceed an amount equal to the balance in the mining damage reserve accumulation.

(5) MINING DAMAGE RESERVE ACCUMULATION. (a) *Calculation.* The mining damage reserve accumulation is calculated by subtracting the total amount of all mining damages awards paid from the appropriation under s. 20.445 (4) (a), 2001 stats., beginning on May 22, 1980 or paid from the appropriation under s. 20.165 (2) (a) from the sum of:

1. Four percent of all moneys distributed under s. 70.395 (1), 1995 stats., and under s. 70.395 (1e) beginning on May 22, 1980; and

2. Prior to 10 years after May 22, 1980, $500,000.

(b) *Proration.* If the balance of the mining damage reserve accumulation is less than $500,000 at the beginning of a fiscal year or falls below that amount at any time, the department shall delay the payment of all mining damage awards during that fiscal

year until after the close of the fiscal year to determine the sufficiency of the mining damage reserve accumulation.

(6) STATE SUBROGATED TO CLAIMANT'S RIGHTS. The state is subrogated to the rights of a claimant who obtains an award under this section in an amount equal to the award and may bring an action under s. 107.32 against a mining company or join in an action brought by a claimant under s. 107.32 to recover the amount awarded the claimant. A claimant who receives an award under this section shall cooperate with the state in any action under this subsection. The department may withhold 5 percent of the total award to which a claimant is entitled under this section until the state decides whether to commence an action under this subsection or, if commenced, until the action is resolved.

(7) ADMISSIBILITY OF FINDINGS AND CONCLUSIONS. The findings and conclusions under this section are not admissible in any civil action brought against a mining company.

(8) APPEAL. Any party to a claim under this section may appeal a decision of the department to circuit court which shall conduct a full evidentiary hearing on the claim.

History: 1979 c. 353; 1981 c. 86; 1997 a. 27; 2003 a. 33; 2011 a. 32.

107.32 Liability of mining companies. A mining company is liable for damages for mining−related injuries resulting from its prospecting, mining, refining or smelting in this state if, and to the degree that, the elements of liability are established in accordance with law, regardless of any change in the nature of the ownership of the interests in the prospecting or mining site, refinery or smelter held by the mining company and regardless of any reorganization, merger, consolidation or liquidation affecting the mining company.

History: 1979 c. 353.

107.33 Limitations on claims and actions for mining−related injuries. The periods of limitation under s. 893.925 apply to all claims and actions for damages arising under or governed by this subchapter.

History: 1979 c. 353; 1979 c. 355 s. 241.

107.34 Application to sites where activities have ceased. This subchapter does not apply to any prospecting or mining site on which prospecting or mining has ceased prior to May 22, 1980 unless prospecting or mining activities are commenced at the site after May 22, 1980, in which case any mining−related injury is within the scope of this subchapter.

History: 1979 c. 353.

107.35 Application to current mining operations. **(1)** If a person incurs a mining−related injury and the mining waste or mine excavation was present, in whole or in part, prior to May 22, 1980 and the waste or excavation was from the prospecting, mining or other practice of a mining company that is actively engaged in mining or prospecting in this state on May 22, 1980, then s. 107.31 applies only if:

(a) The person has fully pursued all other judicial or administrative remedies against the mining company to recover damages for the mining−related injury and the person or any party subrogated to the person's rights has not received compensation for the mining−related injury as a result of pursuing the other judicial or administrative remedies; or

(b) The person chooses to pursue, as his or her sole remedy, compensation from the mining damage appropriation. If a person chooses to pursue a claim under this paragraph, he or she may not pursue any other remedy for the mining−related injury.

(2) If a person makes a claim against the mining damage appropriation under the circumstances described in sub. (1) (a):

(a) The claimant may introduce into evidence any relevant findings of fact made in any prior administrative or judicial proceeding.

(b) The state is not subrogated under s. 107.31 (6) to the rights of the claimant and, in any case, shall be bound by any decision regarding elements of liability other than causation and injury−in−fact made in any prior administrative or judicial proceeding involving the claimant.

(3) If a person makes a claim against the mining damage appropriation under sub. (1) (b), the state may recover under s. 107.31 (6) any payment received by the claimant from the mining damage appropriation only if, in addition to other elements of liability, the state proves that the mining−related injury was from mine excavations or mining wastes created after May 22, 1980. The state's burden of persuasion with regard to the latter element of liability may not be shifted to the mining company.

History: 1979 c. 353.

Legislative Council Note, 1979: This section addresses the application of the mining damage award procedure to a mining−related injury that results from mining waste or a mine excavation which was present, wholly or partially, prior to the effective date of the bill and which resulted from the practices of a mining company actively engaged in prospecting or mining in this state on the effective date of the bill. A person who incurs a mining−related injury under these circumstances may make a claim against the mining damage appropriation only if he or she does not pursue any other remedy or, if other remedies are pursued, only if all other remedies have been exhausted and no compensation for the injury has been received as a result of pursuing other remedies. The state's subrogation rights are limited with respect to awards for mining−related injuries covered by this section. [Bill 570−S]