



State of Wisconsin
2011 - 2012 LEGISLATURE



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**SENATE SUBSTITUTE AMENDMENT 2,
TO 2011 ASSEMBLY BILL 426**

March 5, 2012 – Offered by JOINT COMMITTEE ON FINANCE.

1 **AN ACT** *to repeal* 107.001 (2) and 293.01 (8); *to renumber and amend* 30.123
2 (8) (c), 70.395 (1e) and 87.30 (2); *to amend* 20.370 (2) (gh), 20.455 (1) (gh),
3 20.566 (7) (e), 20.566 (7) (v), 25.46 (7), 29.604 (4) (intro.), 29.604 (4) (c) (intro.),
4 30.025 (1e) (a), 30.025 (1m) (intro.), 30.025 (1m) (c), 30.025 (1s) (a), 30.025 (2),
5 30.025 (2g) (b) (intro.), 30.025 (4), 30.12 (3m) (c) (intro.), 30.133 (2), 30.19 (4) (c)
6 (intro.), 30.195 (2) (c) (intro.), 70.375 (1) (as), 70.375 (1) (bm), 70.375 (2) (a),
7 70.375 (6), 70.38 (2), 70.395 (2) (dc) 1., 70.395 (2) (dc) 2., 70.395 (2) (dc) 3., 70.395
8 (2) (dc) 4., 70.395 (2) (dg), 70.395 (2) (fm), 70.395 (2) (h) 1., 70.395 (2) (hg), 70.395
9 (2) (hr), 70.395 (2) (hw), 107.001 (1), 107.01 (intro.), 107.01 (2), 107.02, 107.03,
10 107.04, 107.11, 107.12, 107.20 (1), 107.20 (2), 107.30 (8), 107.30 (15), 107.30
11 (16), 160.19 (12), 196.491 (3) (a) 3. b., 196.491 (4) (b) 2., 281.65 (2) (a), 281.75
12 (17) (b), 287.13 (5) (e), 289.35, 289.62 (2) (g) 2. and 6., 292.01 (1m), chapter 293
13 (title), 293.01 (5), 293.01 (7), 293.01 (9), 293.01 (12), 293.01 (18), 293.01 (25),

1 293.21 (1) (a), 293.25 (2) (a), 293.25 (4), 293.37 (4) (b), 293.47 (1) (b), 293.50 (1)
2 (b), 293.50 (2) (intro.), 293.50 (2) (a), 293.50 (2) (b), 293.51 (1), 293.65 (3) (a),
3 293.65 (3) (b), 293.86, chapter 295 (title), 295.16 (4) (f), 299.85 (7) (a) 2. and 4.,
4 299.95, 323.60 (5) (d) 3. and 710.02 (2) (d); and **to create** 20.370 (2) (gi), 20.445
5 (1) (gm), 25.49 (2m), 29.604 (7m), 30.025 (1e) (c), 30.025 (4m), 31.23 (3) (e),
6 70.375 (2b), 70.375 (2c), 70.395 (1e) (a), 70.395 (1e) (b), 87.30 (2) (b), 106.05,
7 106.35, 196.491 (3) (a) 3. c., 227.483 (3) (c), 238.14, 293.01 (12m), subchapter III
8 of chapter 295 [precedes 295.40] and 323.60 (1) (gm) of the statutes; **relating**
9 **to:** regulation of ferrous metallic mining and related activities, procedures for
10 obtaining approvals from the Department of Natural Resources for the
11 construction of utility facilities, making an appropriation, and providing
12 penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

13 **SECTION 1.** 20.370 (2) (gh) of the statutes is amended to read:

14 20.370 (2) (gh) *Mining— Nonferrous metallic mining regulation and*
15 *administration.* The amounts in the schedule for the administration, regulation and
16 enforcement of nonferrous metallic mining exploration, prospecting, mining and
17 mine reclamation activities under ch. 293. All moneys received under ch. 293 shall
18 be credited to this appropriation.

19 **SECTION 2.** 20.370 (2) (gi) of the statutes is created to read:

20 20.370 (2) (gi) *Ferrous metallic mining operations.* All moneys received under
21 subch. III of ch. 295 for the department of natural resource's operations related to
22 ferrous metallic exploration and mining.

23 **SECTION 3.** 20.445 (1) (gm) of the statutes is created to read:

1 20.445 (1) (gm) *Mining industry jobs training grants*. All moneys credited to
2 this appropriation account under s. 70.395 (1e) (a), for mining skills training grants
3 under s. 106.05 and for mining equipment manufacturing training grants under s.
4 106.35.

5 **SECTION 4.** 20.455 (1) (gh) of the statutes is amended to read:

6 20.455 (1) (gh) *Investigation and prosecution*. Moneys received under ss. 23.22
7 (9) (c), 49.49 (6), 100.263, 133.16, 281.98 (2), 283.91 (5), 289.96 (3) (b), 291.97 (3),
8 292.99 (2), 293.87 (4) (b), 295.19 (3) (b) 2., 295.79 (4) (b), and 299.97 (2), for the
9 expenses of investigation and prosecution of violations, including attorney fees.

10 **SECTION 5.** 20.566 (7) (e) of the statutes is amended to read:

11 20.566 (7) (e) *Investment and local impact fund supplement*. The amounts in
12 the schedule to supplement par. (v) for the purposes of ss. 70.395, 293.33 (4) and,
13 293.65 (5) (a), 295.443, and 295.61 (9) (a).

14 **SECTION 6.** 20.566 (7) (v) of the statutes is amended to read:

15 20.566 (7) (v) *Investment and local impact fund*. From the investment and local
16 impact fund, all moneys received under s. 70.395 (1e) and (2) (dc) and (dg), less the
17 moneys appropriated under s. 20.370 (2) (gr), to be disbursed under ss. 70.395 (2) (d)
18 to (g), 293.33 (4) and, 293.65 (5) (a), 295.443, and 295.61 (9) (a).

19 **SECTION 7.** 25.46 (7) of the statutes is amended to read:

20 25.46 (7) The fees imposed under s. 289.67 (1) for environmental management,
21 except that for each ton of waste, of the fees imposed under s. 289.67 (1) (cp) or (cv),
22 \$3.20 for each ton of waste is for nonpoint source water pollution abatement.

23 **SECTION 8.** 25.49 (2m) of the statutes is created to read:

24 25.49 (2m) The moneys transferred under s. 70.395 (1e).

25 **SECTION 9.** 29.604 (4) (intro.) of the statutes is amended to read:

1 29.604 (4) PROHIBITION. (intro.) Except as provided in sub. (6r) and (7m) or as
2 permitted by departmental rule or permit:

3 **SECTION 10.** 29.604 (4) (c) (intro.) of the statutes is amended to read:

4 29.604 (4) (c) (intro.) No person may do any of the following to any wild plant
5 of an endangered or threatened species that is on public property or on property that
6 he or she does not own or lease, except in the course of forestry or agricultural
7 practices ~~or~~, in the construction, operation, or maintenance of a utility facility, or as
8 part of bulk sampling activities under s. 295.45:

9 **SECTION 11.** 29.604 (7m) of the statutes is created to read:

10 29.604 (7m) BULK SAMPLING ACTIVITIES. A person may take, transport, or
11 possess a wild animal on the department's endangered and threatened species list
12 without a permit under this section if the person avoids and minimizes adverse
13 impacts to the wild animal to the extent practicable, if the taking, transporting, or
14 possession does not result in wounding or killing the wild animal, and if the person
15 takes, transports, or possesses the wild animal for the purpose of bulk sampling
16 activities under s. 295.45.

17 **SECTION 12.** 30.025 (1e) (a) of the statutes is amended to read:

18 30.025 (1e) (a) Except as provided in ~~par.~~ pars. (b) and (c), this section applies
19 to a proposal to construct a utility facility if the utility facility is required to obtain,
20 or give notification of the wish to proceed under, one or more permits.

21 **SECTION 13.** 30.025 (1e) (c) of the statutes is created to read:

22 30.025 (1e) (c) This section does not apply to a proposal to construct a utility
23 facility for ferrous mineral mining and processing activities governed by subch. III
24 of ch. 295, unless the person proposing to construct the utility facility elects to
25 proceed in the manner provided under this section.

1 **SECTION 14.** 30.025 (1m) (intro.) of the statutes is amended to read:

2 30.025 **(1m)** PREAPPLICATION PROCESS. (intro.) Before filing ~~an a combined~~
3 application ~~under this section for permits under sub. (1s) with the department in lieu~~
4 ~~of separate applications~~, a person proposing to construct a utility facility shall notify
5 the department of the intention to file ~~an a combined~~ application under sub. (1s).
6 After receiving such notice, the department shall confer with the person, in
7 cooperation with the commission, to make a preliminary assessment of the project's
8 scope, to make an analysis of alternatives, to identify potential interested persons,
9 and to ensure that the person making the proposal is aware of all of the following:

10 **SECTION 15.** 30.025 (1m) (c) of the statutes is amended to read:

11 30.025 **(1m)** (c) The timing of information submissions that the person will be
12 required to provide in order to enable the department to participate in commission
13 review procedures and to process the combined application for permits in a timely
14 manner.

15 **SECTION 16.** 30.025 (1s) (a) of the statutes is amended to read:

16 30.025 **(1s)** (a) Any person proposing to construct a utility facility to which this
17 section applies shall, in lieu of separate application for permits, submit one combined
18 application for permits together with any additional information required by the
19 department. The combined application for permits shall be filed with the
20 department at the same time that an application for a certificate is filed with the
21 commission under s. 196.49 or in a manner consistent with s. 196.491 (3) and shall
22 include the detailed information that the department requires to determine whether
23 ~~an a combined~~ application for permits is complete and to carry out its obligations
24 under sub. (4). The department may require supplemental information to be
25 furnished thereafter.

1 **SECTION 17.** 30.025 (2) of the statutes is amended to read:

2 30.025 (2) HEARING. Once the applicant meets the requirements of sub. (1s) (a),
3 the department may schedule the matter for a public hearing. Notice of the hearing
4 shall be given to the applicant and shall be published as a class 1 notice under ch.
5 985. The department may give such further notice as it deems proper, and shall give
6 notice to persons requesting same. One copy of the combined application for permits
7 shall be available for public inspection at the office of the department, at least one
8 copy in the regional office of the department, and at least one copy at the main public
9 library, of the area affected. Notwithstanding s. 227.42, the hearing shall be an
10 informational hearing and may not be treated as a contested case hearing nor
11 converted to a contested case hearing.

12 **SECTION 18.** 30.025 (2g) (b) (intro.) of the statutes is amended to read:

13 30.025 (2g) (b) (intro.) The department shall participate in commission
14 investigations or proceedings under s. 196.49 or 196.491 (3) with regard to any
15 proposed utility facility ~~that is subject to this section~~ for which a combined
16 application for permits is filed under sub. (1s). In order to ensure that the
17 commission's decision is consistent with the department's responsibilities, the
18 department shall provide the commission with information that is relevant to only
19 the following:

20 **SECTION 19.** 30.025 (4) of the statutes is amended to read:

21 30.025 (4) PERMIT CONDITIONS. The permit may be issued, or the authority to
22 proceed under a permit may be granted, upon stated conditions deemed necessary
23 to assure compliance with the criteria designated under sub. (3). The department
24 shall grant or deny the combined application for ~~a permit~~ permits for the utility

1 facility within 30 days of the date on which the commission issues its decision under
2 s. 196.49 or 196.491 (3).

3 **SECTION 20.** 30.025 (4m) of the statutes is created to read:

4 30.025 (4m) PROCEDURE FOR A SINGLE PERMIT APPLICATION. (a) A person
5 proposing to construct a utility facility that is related to mining, as defined in s.
6 295.41 (26), and for which not more than one permit is required, may submit an
7 application for that single permit with the department in the same manner as a
8 combined application for permits may be submitted under sub. (1s). If the applicant
9 elects to submit the application in the same manner as a combined application for
10 permits, the procedures under this section that apply to a combined application for
11 permits shall apply to that application for a single permit.

12 **SECTION 21.** 30.12 (3m) (c) (intro.) of the statutes is amended to read:

13 30.12 (3m) (c) (intro.) The department shall issue an individual permit to a
14 riparian owner for a structure or a deposit pursuant to an application under par. (a)
15 if the department finds that all of the following apply requirements are met:

16 **SECTION 22.** 30.123 (8) (c) of the statutes is renumbered 30.123 (8) (c) (intro.)
17 and amended to read:

18 30.123 (8) (c) (intro.) The department shall issue an individual permit
19 pursuant to an application under par. (a) if the department finds that the all of the
20 following requirements are met:

21 1. The bridge or culvert will not materially obstruct navigation,

22 2. The bridge or culvert will not materially reduce the effective flood flow
23 capacity of a stream, and,

24 3. The bridge or culvert will not be detrimental to the public interest.

25 **SECTION 23.** 30.133 (2) of the statutes is amended to read:

1 30.133 (2) This section does not apply to riparian land located within the
2 boundary of any hydroelectric project licensed or exempted by the federal
3 government, if the conveyance is authorized under any license, rule or order issued
4 by the federal agency having jurisdiction over the project. This section does not apply
5 to riparian land that is associated with an approval required for bulk sampling or
6 mining that is required under subch. III of ch. 295.

7 **SECTION 24.** 30.19 (4) (c) (intro.) of the statutes is amended to read:

8 30.19 (4) (c) (intro.) The department shall issue an individual permit pursuant
9 to an application under par. (a) if the department finds that all of the following ~~apply~~
10 requirements are met:

11 **SECTION 25.** 30.195 (2) (c) (intro.) of the statutes is amended to read:

12 30.195 (2) (c) (intro.) The department shall issue an individual permit applied
13 for under this section to a riparian owner if the department determines that all of the
14 following ~~apply~~ requirements are met:

15 **SECTION 26.** 31.23 (3) (e) of the statutes is created to read:

16 31.23 (3) (e) This subsection does not apply to a bridge that is constructed,
17 maintained, or operated in association with mining or bulk sampling that is subject
18 to subch. III of ch. 295.

19 **SECTION 27.** 70.375 (1) (as) of the statutes is amended to read:

20 70.375 (1) (as) “Mine” means an excavation in or at the earth’s surface made
21 to extract metalliferous minerals for which a permit has been issued under s. 293.49
22 or 295.58.

23 **SECTION 28.** 70.375 (1) (bm) of the statutes is amended to read:

24 70.375 (1) (bm) “Mining-related purposes” means activities which are directly
25 in response to the application for a mining permit under s. 293.37 or 295.47; directly

1 in response to construction, operation, curtailment of operation or cessation of
2 operation of a metalliferous mine site; or directly in response to conditions at a
3 metalliferous mine site which is not in operation. "Mining-related purposes" also
4 includes activities which anticipate the economic and social consequences of the
5 cessation of mining. "Mining-related purposes" also includes the purposes under s.
6 70.395 (2) (g).

7 **SECTION 29.** 70.375 (2) (a) of the statutes is amended to read:

8 70.375 (2) (a) ~~In Except as provided in subs. (2b) and (2c), with respect to mines~~
9 not in operation on November 28, 1981, there is imposed upon persons engaged in
10 mining metalliferous minerals in this state a net proceeds occupation tax effective
11 on the date on which extraction begins to compensate the state and municipalities
12 for the loss of valuable, irreplaceable metalliferous minerals. The amount of the tax
13 shall be determined by applying the rates established under sub. (5) to the net
14 proceeds of each mine. The net proceeds of each mine for each year are the difference
15 between the gross proceeds and the deductions allowed under sub. (4) for the year.

16 **SECTION 30.** 70.375 (2b) of the statutes is created to read:

17 70.375 (2b) MINIMUM TAX. With respect to mines in operation after December
18 31, 2011, beginning with the month in which a permit is issued to a person under s.
19 295.47, and for each of the 60 months following that month, the amount of the tax
20 imposed on that person is the greater of the tax computed under sub. (2) or an amount
21 equal to \$83,333 for each month.

22 **SECTION 31.** 70.375 (2c) of the statutes is created to read:

23 70.375 (2c) CREDIT. With respect to mines in operation after December 31,
24 2011, if a person subject to sub. (2b) would have paid less tax under sub. (2) than
25 under sub. (2b), the person may claim as a credit against the tax imposed under sub.

1 (2) or (2b) an amount equal to the difference between the amount paid under sub. (2b)
2 and the amount that the person would have paid under sub. (2), except that the
3 person may not claim a credit amount that would result in less than the total
4 minimum tax liability computed under sub. (2b) for the period for which the person
5 is subject to sub. (2b). The person may carry forward the amount of any unused credit
6 under this subsection, as adjusted under sub. (6), to claim against the person's tax
7 liability in subsequent years until the total amount of the credit is used.

8 **SECTION 32.** 70.375 (6) of the statutes is amended to read:

9 70.375 (6) INDEXING. For calendar year 1983 and corresponding fiscal years and
10 thereafter, the dollar amounts in sub. (5) and s. 70.395 (1) and (2) (d) 1m. and 5. a.
11 and (dg), and the amount of any unused credit under sub. (2c), shall be changed to
12 reflect the percentage change between the gross national product deflator for June
13 of the current year and the gross national product deflator for June of the previous
14 year, as determined by the U.S. department of commerce as of December 30 of the
15 year for which the taxes are due, except that no annual increase may be more than
16 10%. For calendar year 1983 and corresponding fiscal years and thereafter until
17 calendar year 1997 and corresponding fiscal years, the dollar amounts in s. 70.395
18 (1m), 1995 stats., shall be changed to reflect the percentage change between the gross
19 national product deflator for June of the current year and the gross national product
20 deflator for June of the previous year, as determined by the U.S. department of
21 commerce as of December 30 of the year for which the taxes are due, except that no
22 annual increase may be more than 10%. The revised amounts shall be rounded to
23 the nearest whole number divisible by 100 and shall not be reduced below the
24 amounts under sub. (5) on November 28, 1981. Annually, the department shall

1 adopt any changes in dollar amounts required under this subsection and incorporate
2 them into the appropriate tax forms.

3 **SECTION 33.** 70.38 (2) of the statutes is amended to read:

4 70.38 (2) COMBINED REPORTING. If the same person extracts metalliferous
5 minerals from different sites in this state, the net proceeds for each site for which a
6 permit has been issued under s. 293.49 or 295.58 shall be reported separately for the
7 purposes of computing the amount of the tax under s. 70.375 (5).

8 **SECTION 34.** 70.395 (1e) of the statutes is renumbered 70.395 (1e) (intro.) and
9 amended to read:

10 70.395 (1e) DISTRIBUTION. (intro.) Fifteen days after the collection of the tax
11 under ss. 70.38 to 70.39, the department of administration, upon certification of the
12 department of revenue, shall transfer the amount collected in respect to mines not
13 in operation on November 28, 1981, to the investment and local impact fund., except
14 as follows:

15 **SECTION 35.** 70.395 (1e) (a) of the statutes is created to read:

16 70.395 (1e) (a) For the first 24 months following the month in which a person
17 is issued a permit under s. 295.47, the department of administration shall credit the
18 amount collected from any such person, not to exceed \$1,000,000 annually or
19 \$2,000,000 total, to the appropriation under s. 20.445 (1) (gm) and shall transfer any
20 amount in excess of \$1,000,000 annually, or \$2,000,000 total, as provided under par.
21 (b).

22 **SECTION 36.** 70.395 (1e) (b) of the statutes is created to read:

23 70.395 (1e) (b) Except as provided under par. (a), the department of
24 administration shall transfer 60 percent of the amount collected from each person
25 extracting ferrous metallic minerals in this state to the investment and local impact

1 fund and 40 percent of the amount collected from any such person into the economic
2 development fund.

3 **SECTION 37.** 70.395 (2) (dc) 1. of the statutes is amended to read:

4 70.395 (2) (dc) 1. Each person intending to submit an application for a mining
5 permit under s. 293.49 or 295.47 shall pay ~~\$50,000~~ \$75,000 to the department of
6 revenue for deposit in the investment and local impact fund at the time that the
7 person notifies the department of natural resources under s. 293.31 (1) or 295.465
8 of that intent.

9 **SECTION 38.** 70.395 (2) (dc) 2. of the statutes is amended to read:

10 70.395 (2) (dc) 2. A person making a payment under subd. 1. shall pay an
11 additional ~~\$50,000~~ \$75,000 upon notification by the board that the board has
12 distributed 50% of the payment under subd. 1.

13 **SECTION 39.** 70.395 (2) (dc) 3. of the statutes is amended to read:

14 70.395 (2) (dc) 3. A person making a payment under subd. 2. shall pay an
15 additional ~~\$50,000~~ \$75,000 upon notification by the board that the board has
16 distributed all of the payment under subd. 1. and 50% of the payment under subd.
17 2.

18 **SECTION 40.** 70.395 (2) (dc) 4. of the statutes is amended to read:

19 70.395 (2) (dc) 4. Six months after the signing of a local agreement under s.
20 293.41 or 295.443 for the proposed mine for which the payment is made, the board
21 shall refund any funds paid under this paragraph but not distributed under par. (fm)
22 from the investment and local impact fund to the person making the payment under
23 this paragraph.

24 **SECTION 41.** 70.395 (2) (dg) of the statutes is amended to read:

1 70.395 (2) (dg) Each person constructing a metalliferous mining site shall pay
2 to the department of revenue for deposit in the investment and local impact fund, as
3 a construction fee, an amount sufficient to make the construction period payments
4 under par. (d) 5. in respect to that site. Any person paying a construction fee under
5 this paragraph may credit against taxes due under s. 70.375 an amount equal to the
6 payments that the taxpayer has made under this paragraph, provided that the credit
7 does not reduce the taxpayer's liability under s. 70.375 below the amount needed to
8 make the first-dollar payments under par. (d) 1., 2. and 2m. for that year in respect
9 to the taxpayer's mine. For the first 24 months following the month in which the
10 taxpayer is issued a permit under s. 295.47, the taxpayer may not use the credit to
11 reduce the taxpayer's liability under s. 70.375 below the minimum amount required
12 under s. 70.375 (2b), but the taxpayer may use the credit in subsequent years to
13 reduce the taxpayer's liability under s. 70.375 below the minimum amount required
14 under s. 70.375 (2b). Any amount not creditable because of that limitation in any
15 year may be carried forward.

16 **SECTION 42.** 70.395 (2) (fm) of the statutes is amended to read:

17 70.395 (2) (fm) The board may distribute a payment received under par. (dc)
18 to a county, town, village, city, tribal government or local impact committee
19 authorized under s. 293.41 (3) or 295.443 only for legal counsel, qualified technical
20 experts in the areas of transportation, utilities, economic and social impacts,
21 environmental impacts and municipal services and other reasonable and necessary
22 expenses incurred by the recipient that directly relate to the good faith negotiation
23 of a local agreement under s. 293.41 or 295.443 for the proposed mine for which the
24 payment is made.

25 **SECTION 43.** 70.395 (2) (h) 1. of the statutes is amended to read:

1 70.395 (2) (h) 1. Distribution shall first be made to those municipalities in
2 which metalliferous minerals are extracted or were extracted within 3 years
3 previous to December 31 of the current year, or in which a permit has been issued
4 under s. 293.49 or 295.58 to commence mining;

5 **SECTION 44.** 70.395 (2) (hg) of the statutes is amended to read:

6 70.395 (2) (hg) The board shall, by rule, establish fiscal guidelines and
7 accounting procedures for the use of payments under pars. (d), (f), (fm) and (g), sub.
8 (3) and ~~s. ss.~~ 293.65 (5) and 295.61 (9).

9 **SECTION 45.** 70.395 (2) (hr) of the statutes is amended to read:

10 70.395 (2) (hr) The board shall, by rule, establish procedures to recoup
11 payments made, and to withhold payments to be made, under pars. (d), (f), (fm) and
12 (g), sub. (3) and ~~s. ss.~~ 293.65 (5) and 295.61 (9) for noncompliance with this section
13 or rules adopted under this section.

14 **SECTION 46.** 70.395 (2) (hw) of the statutes is amended to read:

15 70.395 (2) (hw) A recipient of a discretionary payment under par. (f) or (g), sub.
16 (3) or ~~s. ss.~~ 293.65 (5) and 295.61 (9) or any payment under par. (d) that is restricted
17 to mining-related purposes who uses the payment for attorney fees may do so only
18 for the purposes under par. (g) 6. and for processing mining-related permits or other
19 approvals required by the municipality. The board shall recoup or withhold
20 payments that are used or proposed to be used by the recipient for attorney fees
21 except as authorized under this paragraph. The board may not limit the hourly rate
22 of attorney fees for which the recipient uses the payment to a level below the hourly
23 rate that is commonly charged for similar services.

24 **SECTION 47.** 87.30 (2) of the statutes is renumbered 87.30 (2) (a) and amended
25 to read:

1 87.30 (2) (a) ~~Every~~ Except as provided in par. (b), every structure, building, fill,
2 or development placed or maintained within any floodplain in violation of a zoning
3 ordinance adopted under this section, or s. 59.69, 61.35 or 62.23 is a public nuisance
4 and the creation thereof may be enjoined and maintenance thereof may be abated by
5 action at suit of any municipality, the state or any citizen thereof. Any person who
6 places or maintains any structure, building, fill or development within any
7 floodplain in violation of a zoning ordinance adopted under this section, or s. 59.69,
8 61.35 or 62.23 may be fined not more than \$50 for each offense. Each day during
9 which such violation exists is a separate offense.

10 **SECTION 48.** 87.30 (2) (b) of the statutes is created to read:

11 87.30 (2) (b) Paragraph (a) does not apply to a structure, building, fill, or
12 development placed or maintained as part of a mining operation covered by a mining
13 permit under s. 295.58 except to the extent that regulation of the placement or
14 maintenance of the structure, building, fill, or development is required for
15 compliance with a floodplain zoning ordinance as provided under s. 295.607 (3).

16 **SECTION 49.** 106.05 of the statutes is created to read:

17 **106.05 Mining skills training grants.** From the appropriation account
18 under s. 20.445 (1) (gm), the department, in consultation with the Wisconsin
19 Economic Development Corporation, shall award a grant annually of not more than
20 \$500,000 to Cooperative Educational Service Agency Number 12 or to an
21 organization operating a skills improvement apprenticeship program that is
22 authorized to administer the operating engineers certification program and to
23 provide training in the operation of heavy equipment for the purpose of establishing,
24 funding, and facilitating cross-training partnership programs between that agency
25 and that organization.

1 **SECTION 50.** 106.35 of the statutes is created to read:

2 **106.35 Mining equipment manufacturing training grants.** From the
3 appropriation account under s. 20.445 (1) (gm), the department, in consultation with
4 the Wisconsin Economic Development Corporation, shall award a grant annually of
5 not more than \$500,000 to Cooperative Educational Service Agency Number 1 or to
6 an organization operating an economic and workforce development center in the
7 southeastern area of this state to establish, fund, and facilitate cross-training
8 partnership programs between that service agency and that organization for the
9 purpose of establishing classroom curriculum and hands-on job training programs
10 that provide individuals with the opportunity to receive instruction relating to the
11 performance of manufacturing jobs in facilities in that area that are involved in
12 producing equipment and products related to the mining industry.

13 **SECTION 51.** 107.001 (1) of the statutes is amended to read:

14 107.001 (1) "Exploration mining lease" means any lease, option to lease, option
15 to purchase or similar conveyance entered into for the purpose of determining the
16 presence, location, quality or quantity of ~~metalliferous~~ nonferrous metallic minerals
17 or for the purpose of mining, developing or extracting ~~metalliferous~~ nonferrous
18 metallic minerals, or both under ch. 293. Any lease, option to lease, option to
19 purchase or similar conveyance entered into by a mining company is rebuttably
20 presumed to be an exploration mining lease.

21 **SECTION 52.** 107.001 (2) of the statutes is repealed.

22 **SECTION 53.** 107.01 (intro.) of the statutes is amended to read:

23 **107.01 Rules governing mining rights.** (intro.) Where there is no contract
24 between the parties or terms established by the landlord to the contrary the following

1 rules and regulations shall be applied to mining contracts and leases for the digging
2 of ~~ores and~~ nonferrous metallic minerals:

3 **SECTION 54.** 107.01 (2) of the statutes is amended to read:

4 107.01 (2) The discovery of a crevice or range containing ~~ores or minerals~~
5 nonferrous metallic minerals shall entitle the discoverer to the ores or minerals
6 pertaining thereto, subject to the rent due the discoverer's landlord, before as well
7 as after the ~~ores or minerals~~ nonferrous metallic minerals are separated from the
8 freehold; but such miner shall not be entitled to recover any ~~ores or minerals~~
9 nonferrous metallic minerals or the value thereof from the person digging on the
10 miner's range in good faith and known to be mining thereon until the miner shall
11 have given notice of the miner's claim; and the miner shall be entitled to the ~~ores or~~
12 minerals nonferrous metallic minerals dug after such notice.

13 **SECTION 55.** 107.02 of the statutes is amended to read:

14 **107.02 Mining statement; penalty.** When there is no agreement between the
15 parties to any mining lease, license or permit, to mine or remove ore nonferrous
16 metallic minerals from any lands in this state, regulating the method of reporting
17 the amount of ore nonferrous metallic minerals taken, the person mining and
18 removing the ~~ore or ores~~ nonferrous metallic minerals shall keep proper and correct
19 books, and therefrom to make and deliver by or before the fifteenth day of each month
20 to the lessor, owner or person entitled thereto, a detailed statement covering the
21 operations of the preceding month. The statement shall show the total amount of
22 tons or pounds of each kind of ~~ore~~ nonferrous metallic minerals produced; if sold, then
23 to whom sold, giving the date of sale, date of delivery to any railroad company,
24 naming the company, and the station where delivered or billed for shipment; the
25 name and address of the purchaser; the price per ton at which sold and the total value

1 of each kind of ~~ore~~ nonferrous metallic minerals so sold. The books shall be always
2 open to any owner, lessor, licensor or stockholder, if the owner, lessor or licensor is
3 a corporation, and to any person or stockholder interested in any such mining
4 operations, for the purpose of inspection and taking copies thereof or abstracts
5 therefrom. Any person and every officer, agent or employee of any thereof, who
6 violates this section, or who makes any false or incomplete entries on any such books
7 or statements, shall be fined not less than \$100 or imprisoned in the county jail for
8 not more than 3 months or both.

9 **SECTION 56.** 107.03 of the statutes is amended to read:

10 **107.03 Conflicting claims.** In case of conflicting claims to a crevice or range
11 bearing ~~ores or~~ nonferrous metallic minerals the court may continue any action to
12 enforce a claim or grant any necessary time for the purpose of allowing parties to
13 prove up their mines or diggings if it satisfactorily appears necessary to the ends of
14 justice. In such case the court or judge may appoint a receiver and provide that the
15 mines or diggings be worked under the receiver's direction, subject to the order of the
16 court, in such manner as best ascertains the respective rights of the parties. The ~~ores~~
17 ~~or~~ nonferrous metallic minerals raised by either party pending the dispute shall be
18 delivered to the receiver, who may, by order of the court or judge, pay any rent or other
19 necessary expenses therefrom.

20 **SECTION 57.** 107.04 of the statutes is amended to read:

21 **107.04 Lessee's fraud; failure to work mine.** Any miner who conceals or
22 disposes of any ~~ores or~~ nonferrous metallic minerals or mines or diggings for the
23 purpose of defrauding the lessor of rent or who neglects to pay any rent on ~~ores or~~
24 nonferrous metallic minerals raised by the miner for 3 days after the notice thereof
25 and claim of the rent, shall forfeit all right to his or her mines, diggings or range; and

1 the landlord after the concealment or after 3 days have expired from the time of
2 demanding rent, may proceed against the miner to recover possession of the mines
3 or diggings in circuit court as in the case of a tenant holding over after the
4 termination of the lease. If a miner neglects to work his or her mines or diggings
5 according to the usages of miners, without reasonable excuse, he or she shall likewise
6 forfeit the mines or diggings and the landlord may proceed against the miner in like
7 manner to recover possession of the mines or diggings.

8 **SECTION 58.** 107.11 of the statutes is amended to read:

9 **107.11 Account of ~~ore~~ nonferrous metallic minerals received.** Every
10 person operating a metal recovery system and every purchaser of ~~ores and~~
11 nonferrous metallic minerals shall keep a substantially bound book, ruled into
12 suitable columns, in which shall be entered from day to day, as ~~ores or~~ nonferrous
13 metallic minerals are received, the following items: the day, month and year when
14 received; the name of the person from whom purchased; the name of the person by
15 whom hauled and delivered; name of the owner of the land from which the ~~ores or~~
16 nonferrous metallic minerals were obtained, or if not known, the name of the
17 diggings or some distinct description of the land. The bound book shall be kept at the
18 furnace or at the usual place of business of such person or purchaser or his or her
19 agent in this state, and shall be open to authorized representatives of the department
20 of revenue at reasonable times for inspection and taking extracts.

21 **SECTION 59.** 107.12 of the statutes is amended to read:

22 **107.12 Penalty.** If any person operating a metal recovery system or purchaser
23 of ~~ores and~~ nonferrous metallic minerals or the agent of any such person or purchaser
24 doing business fails to keep such a book or to make such entries as required under
25 s. 107.11 or unreasonably refuses to show the book for inspection or taking extracts

1 or makes false entries in the book he or she shall forfeit \$10 for each offense, one-half
2 to the use of the prosecutor; and each day such failure or refusal continues shall be
3 deemed a distinct and separate offense.

4 **SECTION 60.** 107.20 (1) of the statutes is amended to read:

5 107.20 (1) Any provision of an exploration mining lease entered into after April
6 25, 1978, granting an option or right to determine the presence, location, quality or
7 quantity of ~~metalliferous~~ nonferrous metallic minerals shall be limited to a term not
8 exceeding 10 years from the date on which the exploration mining lease is recorded
9 in the office of the register of deeds of the county where the property is located, except
10 that any provision of an exploration mining lease entered into after April 25, 1978,
11 granting an option or right to determine the quality and quantity of ~~metalliferous~~
12 nonferrous metallic minerals under a prospecting permit shall be limited to a term
13 not exceeding 10 years from the date that the lessee applies for a prospecting permit
14 under s. 293.35, if the lessee applies for the prospecting permit within 10 years from
15 the date on which the exploration mining lease is recorded in the office of the register
16 of deeds of the county where the property is located.

17 **SECTION 61.** 107.20 (2) of the statutes is amended to read:

18 107.20 (2) Any provision of an exploration mining lease entered into after April
19 25, 1978, granting an option or right to develop or extract ~~metalliferous~~ nonferrous
20 metallic minerals shall be limited to a term not exceeding 50 years from the date on
21 which the exploration mining lease is recorded in the office of the register of deeds
22 of the county where the property is located.

23 **SECTION 62.** 107.30 (8) of the statutes is amended to read:

24 107.30 (8) "Mining" or "mining operation" has the meaning set forth in s. 293.01
25 ~~(9)~~ means all or part of the process involved in the mining of metallic minerals, other

1 than for exploration or prospecting, including commercial extraction,
2 agglomeration, beneficiation, construction of roads, removal of overburden, and the
3 production of refuse.

4 **SECTION 63.** 107.30 (15) of the statutes is amended to read:

5 107.30 (15) "Prospecting" has the meaning set forth in s. 293.01 (18) means
6 engaging in the examination of an area for the purpose of determining the quality
7 and quantity of minerals, other than for exploration but including the obtaining of
8 an ore sample, by such physical means as excavating, trenching, construction of
9 shafts, ramps, and tunnels and other means, other than for exploration, which the
10 department of natural resources, by rule, identifies, and the production of
11 prospecting refuse and other associated activities. "Prospecting" does not include
12 such activities when the activities are, by themselves, intended for and capable of
13 commercial exploitation of the underlying ore body. The fact that prospecting
14 activities and construction may have use ultimately in mining, if approved, does not
15 mean that prospecting activities and construction constitute mining within the
16 meaning of sub. (8), provided such activities and construction are reasonably related
17 to prospecting requirements.

18 **SECTION 64.** 107.30 (16) of the statutes is amended to read:

19 107.30 (16) "Prospecting site" has the meaning set forth in s. 293.01 (21) means
20 the lands on which prospecting is actually conducted as well as those lands on which
21 physical disturbance will occur as a result of such activity.

22 **SECTION 65.** 160.19 (12) of the statutes is amended to read:

23 160.19 (12) The requirements in this section shall not apply to rules governing
24 an activity regulated under ch. 293 or subch. III of ch. 295, or to a solid waste facility
25 regulated under subch. III of ch. 289 which is part of an activity regulated under ch.

1 293 or subch. III of ch. 295, except that the department may promulgate new rules
2 or amend rules governing this type of activity, practice or facility if the department
3 determines that the amendment or promulgation of rules is necessary to protect
4 public health, safety or welfare.

5 **SECTION 66.** 196.491 (3) (a) 3. b. of the statutes is amended to read:

6 196.491 (3) (a) 3. b. ~~Within~~ Except as provided under subd. 3. c., within 20
7 days after the department provides a listing specified in subd. 3. a. to a person, the
8 person shall apply for the permits and approvals identified in the listing. The
9 department shall determine whether an application under this subd. 3. b. is complete
10 and, no later than 30 days after the application is filed, notify the applicant about
11 the determination. If the department determines that the application is incomplete,
12 the notice shall state the reason for the determination. An applicant may
13 supplement and refile an application that the department has determined to be
14 incomplete. There is no limit on the number of times that an applicant may refile
15 an application under this subd. 3. b. If the department fails to determine whether
16 an application is complete within 30 days after the application is filed, the
17 application shall be considered to be complete. The department shall complete action
18 on an application under this subd. 3. b. for any permit or approval that is required
19 prior to construction of a facility within 120 days after the date on which the
20 application is determined or considered to be complete.

21 **SECTION 67.** 196.491 (3) (a) 3. c. of the statutes is created to read:

22 196.491 (3) (a) 3. c. The 20-day deadline specified in subd. 3. b. for applying
23 for the applicable permits and approvals specified in the listing provided by the
24 department does not apply to a person proposing to construct a utility facility for
25 ferrous mineral mining and processing activities governed by subch. III of ch. 295.

1 **SECTION 68.** 196.491 (4) (b) 2. of the statutes is amended to read:

2 196.491 (4) (b) 2. The person shows to the satisfaction of the commission that
3 the person reasonably anticipates, at the time that construction of the equipment or
4 facilities commences, that on each day that the equipment and facilities are in
5 operation the person will consume no less than 70% of the aggregate kilowatt hours
6 output from the equipment and facilities in manufacturing processes at the site
7 where the equipment and facilities are located or in ferrous mineral mining and
8 processing activities governed by subch. III of ch. 295 at the site where the equipment
9 and facilities are located.

10 **SECTION 69.** 227.483 (3) (c) of the statutes is created to read:

11 227.483 (3) (c) If the proceeding relates to mining for ferrous minerals, as
12 defined in s. 295.41 (18), that the petition, claim, or defense was commenced, used,
13 or continued primarily for the purpose of causing delay to an activity authorized
14 under a license that is the subject of the hearing.

15 **SECTION 70.** 238.14 of the statutes is created to read:

16 **238.14 Business development grants and loans.** When funds described in
17 s. 25.49 (2m) are appropriated to the corporation, the corporation shall use the funds
18 to make grants and loans to businesses in this state, and the corporation shall give
19 preference for grants and loans to businesses located in an area affected by mining
20 for ferrous minerals.

21 **SECTION 71.** 281.65 (2) (a) of the statutes is amended to read:

22 281.65 (2) (a) “Best management practices” means practices, techniques or
23 measures, except for dredging, identified in areawide water quality management
24 plans, which are determined to be effective means of preventing or reducing
25 pollutants generated from nonpoint sources, or from the sediments of inland lakes

1 polluted by nonpoint sources, to a level compatible with water quality objectives
2 established under this section and which do not have an adverse impact on fish and
3 wildlife habitat. The practices, techniques or measures include land acquisition,
4 storm sewer rerouting and the removal of structures necessary to install structural
5 urban best management practices, facilities for the handling and treatment of
6 milkhouse wastewater, repair of fences built using grants under this section and
7 measures to prevent or reduce pollutants generated from mine tailings disposal sites
8 for which the department has not approved a plan of operation under s. 289.30 or s.
9 295.51.

10 **SECTION 72.** 281.75 (17) (b) of the statutes is amended to read:

11 281.75 (17) (b) This section does not apply to contamination which is
12 compensable under subch. II of ch. 107 or s. 293.65 (4) or 295.61 (8).

13 **SECTION 73.** 287.13 (5) (e) of the statutes is amended to read:

14 287.13 (5) (e) Solid waste produced by a commercial business or industry which
15 is disposed of or held for disposal in an approved facility, as defined under s. 289.01
16 (3), or a mining waste site, as defined in s. 295.41 (31), covered by a mining permit
17 under s. 295.58, owned, or leased by the generator and designed and constructed for
18 the purpose of accepting that type of solid waste.

19 **SECTION 74.** 289.35 of the statutes is amended to read:

20 **289.35 Shoreland and floodplain zoning.** Solid waste facilities are
21 prohibited within areas under the jurisdiction of shoreland and floodplain zoning
22 regulations adopted under ss. 59.692, 61.351, 62.231 ~~and~~, 87.30, and 281.31, except
23 that the department may issue permits authorizing facilities in such areas. If the
24 department issues a permit under this section, the permit shall specify the location,
25 height, or size of the solid waste facility authorized under the permit.

1 by the operator of his or her intent to sell such material within 3 years from the time
2 it results from or is displaced by mining. If after 3 years from the time merchantable
3 by-product results from or is displaced by mining such material has not been
4 transported off the mining site, it shall be considered and regulated as refuse unless
5 removal is continuing at a rate of more than 12,000 cubic yards per year.

6 **SECTION 80.** 293.01 (8) of the statutes is repealed.

7 **SECTION 81.** 293.01 (9) of the statutes is amended to read:

8 293.01 (9) "Mining" or "mining operation" means all or part of the process
9 involved in the mining of nonferrous metallic minerals, other than for exploration or
10 prospecting, including commercial extraction, agglomeration, beneficiation,
11 construction of roads, removal of overburden and the production of refuse.

12 **SECTION 82.** 293.01 (12) of the statutes is amended to read:

13 293.01 (12) "Mining site" means the surface area disturbed by a mining
14 operation, including the surface area from which the nonferrous metallic minerals
15 or refuse or both have been removed, the surface area covered by refuse, all lands
16 disturbed by the construction or improvement of haulageways, and any surface areas
17 in which structures, equipment, materials and any other things used in the mining
18 operation are situated.

19 **SECTION 83.** 293.01 (12m) of the statutes is created to read:

20 293.01 (12m) "Nonferrous metallic mineral" means an ore or other earthen
21 material to be excavated from the natural deposits on or in the earth for its metallic
22 content but not primarily for its iron oxide content.

23 **SECTION 84.** 293.01 (18) of the statutes is amended to read:

24 293.01 (18) "Prospecting" means engaging in the examination of an area for the
25 purpose of determining the quality and quantity of nonferrous metallic minerals,

1 other than for exploration but including the obtaining of an ore a nonferrous metallic
2 mineral sample, by such physical means as excavating, trenching, construction of
3 shafts, ramps and tunnels and other means, other than for exploration, which the
4 department, by rule, identifies, and the production of prospecting refuse and other
5 associated activities. "Prospecting" shall not include such activities when the
6 activities are, by themselves, intended for and capable of commercial exploitation of
7 the underlying nonferrous ore body. However, the fact that prospecting activities and
8 construction may have use ultimately in mining, if approved, shall not mean that
9 prospecting activities and construction constitute mining within the meaning of sub.
10 (9), provided such activities and construction are reasonably related to prospecting
11 requirements.

12 **SECTION 85.** 293.01 (25) of the statutes is amended to read:

13 293.01 (25) "Refuse" means all waste soil, rock, mineral, liquid, vegetation and
14 other material, except merchantable by-products, directly resulting from or
15 displaced by the prospecting or mining and from the cleaning or preparation of
16 nonferrous metallic minerals during prospecting or mining operations, and shall
17 include all waste materials deposited on or in the prospecting or mining site from
18 other sources.

19 **SECTION 86.** 293.21 (1) (a) of the statutes is amended to read:

20 293.21 (1) (a) "Driller" means a person who performs core, rotary, percussion
21 or other drilling involved in exploration for nonferrous metallic minerals.

22 **SECTION 87.** 293.25 (2) (a) of the statutes is amended to read:

23 293.25 (2) (a) *Applicability.* Except as provided under par. (b), ss. 293.21 and
24 293.81 and rules promulgated under those sections apply to radioactive waste site
25 exploration, to activities related to radioactive waste site exploration and to persons

1 engaging in or intending to engage in radioactive waste site exploration or related
2 activities in the same manner as those sections and rules are applicable to
3 nonferrous metallic mineral exploration, to activities related to nonferrous metallic
4 mineral exploration and to persons engaging in or intending to engage in nonferrous
5 metallic mineral exploration or related activities.

6 **SECTION 88.** 293.25 (4) of the statutes is amended to read:

7 293.25 (4) REGULATION OF EXPLORATION AND RELATED PROVISIONS. Sections
8 293.13, 293.15 (1) to (12), 293.85, 293.87 and 293.89 and rules promulgated under
9 those sections apply to radioactive waste site exploration, to activities related to
10 radioactive waste site exploration and to persons engaging in or intending to engage
11 in radioactive waste site exploration or related activities in the same manner as
12 those sections and rules are applicable to nonferrous metallic mineral exploration,
13 to activities related to nonferrous metallic mineral exploration and to persons
14 engaging in or intending to engage in nonferrous metallic mineral exploration or
15 related activities.

16 **SECTION 89.** 293.37 (4) (b) of the statutes is amended to read:

17 293.37 (4) (b) If the department finds that the anticipated life and total area
18 of a nonferrous metallic mineral deposit are of sufficient magnitude that reclamation
19 of the mining site consistent with this chapter requires a comprehensive plan for the
20 entire affected area, it shall require an operator to submit with the application for
21 a mining permit, amended mining site or change in mining or reclamation plan, a
22 comprehensive long-term plan showing, in detail satisfactory to the department, the
23 manner, location and time for reclamation of the entire area of contiguous land which
24 will be affected by mining and which is owned, leased or under option for purchase
25 or lease by the operator at the time of application. Where a nonferrous metallic

1 mineral deposit lies on or under the lands of more than one operator, the department
2 shall require the operators to submit mutually consistent comprehensive plans.

3 **SECTION 90.** 293.47 (1) (b) of the statutes is amended to read:

4 293.47 (1) (b) “Geologic information” means information concerning
5 descriptions of ~~an~~ a nonferrous ore body, descriptions of reserves, tonnages and
6 grades of nonferrous ore, descriptions of a drill core or bulk sample including
7 analysis, descriptions of drill hole depths, distances and similar information related
8 to the nonferrous ore body.

9 **SECTION 91.** 293.50 (1) (b) of the statutes is amended to read:

10 293.50 (1) (b) “Sulfide ore body” means a mineral deposit in which nonferrous
11 metals are mixed with sulfide minerals.

12 **SECTION 92.** 293.50 (2) (intro.) of the statutes is amended to read:

13 293.50 (2) (intro.) Beginning on May 7, 1998, the department may not issue a
14 permit under s. 293.49 for the purpose of the mining of a sulfide ore body until all of
15 the following conditions are satisfied:

16 **SECTION 93.** 293.50 (2) (a) of the statutes is amended to read:

17 293.50 (2) (a) The department determines, based on information provided by
18 an applicant for a permit under s. 293.49 and verified by the department, that a
19 mining operation has operated in a sulfide ore body which, together with the host
20 nonferrous rock, has a net acid generating potential in the United States or Canada
21 for at least 10 years without the pollution of groundwater or surface water from acid
22 drainage at the tailings site or at the mine site or from the release of heavy metals.

23 **SECTION 94.** 293.50 (2) (b) of the statutes is amended to read:

24 293.50 (2) (b) The department determines, based on information provided by
25 an applicant for a permit under s. 293.49 and verified by the department, that a

1 mining operation that operated in a sulfide ore body which, together with the host
2 nonferrous rock, has a net acid generating potential in the United States or Canada
3 has been closed for at least 10 years without the pollution of groundwater or surface
4 water from acid drainage at the tailings site or at the mine site or from the release
5 of heavy metals.

6 **SECTION 95.** 293.51 (1) of the statutes is amended to read:

7 293.51 (1) Upon notification that an application for a prospecting or mining
8 permit has been approved by the department but prior to commencing prospecting
9 or mining, the operator shall file with the department a bond conditioned on faithful
10 performance of all of the requirements of this chapter and all rules adopted by the
11 department under this chapter. The bond shall be furnished by a surety company
12 licensed to do business in this state. In lieu of a bond, the operator may deposit cash,
13 certificates of deposit or government securities with the department. Interest
14 received on certificates of deposit and government securities shall be paid to the
15 operator. The amount of the bond or other security required shall be equal to the
16 estimated cost to the state of fulfilling the reclamation plan, in relation to that
17 portion of the site that will be disturbed by the end of the following year. The
18 estimated cost of reclamation of each prospecting or mining site shall be determined
19 by the department on the basis of relevant factors including, but not limited to,
20 expected changes in the price index, topography of the site, methods being employed,
21 depth and composition of overburden and depth of nonferrous metallic mineral
22 deposit being mined.

23 **SECTION 96.** 293.65 (3) (a) of the statutes is amended to read:

24 293.65 (3) (a) An approval under s. 281.34 is required to withdraw groundwater
25 for prospecting or mining or to dewater mines if the capacity and rate of withdrawal

1 of all wells involved in the withdrawal of groundwater or the dewatering of mines
2 exceeds 100,000 gallons each day. A permit under s. 283.31 is required to discharge
3 pollutants resulting from the dewatering of mines.

4 **SECTION 97.** 293.65 (3) (b) of the statutes is amended to read:

5 293.65 (3) (b) The department may not issue an approval under s. 281.34 if the
6 withdrawal of groundwater for prospecting or mining purposes or the dewatering of
7 mines will result in the unreasonable detriment of public or private water supplies
8 or the unreasonable detriment of public rights in the waters of the state. No
9 withdrawal of groundwater for prospecting or mining purposes or the dewatering of
10 mines may be made to the unreasonable detriment of public or private water supplies
11 or the unreasonable detriment of public rights in the waters of the state.

12 **SECTION 98.** 293.86 of the statutes is amended to read:

13 **293.86 Visitorial powers of department.** Any duly authorized officer,
14 employee or representative of the department may enter and inspect any property,
15 premises or place on or at which any prospecting or ~~metallie~~ mining operation or
16 facility is located or is being constructed or installed at any reasonable time for the
17 purpose of ascertaining the state of compliance with this chapter and chs. 281, 285,
18 289 to 292, 295 and 299, subchs. I and II of ch. 295, and rules adopted pursuant
19 thereto. No person may refuse entry or access to any such authorized representative
20 of the department who requests entry for purposes of inspection, and who presents
21 appropriate credentials, nor may any person obstruct, hamper or interfere with any
22 such inspection. The department shall furnish to the prospector or operator, as
23 indicated in the prospecting or mining permit, a written report setting forth all
24 observations, relevant information and data which relate to compliance status.

25 **SECTION 99.** Chapter 295 (title) of the statutes is amended to read:

1 (5) That the provisions in ch. 293, 2009 stats., are a deterrent to ferrous mining
2 in this state and are not necessary to ensure that ferrous mining will be conducted
3 in an environmentally sound manner.

4 (6) That simplifying and shortening the permitting process for ferrous metallic
5 mineral mining when compared to nonferrous metallic mineral mining, as
6 Minnesota and Michigan have done, will encourage ferrous metallic mineral mining
7 in Wisconsin and create jobs and generate resources for the state.

8 (7) That because of the fixed location of ferrous mineral deposits in the state,
9 it is probable that mining those deposits will result in adverse impacts to wetlands
10 and that, therefore, the use of wetlands for bulk sampling and mining activities,
11 including the disposal or storage of mining wastes or materials, or the use of other
12 lands for mining activities that would have a significant adverse impact on wetlands,
13 is presumed to be necessary.

14 **295.41 Definitions.** In this subchapter:

15 (1) “Air pollution” means the presence in the atmosphere of one or more air
16 contaminants in such quantities and of such duration as is injurious to human health
17 or welfare, animal or plant life, or property.

18 (2) “Applicant” means a person who applies for, or is preparing to apply for, an
19 exploration license or a mining permit or who files a bulk sampling plan.

20 (3) “Approval” means any permit, license, certification, contract, or other
21 authorization that the department issues, or any other action by the department,
22 that is required for exploration, to engage in bulk sampling at a bulk sampling site,
23 or to construct or operate a mining site, including any action required for any of the
24 following:

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

4 (b) The withdrawal of land entered as forest cropland under s. 77.10.

5 (c) The withdrawal of land designated as managed forest land under subch. VI
6 of ch. 77 and any modification of, or amendment to, a managed forest land
7 management plan necessitated by the withdrawal of the land.

8 (4) "Background water quality" means the concentration of a substance in
9 groundwater as determined by monitoring at locations that will not be affected by
10 a mining site.

11 (5) "Baseline water quality" means the concentration of a substance in
12 groundwater or surface water as determined by monitoring before mining operations
13 begin.

14 (6) "Borrow materials" means soil or rock used in construction or reclamation
15 activities.

16 (7) "Bulk sampling" means excavating in a potential mining site by removing
17 less than 10,000 tons of material for the purposes of obtaining site-specific data to
18 assess the quality and quantity of the ferrous mineral deposits and of collecting data
19 from and analyzing the excavated materials in order to prepare the application for
20 a mining permit or for any other approval.

21 (8) "Closing" means the time at which a mining waste site ceases to accept
22 mining wastes.

23 (9) "Closure" means the actions taken by an operator to prepare a mining waste
24 site for long-term care and to make it suitable for other uses.

1 **(10)** “Construct” means to engage in a program of on-site construction,
2 including site clearing, grading, dredging, or filling of land.

3 **(11)** “Department” means the department of natural resources.

4 **(12)** “Disposal” means the discharge, deposit, injection, dumping, or placing of
5 a substance into or on any land or water.

6 **(14)** “Environmental impact report” means a document submitted by a person
7 seeking a mining permit that discloses environmental impacts of the proposed
8 mining.

9 **(15)** “Environmental impact statement” means a detailed statement under s.
10 1.11 (2) (c).

11 **(16)** “Environmental pollution” means contaminating or rendering unclean or
12 impure the air, land, or waters of the state, or making the air, land, or waters of the
13 state injurious to public health or animal or plant life.

14 **(17)** “Exploration license” means a license under s. 295.44.

15 **(18)** “Ferrous mineral” means an ore or earthen material in natural deposits
16 in or on the earth that primarily exists in the form of an iron oxide, including taconite
17 and hematite.

18 **(19)** “Fill area” means an area proposed to receive or that is receiving direct
19 application of mining waste.

20 **(20)** “Freeboard” means the height of the top of a dam above the adjacent liquid
21 surface within the impoundment.

22 **(21)** “Groundwater” means any of the waters of the state occurring in a
23 saturated subsurface geological formation of rock or soil.

24 **(22)** “Groundwater quality” means the chemical, physical, biological, thermal,
25 or radiological quality of groundwater at a site or within an underground aquifer.

1 **(23)** “Groundwater quality standards” means numerical values consisting of
2 enforcement standards and preventive action limits contained in Table 1 of s. NR
3 140.10, and Table 2 of s. NR 140.12, Wis. Adm. Code, and any preventive action limits
4 for indicator parameters identified under s. NR 140.20 (2).

5 **(24)** “Leachate” means water or other liquid that has been contaminated by
6 dissolved or suspended materials due to contact with refuse disposed of on the
7 mining site.

8 **(25)** “Merchantable by-product” means all waste soil, rock, mineral, liquid,
9 vegetation, and other material directly resulting from or displaced by the mining,
10 cleaning, or preparation of minerals, during mining operations, that are determined
11 by the department to be marketable upon a showing of marketability made by the
12 operator, accompanied by a verified statement by the operator of his or her intent to
13 sell the material within 3 years from the time it results from or is displaced by
14 mining.

15 **(26)** “Mining” means all or part of the process involved in the mining of a
16 ferrous mineral, other than for exploration, including commercial extraction,
17 agglomeration, beneficiation, construction of roads, removal of overburden, and the
18 production of refuse, involving the removal of more than 15,000 tons of earth
19 material a year in the regular operation of a business for the purpose of extracting
20 a ferrous mineral.

21 **(27)** “Mining permit” means the permit under s. 295.58.

22 **(28)** “Mining plan” means a proposal for mining on a mining site, including a
23 description of the systematic activities to be used for the purpose of extracting
24 ferrous minerals.

1 **(29)** “Mining site” means the surface area disturbed by mining, including the
2 surface area from which the ferrous minerals or refuse or both have been removed,
3 the surface area covered by refuse, all lands disturbed by the construction or
4 improvement of haulageways, and any surface areas in which structures,
5 equipment, materials, and any other things used in the mining are situated.

6 **(30)** “Mining waste” means tailings, waste rock, mine overburden, waste
7 treatment sludges, or other discarded material, including solid, liquid, semi-solid,
8 or contained gaseous material, resulting from mining or from the cleaning or
9 preparation of ferrous minerals during mining operations, except that “mining
10 waste” does not include topsoil and mine overburden intended to be returned to the
11 mining site or used in the reclamation process and that is placed on the mining site
12 for those purposes, as provided for in the approved mining plan, and does not include
13 merchantable by-products.

14 **(31)** “Mining waste site” means any land or appurtenances thereto used for the
15 storage or disposal of mining waste or for the storage of merchantable by-products,
16 but does not include land or appurtenances used in the production or transportation
17 of mining waste, such as the concentrator, haul roads, or tailings pipelines, that are
18 part of the mining site.

19 **(32)** “Nonferrous metallic mineral” means an ore or other earthen material to
20 be excavated from natural deposits on or in the earth for its metallic content but not
21 primarily for its iron oxide content.

22 **(33)** “Operator” means any person who is engaged in mining, or who holds a
23 mining permit, whether individually, jointly, or through subsidiaries, agents,
24 employees, or contractors.

25 **(34)** “Overburden” means any unconsolidated material that overlies bedrock.

1 **(35)** “Person” means an individual, corporation, limited liability company,
2 partnership, association, local governmental agency, interstate agency, state agency,
3 or federal agency.

4 **(36)** “Piping” means the progressive erosion of materials from an embankment
5 or foundation caused by the seepage of water.

6 **(37)** “Principal shareholder” means any person who owns at least 10 percent
7 of the beneficial ownership of an applicant or operator.

8 **(38)** “Reagent” means a substance or compound that is added to a system in
9 order to bring about a chemical reaction or is added to see if a reaction occurs to
10 confirm the presence of another substance.

11 **(39)** “Reclamation” means the process by which an area physically or
12 environmentally affected by exploration or mining is rehabilitated to either its
13 original state or to a state that provides long-term environmental stability.

14 **(40)** “Reclamation plan” means the proposal for the reclamation of an
15 exploration site under s. 295.44 (2) (b) or a mining site under s. 295.49.

16 **(41)** “Refuse” means all mining waste and all waste materials deposited on or
17 in the mining site from other sources, except merchantable by-products.

18 **(42)** “Related person” means any person that owns or operates a mining site
19 in the United States and that is one of the following when an application for a mining
20 permit is submitted to the department:

21 (a) The parent corporation of the applicant.

22 (b) A person that holds more than a 30 percent ownership interest in the
23 applicant.

24 (c) A subsidiary or affiliate of the applicant in which the applicant holds more
25 than a 30 percent ownership interest.

1 **(44)** “Subsidence” means lateral or vertical ground movement caused by a
2 failure, initiated at the mine, of a man-made underground mine, that directly
3 damages residences or commercial buildings, except that “subsidence” does not
4 include lateral or vertical ground movement caused by earthquake, landslide, soil
5 conditions, soil erosion, soil freezing and thawing, or roots of trees and shrubs.

6 **(45)** “Tailings” means waste material resulting from beneficiation of crushed
7 ferrous minerals at a concentrator or from washing, concentration, or treatment of
8 crushed ferrous minerals.

9 **(46)** “Unsuitable” means that the land proposed for mining is not suitable for
10 mining because the mining activity will more probably than not destroy or
11 irreparably damage any of the following:

12 (a) Habitat required for survival of species of vegetation or wildlife designated
13 as endangered through prior inclusion in rules adopted by the department, if the
14 endangered species cannot be reestablished elsewhere.

15 (b) Unique features of the land, as determined by state or federal designation
16 and incorporated in rules adopted by the department, as any of the following, which
17 cannot have their unique characteristic preserved by relocation or replacement
18 elsewhere:

- 19 1. Wilderness areas.
- 20 2. Wild and scenic rivers.
- 21 3. National or state parks.
- 22 4. Wildlife refuges and areas.
- 23 5. Listed properties, as defined in s. 44.31 (4).

24 **(46m)** “Wastewater and sludge storage or treatment lagoon” means a
25 man-made containment structure that is constructed primarily of earthen

1 materials, that is for the treatment or storage of wastewater, storm water, or sludge,
2 and that is not a land disposal system, as defined in s. NR 140.05 (11), Wis. Adm.
3 Code.

4 (47) “Waters of the state” has the meaning given in s. 281.01 (18).

5 (48) “Water supply” means the sources and their surroundings from which
6 water is supplied for drinking or domestic purposes.

7 (49) “Wetland” has the meaning given in s. 23.32 (1).

8 **295.43 Responsibilities related to mining.** The department shall serve as
9 the central unit of state government to ensure that the impact from mining and
10 reclamation on the air, lands, waters, plants, fish, and wildlife in this state will be
11 minimized and mitigated to the extent practicable. The administration of
12 occupational health and safety laws and rules that apply to mining remain
13 exclusively the responsibility of the department of safety and professional services.
14 The powers and duties of the geological and natural history survey under s. 36.25 (6)
15 remain exclusively the responsibility of the geological and natural history survey.
16 Nothing in this section prevents the department of safety and professional services
17 and the geological and natural history survey from cooperating with the department
18 in the exercise of their respective powers and duties.

19 **295.44 Exploration. (1) DEFINITIONS.** In this section:

20 (a) “Abandonment” means the filling or sealing of a drillhole.

21 (b) “Clay slurry” means a fluid mixture of native clay formation or commercial
22 clay or clay mineral products and water prepared with only the amount of water
23 necessary to produce fluidity.

24 (c) “Concrete grout” means a mixture consisting of type A portland cement and
25 an equal or lesser volume of dry sand combined with water.

1 (d) “Driller” means a person who performs core, rotary, percussion, or other
2 drilling involved in exploration for ferrous minerals.

3 (e) “Drilling site” means the area disturbed by exploration, including the
4 drillhole.

5 (f) “Dump bailer” means a cylindrical container with a valve that empties the
6 contents of the container at the bottom of a drillhole.

7 (g) “Explorer” means any person who engages in exploration or who contracts
8 for the services of drillers for the purpose of exploration.

9 (h) “Exploration” means the on-site geologic examination from the surface of
10 an area by core, rotary, percussion, or other drilling, where the diameter of the hole
11 does not exceed 18 inches, for the purpose of searching for ferrous minerals or
12 establishing the nature of a known ferrous mineral deposit, including associated
13 activities such as clearing and preparing sites or constructing roads for drilling.
14 “Exploration” does not include drilling for the purpose of collecting soil samples or
15 for determining radioactivity by means of placement of devices that are sensitive to
16 radiation.

17 (i) “License year” means the period beginning on July 1 of any year and ending
18 on the following June 30.

19 (j) “Neat cement grout” means a mixture consisting of type A portland cement
20 and water.

21 (k) “Termination” means the filling of drillholes and the reclamation of a
22 drilling site.

23 **(2) LICENSE.** No person may engage in exploration, or contract for the services
24 of drillers for purposes of exploration, without an annual license from the
25 department. The department shall provide copies of the application for an

1 exploration license to the state geologist upon issuance of the exploration license. A
2 person seeking an exploration license shall file an application that includes all of the
3 following:

4 (a) An exploration plan that includes all of the following:

5 1. A description of the site where the exploration will take place and a map of
6 that area showing the locations of the exploration.

7 2. A description of the means and method that will be used for the exploration.

8 3. A description of the grading and stabilization of the excavation, sides, and
9 benches that will be conducted.

10 4. A description of how the grading and stabilization of any deposits of refuse
11 will be conducted.

12 5. A description of how any diversion and drainage of water from the
13 exploration site will be conducted.

14 6. A description of how any backfilling will be conducted.

15 7. A description of how any pollutant-bearing minerals or materials will be
16 covered.

17 8. A description of how the topsoils will be removed and stockpiled or how other
18 measures will be taken to protect topsoils before exploration.

19 9. A description of how vegetative cover will be provided.

20 10. A description of how any water impoundment will be accomplished.

21 11. Identification of the means and method that will be used to prevent
22 significant environmental pollution to the extent practicable.

23 (b) A reclamation plan, designed to minimize adverse effects to the
24 environment to the extent practicable, that includes all of the following:

1 1. A description of how all toxic and hazardous wastes and other solid waste
2 will be disposed of in solid or hazardous waste disposal facilities licensed under ch.
3 289 or 291 or otherwise in an environmentally sound manner.

4 2. A description of how topsoil will be preserved for purposes of future use in
5 reclamation.

6 3. A description of how revegetation will be conducted to stabilize disturbed
7 soils and prevent air and water pollution to the extent practicable.

8 4. A description of how disturbance to wetlands will be minimized to the extent
9 practicable.

10 5. A statement that all drillholes will be abandoned in compliance with sub. (5).

11 (c) An exploration license fee of \$300.

12 (d) A bond, as provided in sub. (3) (a).

13 (e) A certificate of insurance showing that the applicant has in force a liability
14 insurance policy issued by an insurance company licensed to do business in this state
15 covering all exploration conducted or contracted for by the explorer in this state and
16 affording personal injury and property damage protection in a total amount
17 determined to be adequate by the department, but not more than \$1,000,000 and not
18 less than \$50,000.

19 (f) A copy of the applicant's most recent annual report to the federal securities
20 and exchange commission on form 10-K, or, if this is not available, a report of the
21 applicant's current assets and liabilities or other data necessary to establish that the
22 applicant is competent to conduct exploration in this state.

23 **(2m) CONFIDENTIALITY.** The department shall protect as confidential any
24 information, other than effluent data, contained in an application for an exploration
25 license, upon a showing that the information is entitled to protection as a trade

1 secret, as defined in s. 134.90 (1) (c), and any information relating to the location,
2 quality, or quantity of a ferrous mineral deposit, to production or sales figures, or to
3 processes or production unique to the applicant or that would tend to adversely affect
4 the competitive position of the applicant if made public.

5 **(3) BOND.** (a) An applicant shall submit, as part of the application for an
6 exploration license, a bond in the amount of \$5,000 that is conditioned on faithful
7 performance of the requirements of this section, that is issued by a surety company
8 licensed to do business in this state, and that provides that the bond may not be
9 canceled by the surety, except after not less than 90 days' notice to the department
10 in writing by registered or certified mail.

11 (b) If the surety for a bond submitted under par. (a) issues a cancellation notice,
12 the explorer shall deliver a replacement bond at least 30 days before the expiration
13 of the 90 day notice period. If the explorer fails to submit a replacement bond, the
14 explorer may not engage in exploration until the explorer submits a replacement
15 bond.

16 (c) If the license of the surety company for a bond submitted under par. (a) is
17 revoked or suspended, the explorer, within 30 days after receiving written notice
18 from the department, shall deliver a replacement bond. If the explorer fails to submit
19 a replacement bond, the explorer may not engage in exploration until the explorer
20 submits a replacement bond.

21 (d) The department may require that the amount of the bond submitted under
22 this subsection be increased at any time, if the department determines that the level
23 of activity by the explorer makes it likely that the bond would be inadequate to fund
24 the termination of all drillholes for which the explorer is responsible.

1 (e) The department shall release a bond submitted under this subsection one
2 year after the issuance of the last certificate of completion of exploration under sub.
3 (9) (c) 3. if the explorer no longer holds an exploration license and the department
4 determines that the explorer has complied with this section.

5 (4) ISSUANCE OR DENIAL OF EXPLORATION LICENSE. (a) Except as provided in par.
6 (c), within 10 business days of receiving an administratively complete application for
7 an exploration license, the department shall issue the exploration license or provide
8 the notice required under par. (f) of intent not to issue the exploration license, unless
9 the application is for an upcoming license year. If an application is for an upcoming
10 license year, the department shall issue the exploration license or provide the notice
11 required under par. (f) of intent not to issue the exploration license within 10
12 business days of receiving an administratively complete application or on the next
13 July 1, whichever is later.

14 (b) An application for an exploration license is considered to be
15 administratively complete on the day that it is submitted, unless, before the 10th
16 business day after receiving the application, the department provides the applicant
17 with written notification that the application is not administratively complete. The
18 department may determine that an application is not administratively complete only
19 if the application does not include an exploration plan; a reclamation plan; an
20 exploration license fee; a bond; a certificate of insurance; or a copy of the applicant's
21 most recent annual report to the federal securities and exchange commission on form
22 10-K, or, if this is not available, a report of the applicant's current assets and
23 liabilities or other data necessary to establish that the applicant is competent to
24 conduct exploration in this state. The department may not consider the quality of

1 the information provided. In a notice provided under this paragraph, the
2 department shall identify what is missing from the application.

3 (c) If the department provides notification, in compliance with par. (b), that an
4 application is not administratively complete, the department shall issue the
5 exploration license or provide the notice required under par. (f) of intent not to issue
6 the license within 7 business days of receipt of the missing item, unless the
7 application is for an upcoming license year. If the application is for an upcoming
8 license year, the department shall issue the exploration license or provide the notice
9 required under par. (f) of intent not to issue the exploration license within 7 business
10 days of receipt of the missing item or on the next July 1, whichever is later.

11 (d) If the department does not comply with par. (a) or (c), the application is
12 automatically approved and the department shall issue an exploration license that
13 includes the requirements in sub. (5). The explorer may engage in exploration based
14 on the automatic approval, notwithstanding any delay by the department in issuing
15 the license.

16 (e) Subject to par. (f), the department shall deny an application for an
17 exploration license if the department finds that, after the activities in the exploration
18 plan and the reclamation plan have been completed, the exploration will have a
19 substantial and irreparable adverse impact on the environment or present a
20 substantial risk of injury to public health and welfare.

21 (f) Before denying an application, the department shall provide the applicant
22 with written notification of its intent not to issue the exploration license, setting
23 forth all of the reasons for its intent not to issue the exploration license, including
24 reference to competent evidence supporting its position. The department shall
25 provide the person with an opportunity to correct any deficiencies in the exploration

1 plan or reclamation plan within 10 business days. If the person amends the
2 exploration plan or reclamation plan and corrects the deficiencies, the department
3 shall issue the exploration license within 10 business days of receipt of the amended
4 exploration plan or reclamation plan, unless the application is for an upcoming
5 license year. If an application is for an upcoming license year, the department shall
6 issue the exploration license within 10 business days of receipt of the amended
7 exploration plan or reclamation plan or on the next July 1, whichever is later. If the
8 department determines that the deficiencies have not been corrected, it shall deny
9 the application, in writing, setting forth all of the reasons for its determination,
10 including reference to competent evidence supporting the determination.

11 **(5) REQUIREMENTS IN EXPLORATION LICENSE.** The department shall include all of
12 the following in an exploration license:

13 (a) A requirement that if the explorer wishes to temporarily abandon a drillhole
14 so that the explorer may use the drillhole for future exploration, the explorer leave
15 the well casing in place and seal the upper end of the casing with a watertight
16 threaded or welded cap.

17 (b) A requirement to permanently abandon a drillhole 4 inches in diameter or
18 smaller by filling the drillhole from the bottom upward to the surface of the ground
19 with concrete grout or neat cement grout.

20 (c) A requirement to abandon a drillhole larger than 4 inches in diameter by
21 filling the drillhole from the bottom upward to the surface of the ground with
22 concrete grout or neat cement grout or in one of the following ways:

23 1. If the drillhole is constructed in limestone, dolomite, shale, or Precambrian
24 formations, such as granite, gabbro, gneiss, schist, slate, greenstone, or quartzite, by
25 filling the drillhole with gravel or crushed rock or, if it is physically impracticable to

1 use gravel or crushed rock and if the department approves, with clay slurry, from the
2 bottom upward to a point 20 feet below the top of the first rock formation encountered
3 below the surface of the ground or to at least 40 feet below the surface of the ground,
4 whichever is the greater depth, and filling the remainder of the drillhole with
5 concrete grout or neat cement grout.

6 2. If the drillhole is constructed in sandstone formation, by filling the drillhole
7 with disinfected sand or pea gravel or, if it is physically impracticable to use sand or
8 pea gravel and if the department approves, with clay slurry, from the bottom upward
9 to a point 20 feet below the top of the first rock formation encountered below the
10 surface of the ground or to at least 40 feet below the surface of the ground, whichever
11 is the greater depth, and filling the remainder of the drillhole with concrete grout or
12 neat cement grout.

13 3. If the drillhole is constructed in glacial drift or other unconsolidated
14 formation, by filling the hole with clean clay slurry to a point 20 feet below the surface
15 of the ground and filling the remainder of the drillhole with concrete grout or neat
16 cement grout.

17 4. If the drillhole is constructed in mixed rock types, by filling the drillhole as
18 provided in subs. 1., 2., and 3., and providing a concrete grout or neat cement grout
19 plug that extends at least 20 feet above and below the point of surface contact
20 between each recognized geologic rock type.

21 (d) 1. A requirement to use a conductor pipe or, when practical, a dump bailer
22 when filling a drillhole.

23 2. A requirement to keep the bottom end of the conductor pipe submerged in
24 concrete grout or neat cement grout at all times when concrete grout or neat cement
25 grout is placed under water using a conductor pipe.

1 3. A requirement to fill the drillhole at the same time that all or part of the
2 drillhole casing is removed from an unconsolidated formation, such as sand or gravel,
3 that will not remain open upon abandonment of a drillhole and to keep the end of the
4 casing below the surface of the fill material throughout the operation.

5 (e) A requirement to obtain approval from the department of the method of
6 containing the flow from, and the method of eventual abandonment of, a drillhole
7 that penetrates an aquifer under artesian pressure so that the groundwater flows at
8 the surface of the ground.

9 **(6) RENEWALS.** (a) An explorer wishing to renew an exploration license shall
10 file with the department a renewal application that includes all of the following:

11 1. A renewal fee of \$150.

12 2. A bond that satisfies sub. (3) (a).

13 3. A certificate of insurance that satisfies sub. (2) (e).

14 4. A copy of the applicant's most recent annual report to the federal securities
15 and exchange commission on form 10-K, or, if this is not available, a report of the
16 applicant's current assets and liabilities or other data necessary to establish that the
17 applicant is competent to conduct exploration in this state.

18 5. Either a statement that no changes are being proposed to the exploration
19 plan and reclamation plan previously approved by the department or a new
20 exploration plan or reclamation plan if the applicant proposes to make changes.

21 (b) Except as provided in par. (d), within 10 business days of receiving an
22 administratively complete application for renewal of an exploration license, the
23 department shall renew the exploration license or provide the notice, required under
24 par. (g), of intent not to renew the exploration license.

1 (c) An application for renewal of an exploration license is considered to be
2 administratively complete on the day that it is submitted, unless, before the 10th
3 business day after receiving the application, the department provides the explorer
4 with written notification that the application is not administratively complete. The
5 department may determine that an application is not administratively complete only
6 if the application does not include a renewal fee; a bond; a certificate of insurance;
7 a copy of the applicant's most recent annual report to the federal securities and
8 exchange commission on form 10-K, or, if this is not available, a report of the
9 applicant's current assets and liabilities or other data necessary to establish that the
10 applicant is competent to conduct exploration in this state; or either a statement that
11 no changes are being proposed to the exploration plan and reclamation plan
12 previously approved by the department or a new exploration plan or reclamation
13 plan if the applicant proposes to make changes. The department may not consider
14 the quality of any information provided. In a notice provided under this paragraph,
15 the department shall identify what is missing from the application.

16 (d) If the department provides notification, in compliance with par. (c), that an
17 application is not administratively complete, the department shall renew the
18 exploration license or provide the notice, required under par. (g), of intent not to
19 renew the exploration license within 7 business days of receipt of the missing item.

20 (e) If the department does not comply with par. (b) or (d), the application for
21 renewal is automatically approved.

22 (f) Subject to par. (g), the department shall deny an application for renewal of
23 an exploration license only if the applicant has filed a new exploration plan or
24 reclamation plan and the department finds that the exploration, after completion of
25 the new exploration plan and the new reclamation plan, will have a substantial and

1 irreparable adverse impact on the environment or present a substantial risk of injury
2 to public health and welfare.

3 (g) Before denying an application, the department shall provide the person who
4 submitted the application with written notification of its intent not to renew the
5 exploration license, setting forth all of the reasons for its intent not to renew the
6 exploration license, including reference to competent evidence supporting its
7 position. The department shall provide the person with an opportunity to correct any
8 deficiencies in the exploration plan or restoration plan within 10 business days. If
9 the person amends the exploration plan or reclamation plan and corrects the
10 deficiencies, the department shall renew the exploration license within 10 business
11 days of receipt of the amended exploration plan or reclamation plan. If the
12 department determines that the deficiencies have not been corrected, it shall deny
13 the application, in writing, setting forth all of the reasons for its determination,
14 including reference to competent evidence supporting the determination.

15 (h) The renewal of an exploration license takes effect on the date of issuance
16 and expires on the following June 30.

17 **(7) REVOCATION OR SUSPENSION OF EXPLORATION LICENSE.** After a hearing, the
18 department may revoke or suspend an exploration license if it determines that any
19 of the following apply:

20 (a) The explorer has not complied with a statute, a rule promulgated by the
21 department, or a condition in the exploration license.

22 (b) The explorer has failed to increase bond amounts to adequate levels as
23 provided under sub (3) (d).

24 **(8) NOTICE PROCEDURE.** (a) An explorer shall notify the department of the
25 explorer's intent to drill on a parcel by registered mail at least 5 days prior to the

1 beginning of drilling. Notice is considered to be given on the date that the
2 department receives the notice. In the notice, the explorer shall specify which
3 drillholes identified in the exploration plan the explorer intends to drill. The
4 explorer shall send the notice to the subunit of the department with authority over
5 mine reclamation.

6 (b) A notice of intent to drill provided under par. (a) remains in effect for one
7 year beginning on the date that the department receives the notice. If the explorer
8 wishes to continue drilling on the parcel after the notice is no longer in effect, the
9 explorer shall resubmit a notice of intent to drill on the parcel.

10 **(9) REPORTS.** (a) Within 10 days after completing the temporary or permanent
11 abandonment of a drillhole, an explorer shall file with the department an
12 abandonment report that describes the means and method used in the abandonment
13 and is signed by an authorized representative of the explorer attesting to the
14 accuracy of the information contained in the report. The explorer shall submit the
15 abandonment report to the department's district office for the district in which the
16 drilling site is located.

17 (b) After permanent abandonment of a drillhole and regrading and
18 revegetation of the drilling site, an explorer shall notify the department of
19 completion of termination of the drilling site. The explorer shall submit the notice,
20 in writing, to the department's district office for the district in which the drilling site
21 is located.

22 (c) 1. After receipt of a notice under par. (b), the department shall notify the
23 explorer in writing whether the termination is satisfactory or unsatisfactory. If the
24 termination is unsatisfactory, the department shall inform the explorer of the
25 necessary corrective measures. Following the completion of corrective measures, the

1 explorer shall file written notice with the department's district office for the district
2 in which the drilling site is located specifying the means and method used and
3 stating that termination is complete.

4 2. If an explorer fails to comply with corrective measures identified under subd.
5 1., the department may suspend the explorer's exploration license in accordance with
6 sub. (7).

7 3. Upon satisfactory completion of termination of a drilling site, the
8 department shall issue a certificate of completion. The department may not issue a
9 certificate of completion for a drilling site that has only been temporarily abandoned.

10 **(10) DRILLING FEES.** Upon the submission of a report under sub. (9) (a) of
11 temporary abandonment of a drillhole, if the drillhole is temporarily abandoned, or
12 upon submission of a report under sub. (9) (a) of permanent abandonment of a
13 drillhole, if the drillhole is not temporarily abandoned, the explorer shall pay a fee
14 to the department. The fee is \$100 per drillhole for the first 20 drillholes for which
15 a report is filed in a license year and \$50 for each subsequent drillhole for which a
16 report is filed in that license year.

17 **(11) INSPECTIONS.** (a) Any duly authorized officer, employee, or representative
18 of the department may enter and inspect any property, premises, or place on or at
19 which exploration is being performed at any reasonable time for the purpose of
20 ascertaining the state of compliance with this section. No explorer may refuse entry
21 or access to any authorized representative of the department who requests entry for
22 the purposes of inspection and who presents appropriate credentials.

23 (b) No person may obstruct, hamper, or interfere with any inspection
24 authorized in par. (a).

25 (c) No inspector may obstruct, hamper, or interfere with exploration activities.

1 **(12) EXEMPTION.** This section does not apply to an operator with a mining
2 permit who is engaged in exploration activities on lands included in a mining plan
3 and reclamation plan, if the mining plan or reclamation plan contains provisions
4 relating to termination of the exploration activities.

5 **(13) ENVIRONMENTAL ANALYSIS NOT REQUIRED.** The department is not required
6 to prepare an environmental impact statement or an environmental assessment for
7 an application for an exploration license.

8 **295.443 Local impact committee; local agreement.** **(1)** A county, town,
9 village, city, or tribal government likely to be substantially affected by potential or
10 proposed mining may designate an existing committee, or establish a committee, for
11 purposes of:

12 (a) Facilitating communications between operators and itself.

13 (b) Analyzing implications of mining.

14 (c) Reviewing and commenting on reclamation plans.

15 (d) Developing solutions to mining-induced growth problems.

16 (e) Recommending priorities for local action.

17 (f) Formulating recommendations to the investment and local impact fund
18 board regarding distribution of funds under s. 70.395 (2) (g) related to mining for
19 ferrous minerals.

20 (g) Negotiating a local agreement under sub. (1m).

21 **(1m)** A county, town, village, city, or tribal government that requires an
22 operator to obtain an approval or permit under a zoning or land use ordinance and
23 a county, town, village, or city in which any portion of a proposed mining site is
24 located may, individually or in conjunction with other counties, towns, villages,
25 cities, or tribal governments, enter into one or more agreements with an operator for

1 the development of a mining operation. The local agreement may include any of the
2 following:

3 (a) A legal description of the land subject to the agreement and the names of
4 its legal and equitable owners.

5 (b) The duration of the agreement.

6 (c) The uses permitted on the land.

7 (d) A description of any conditions, terms, restrictions, or other requirements
8 determined to be necessary by the county, town, village, city, or tribal government for
9 the public health, safety, or welfare of its residents.

10 (e) A description of any obligation undertaken by the county, town, village, city,
11 or tribal government to enable the development to proceed.

12 (f) The applicability or nonapplicability of county, town, village, city, or tribal
13 ordinances, approvals, or resolutions.

14 (g) A provision for the amendment of the agreement.

15 (h) Other provisions determined to be reasonable and necessary by the parties
16 to the agreement.

17 **(2)** A county, town, village, city, or tribal government affected in common with
18 another county, town, village, city, or tribal government by a proposed or existing
19 mine may cooperatively designate or establish a joint committee, but may also
20 maintain a separate committee under sub. (1). Committees under this section may
21 include representatives of affected units of government, business, and industry,
22 manpower, health, protective or service agencies, school districts, or environmental
23 and other interest groups or other interested parties.

24 **(3)** Persons applying for an exploration license under s. 295.44 shall thereafter
25 appoint a liaison person to any committee established under sub. (1) or (2), and shall

1 provide such reasonable information as is requested by the committee. Operators
2 and persons applying for an exploration license under s. 295.44 shall thereafter
3 make reasonable efforts to design and operate mining operations in harmony with
4 community development objectives.

5 (4) Committees established under sub. (1) or (2) may be funded by their
6 appointing authority, and may, through their appointing authority, submit a request
7 for operating funds to the investment and local impact fund board under s. 70.395.
8 Committees established under sub. (1) shall be eligible for funds only if the county,
9 town, village or city is also a participant in a joint committee, if any, established
10 under sub. (2). The investment and local impact fund board may not grant funds for
11 the use of more than one committee established under sub. (1) in relation to a
12 particular mining proposal unless a joint committee has been established under sub.
13 (2). The investment and local impact fund board shall grant operating funds to any
14 committee that submits a request and is eligible under this subsection and s. 70.395
15 (2) (fm). Committees may hire staff, enter into contracts with private firms or
16 consultants or contract with a regional planning commission or other agency for staff
17 services for mining-related purposes or the purposes under s. 70.395 (2) (fm).

18 **295.45 Bulk sampling plan.** (1) A person who intends to engage in bulk
19 sampling may file a bulk sampling plan with the department. The collection of data
20 under a bulk sampling plan may include sampling and analysis related to
21 geophysical, geochemical, groundwater, and surface water conditions, as well as any
22 other data or studies necessary to prepare an application for a mining permit,
23 including the mining plan, reclamation plan, mining waste site feasibility study and
24 plan of operation, or any other approval required for the proposed mining.

25 (2) A person shall include all of the following in a bulk sampling plan:

1 (a) A description and map of the bulk sampling site, including the number of
2 acres in the site, the number of acres of land that will be disturbed, if any, associated
3 with each bulk sampling location, and the locations and types of sampling or studies
4 to be conducted at each bulk sampling location.

5 (b) A description of the methods to be used for the bulk sampling.

6 (c) A site-specific plan for controlling surface erosion that conforms to
7 requirements under ss. 281.33 (3) and 283.33 and that identifies how impacts to
8 plant and wildlife habitats will be avoided or minimized to the extent practicable.

9 (d) A revegetation plan for each area where bulk sampling will be performed
10 that describes how adverse impacts to the environment will be avoided or minimized
11 to the extent practicable and how the site will be revegetated and stabilized and that
12 identifies how adverse impacts to plant and wildlife habitats will be avoided or
13 minimized to the extent practicable.

14 (e) The estimated time for completing the bulk sampling and revegetation of
15 the bulk sampling locations.

16 (f) A description of any known adverse environmental impacts that are likely
17 to be caused by the bulk sampling and how those impacts will be avoided or
18 minimized to the extent practicable.

19 (g) A description of any adverse effects, as defined in s. 44.31 (1), that the bulk
20 sampling might have on any historic property, as defined in s. 44.31 (3), that is a
21 listed property, as defined in s. 44.31 (4), that is on the Wisconsin inventory of historic
22 places, as defined in s. 44.31 (12), or that is on the list of locally designated historic
23 places under s. 44.45; or any scenic or recreational areas; and plans to avoid or
24 minimize those adverse effects to the extent practicable.

1 **(2m)** The department shall protect as confidential any information, other than
2 effluent data, contained in a bulk sampling plan and in any application for an
3 approval that is required before the bulk sampling may be implemented, upon a
4 showing that the information is entitled to protection as a trade secret, as defined in
5 s. 134.90 (1) (c), and any information relating to the location, quality, or quantity of
6 a ferrous mineral deposit, to production or sales figures, or to processes or production
7 unique to the applicant or that would tend to adversely affect the competitive
8 position of the applicant if made public.

9 **(3)** Within 14 days of receipt of a bulk sampling plan, the department shall
10 identify for the applicant, in writing, all approvals that are required before the bulk
11 sampling may be implemented, any waivers, exemptions, or exceptions to those
12 approvals that are potentially available, and any information that the department
13 needs to issue the approvals or to issue a decision on any waiver, exemption, or
14 exception. If no approvals are required, the department shall notify the applicant
15 that no approvals are required and that the applicant may proceed with the bulk
16 sampling.

17 **(3e)** If a storm water discharge permit under s. 283.33 (1) (a) or a water quality
18 certification under rules promulgated under subch. II of ch. 281 to implement 33
19 USC 1341 (a) is required before bulk sampling may be implemented, the person filing
20 the bulk sampling plan may apply for and be issued the permit or certification.

21 **(3m)** The department shall act on any required construction site erosion
22 control and storm water management approval, notwithstanding any authorization
23 by the department of a local program to administer construction site erosion control
24 and storm water management requirements.

25 **(3s)** An applicant shall submit all of the following at the same time:

1 (a) Applications for individual approvals identified under sub. (3).

2 (b) Applications for coverage under general permits or registration permits
3 identified under sub. (3).

4 (c) Applications for waivers, exemptions, or exceptions identified under sub.
5 (3).

6 (d) A bond, as provided in sub. (5).

7 **(4)** (a) Notwithstanding any provision in ch. 23, 29, 30, 169, 281, 283, 285, 289,
8 or 291 or in a rule promulgated under those chapters that is applicable to an approval
9 identified under sub. (3), the application for any approval, for a waiver, exemption,
10 or exception to an approval, or for a determination that the proposed bulk sampling
11 activity is below the threshold that requires an approval, is considered to be complete
12 on the 30th day after the department receives the application, unless, before that
13 day, the department provides the applicant with written notification that the
14 application is not complete, stating the reason for the determination and describing
15 the specific information necessary to make the application complete.

16 (b) If the department provides a notice under par. (a), the applicant shall
17 supplement the application by providing the specified information. The application
18 is complete when the applicant provides the information.

19 (c) If the department determines that the issuance of an approval is contingent
20 upon the issuance of a permit under s. 29.604 (6m), and if the application for the
21 permit under s. 29.604 (6m) is filed with the approval application, the department
22 may not determine that the approval application is incomplete on the basis that the
23 department has not yet issued the permit under s. 29.604 (6m).

24 **(5)** (a) A person who intends to engage in bulk sampling shall submit with the
25 bulk sampling plan a bond in the amount of \$5,000 that is conditioned on faithful

1 performance of the requirements of this section, that is issued by a surety company
2 licensed to do business in this state, and that provides that the bond may not be
3 canceled by the surety, except after not less than 90 days' notice to the department
4 in writing by registered or certified mail.

5 (b) If the surety for a bond submitted under par. (a) issues a cancellation notice,
6 the person who filed the bulk sampling plan shall deliver a replacement bond at least
7 30 days before the expiration of the 90-day notice period. If the person fails to submit
8 a replacement bond, the person may not engage in bulk sampling until the person
9 submits a replacement bond.

10 (c) If the license of the surety company for a bond submitted under par. (a) is
11 revoked or suspended, the person who filed the bulk sampling plan, within 30 days
12 after receiving written notice from the department, shall deliver a replacement bond.
13 If the person fails to submit a replacement bond, the person may not engage in bulk
14 sampling until the person submits a replacement bond.

15 (d) The department may require that the amount of the bond submitted under
16 this subsection be increased at any time, if the department determines that it is
17 unlikely that the bond would be adequate to fund the cost to this state of completing
18 the revegetation plan.

19 (e) The department shall release a bond submitted under this subsection one
20 year after the time for completing the bulk sampling and the revegetation set forth
21 in the bulk sampling plan if the department determines that the person who engaged
22 in bulk sampling has complied with this section.

23 (7) Notwithstanding any provision in ch. 23, 29, 30, 169, 281, 283, 285, 289, or
24 291 or a rule promulgated under those chapters applicable to an approval identified
25 under sub. (3), all of the following apply:

1 (a) When considering an application for an approval identified under sub. (3),
2 the department shall recognize the fixed location of the metallic mineral deposits,
3 the water needs inherent in mining, and the need for mining waste sites and
4 processing facilities, including wastewater and sludge storage or treatment lagoons,
5 to be contiguous to the location of the ferrous mineral deposits.

6 (b) When issuing an approval, the department shall require the bulk sampling
7 activity for which the approval is issued to be conducted at locations that result in
8 the fewest overall adverse environmental impacts, to the extent practicable.

9 **(8)** In determining whether to approve or deny an application for an approval
10 identified under sub. (3), the department shall consider the site-specific erosion
11 control plan, the revegetation plan, and any mitigation under s. 295.60, any
12 measures under s. 295.605, or any conservation measures under s. 295.61 that the
13 applicant proposes to take.

14 **(9)** Notwithstanding any inconsistent period in ch. 23, 29, 30, 169, 281, 283,
15 285, 289, or 291 or in a rule promulgated under those chapters that is applicable to
16 an approval identified under sub. (3), the department shall approve or deny the
17 application within 30 days after the day on which the application is considered to be
18 complete under sub. (4) if any of the following apply:

19 (a) The application is for a waiver, exemption, or exception to an approval for
20 a bulk sampling activity or for a determination that the proposed bulk sampling
21 activity is below the threshold that requires an approval.

22 (b) The application is for a determination of eligibility for coverage under a
23 general permit or a registration permit.

24 **(10)** (a) Notwithstanding any inconsistent period in ch. 23, 29, 30, 169, 281,
25 283, 285, 289, or 291 or in a rule promulgated under those chapters that is applicable

1 to an approval identified under sub. (3), the department shall approve or deny any
2 application for an approval identified under sub. (3) to which sub. (9) does not apply
3 within 60 days after the date on which the application is considered to be complete
4 under sub. (4), unless the application is for an individual permit for which federal law
5 requires the opportunity for public comment or the ability to request a public hearing
6 prior to issuance of the approval.

7 (b) The department shall publish a class 1 notice, under ch. 985, that describes
8 the availability of information concerning the activity for which an approval
9 described in par. (a) is required, its proposed decision, its draft approval, information
10 or summaries related to the approval, the department's analyses and preliminary
11 determinations relating to the approval, the preapplication description under s.
12 295.46, any additional information that a law concerning the approval requires to be
13 made available, and the opportunity to submit written comments within 30 days
14 after the notice is published.

15 (c) In the notice under par. (b), the department shall also specify the date, time,
16 and location of the public informational hearing. The department shall send the
17 notice to any person to whom the department is required to give notice of any
18 proposed determination, application, or hearing concerning an approval described
19 in par. (a) under the laws relating to the issuance of the approval.

20 (d) If there is more than one approval described in par. (a), the department shall
21 issue one notice and coordinate the public comment period for all of the approvals.
22 If possible, the department shall coordinate the notice and the public comment
23 period for an approval that is an individual permit for which federal law requires the
24 opportunity for public comment or the ability to request a public hearing prior to

1 issuance of the approval with notice and the public comment period for the approvals
2 described in par. (a).

3 (e) The department shall hold a public informational hearing within 30 days
4 after publishing the notice under par. (b). The department shall hold the public
5 informational hearing in the county where the majority of the proposed bulk
6 sampling site is located. If there is more than one approval described in par. (a), the
7 department shall hold a single public informational hearing covering all of the
8 approvals and the preapplication description under s. 295.46. If possible, the
9 department shall include consideration of an approval that is an individual permit
10 for which federal law requires the opportunity for public comment or the ability to
11 request a public hearing prior to issuance of the approval in the public informational
12 hearing under this paragraph. The public informational hearing under this
13 paragraph is not a contested case hearing under ch. 227.

14 **(10g)** (a) If it is not possible to coordinate the public comment period and public
15 informational hearing for an approval that is an individual permit for which federal
16 law requires the opportunity for public comment or the ability to request a public
17 hearing prior to issuance of the approval with the public comment period and public
18 informational hearing under sub. (10), the department shall issue a separate public
19 notice and hold a separate public informational hearing for the approval in
20 accordance with the law governing the approval.

21 (b) The department shall approve or deny the application for an approval to
22 which par. (a) applies within 180 days after the date on which the application is
23 considered to be complete under sub. (4).

24 **(10r)** An approval identified under sub. (3) is issued upon mailing and is final
25 and effective upon issuance.

1 **(11)** The department is not required to prepare an environmental impact
2 statement or an environmental assessment for an approval required for bulk
3 sampling.

4 **295.46 Preapplication description.** (1) A person who files a bulk sampling
5 plan under s. 295.45 with regard to a proposed mining project shall file, together with
6 the bulk sampling plan, a general description of the proposed mining project. A
7 person who proposes to engage in a mining project, but who does not file a bulk
8 sampling plan, shall file a general description of the proposed mining project with
9 the department at the time that the person provides the notice of intent to file an
10 application for a mining permit under s. 295.465. The general description shall
11 include all of the following:

12 (a) A description of the proposed mining site.

13 (b) A map that shows all of the following:

14 1. The boundaries of the area of land that will be affected by the proposed
15 mining project.

16 2. The location and names of all streams, roads, railroads, pipelines, and utility
17 lines on or within 1,000 feet of the proposed mining site.

18 3. The name or names of the owner or owners of the proposed mining site.

19 4. The name of each city, village, or town in which the proposed mining site is
20 located and the name of any other city, village, or town that is located within 3 miles
21 of the proposed mining site.

22 5. The federal natural resources conservation service land capabilities
23 classifications of the area affected by the proposed mining project.

24 6. The elevation of the water table.

1 (c) A general description of the nature, extent, and final configuration of the
2 proposed excavation and mining site, including an estimate of the production of
3 tailings, waste rock, and other refuse and the location of their disposal.

4 (d) A general conceptual description of the likely operating procedures of the
5 proposed mining project.

6 (e) The likely location, and a general description, of the excavation, waste site,
7 and processing facilities relating to the proposed mining project.

8 **(2)** (a) If the department provides notice to an applicant under s. 295.45 (3) that
9 no approvals are required for bulk sampling or if a person who proposes to engage
10 in a mining project files a preapplication description of the proposed mining project
11 at the time that the person provides the notice of intent to file an application for a
12 mining permit under s. 295.465 because the person did not file a bulk sampling plan,
13 the department shall publish a class 1 notice, under ch. 985, of a public informational
14 hearing on the proposed mining project. The department shall publish the notice
15 when it notifies the applicant that no approvals are required or after it receives the
16 notice of intent.

17 (b) In a notice under par. (a), the department shall do all of the following:

18 1. Describe the availability of the preapplication description.

19 2. Describe the opportunity to submit written comments within 30 days after
20 the notice is published.

21 3. Specify the date, time, and location of the public informational hearing.

22 (c) The department shall send a notice under par. (a) to all of the following:

23 1. The clerk of any city, village, town, or county within which any part the
24 proposed mining site lies.

1 2. The clerk of any city, village, or town, contiguous to any city, village, or town
2 within which any portion of the proposed mining site is located.

3 3. Any regional planning commission for the area within which the affected
4 area lies.

5 4. Any state agency that the department knows may be required to grant a
6 permit or other authorization necessary for the proposed mining project.

7 5. Any interested person who has requested notification.

8 (d) The department shall hold a public informational hearing within 30 days
9 after publishing the notice under par. (a). The department shall hold the public
10 informational hearing in the county in which the majority of the proposed mining site
11 is located.

12 **295.465 Preapplication notification.** (1) Except as provided in sub. (3), at
13 least 12 months before filing an application for a mining permit under s. 295.47, a
14 person proposing to engage in a mining project shall notify the department in writing
15 of the intention to file an application for a mining permit. After receiving the
16 notification, the department shall hold at least one meeting with the person to make
17 a preliminary assessment of the project's scope, to make an analysis of alternatives,
18 to identify potential interested persons, and to ensure that the person making the
19 proposal is aware of all of the following:

20 (a) The approvals, including the filing requirements for the approvals, that the
21 person may be required to obtain for the mining project.

22 (b) The requirements for submission of an environmental impact report and for
23 submission of any other information required by the department to prepare an
24 environmental impact statement under s. 295.53.

1 (c) The information the department will require to enable the department to
2 process the application for the mining permit in a timely manner.

3 (2) Within 60 days of a meeting under sub. (1), the department shall provide
4 all of the following to the person:

5 (a) A detailed written summary of the requirements under sub. (1) (a) to (c).

6 (b) Any available information relevant to the potential impacts of the mining
7 project on rare, threatened, or endangered species and historic or cultural resources
8 and any other information relevant to potential impacts that may occur from the
9 project that are required to be considered under s. 1.11.

10 (c) Available information to evaluate the environmental impact of the project
11 and to expedite the preparation of the environmental impact report and the
12 environmental impact statement, including information concerning preliminary
13 environmental reviews, field studies, and investigations; monitoring programs to
14 establish baseline water quality; laboratory studies and investigations; advisory
15 services; and the timing and the processes associated with any necessary
16 consultations with other state or federal agencies and within the department, such
17 as those required for endangered resources and cultural resource consultations and
18 approvals.

19 (3) A person who files an application under s. 295.47 for a mining proposal is
20 not required to provide notice under sub. (1) if the person files the application no
21 more than one year after the department denied the person's application for the same
22 mining proposal.

23 **295.47 Application for mining permit.** (1) (a) No person may engage in
24 mining or reclamation at any mining site unless the mining site is covered by a
25 mining permit and by written authorization to mine under s. 295.59 (3). An

1 applicant shall submit an application for a mining permit to the department in
2 writing and in reproducible form and shall provide the number of copies that are
3 requested by the department. An application and a mining permit are required for
4 each separate mining site. The applicant shall distribute copies of the application
5 to the clerk of any city, village, town, or county with zoning jurisdiction over the
6 proposed site, to the clerk of any city, village, town, or county within whose
7 boundaries any portion of the proposed mining site is located, to the elected
8 governing body of any federally recognized American Indian tribe or band with a
9 reservation the boundaries of which are within 20 miles of the proposed site, and to
10 the main public library of each city, village, town, or county with zoning jurisdiction
11 over the proposed site or within whose boundaries any portion of the proposed site
12 is located.

13 (b) If a person proposes to conduct mining at a mining site that includes an
14 abandoned mining site, the person shall include plans for reclamation of the
15 abandoned mining site, or the portion of the abandoned mining site that is included
16 in the mining site, in its mining plan and reclamation plan.

17 (2) As a part of each application for a mining permit, the applicant shall furnish
18 all of the following:

19 (a) A mining plan under s. 295.48.

20 (b) A reclamation plan under s. 295.49.

21 (c) A mining waste site feasibility study and plan of operation under s. 295.51.

22 (e) The name and address of each owner of land within the mining site and each
23 person known by the applicant to hold any option or lease on land within the mining
24 site.

25 (f) A list of all mining permits in this state held by the applicant.

1 (g) Evidence the applicant has applied or will apply for necessary permits or
2 other permissions under all applicable zoning ordinances and that the applicant has
3 applied or will apply to the department for any approval and has applied or will apply
4 for any other license or permit required under state law.

5 (h) 1. The information specified in subd. 2. concerning the occurrence of any of
6 the following within 10 years before the application is submitted:

7 a. A forfeiture by the applicant, principal shareholder of the applicant, or a
8 related person of a mining reclamation bond that was sufficient to cover all costs of
9 reclamation and was posted in accordance with a permit or other approval for a
10 mining operation in the United States, unless the forfeiture was by agreement with
11 the entity for whose benefit the bond was posted.

12 b. A felony conviction of the applicant, a related person, or an officer or director
13 of the applicant for a violation of a law for the protection of the natural environment
14 arising out of the operation of a mining site in the United States.

15 c. The bankruptcy or dissolution of the applicant or a related person that
16 resulted in the failure to reclaim a mining site in the United States in violation of a
17 state or federal law.

18 d. The permanent revocation of a mining permit or other mining approval
19 issued to the applicant or a related person if the permit or other mining approval was
20 revoked because of a failure to reclaim a mining site in the United States in violation
21 of state or federal law.

22 2. The applicant shall specify the name and address of the person involved in
23 and the date and location of each occurrence described in subd. 1.

24 (i) A description of any land contiguous to the proposed mining site that the
25 applicant owns or leases or has an option to purchase or lease.

1 (j) Any other pertinent information that the applicant believes may be useful
2 to the department.

3 **295.48 Mining plan. (1) GENERAL.** An applicant for a mining permit shall
4 submit as part of the application a mining plan that includes a description of the
5 proposed mining site and either a detailed map drawn to a scale approved by the
6 department or aerial photographs, if the photographs show the details to the
7 satisfaction of the department, prepared and certified by a competent engineer,
8 surveyor, or other person approved by the department that show all of the following:

9 (a) The boundaries of the area of land that will be affected.

10 (b) The drainage area above and below the area that will be affected.

11 (c) The location and names of all streams, roads, railroads, pipelines, and
12 utility lines on or within 1,000 feet of the mining site.

13 (d) The name or names of the owner or owners of the mining site.

14 (e) The name of the city, village, or town in which the mining site is located and
15 the name of any other city, village, or town that is within 3 miles of the mining site.

16 **(2) DESCRIPTIVE DATA.** The applicant shall provide descriptive data to
17 accompany the map or photographs under sub. (1), including all of the following:

18 (a) The federal natural resources conservation service land capabilities
19 classifications of the affected area.

20 (b) The elevation of the water table.

21 (c) Details of the nature, extent, and final configuration of the proposed
22 excavation and mining site, including the total estimated production of tailings,
23 waste rock, and other refuse and the location of their disposal.

24 (d) The nature and depth of the overburden.

1 **(3) OPERATING PROCEDURES.** The applicant shall also include in the mining plan
2 the details of the proposed operating procedures, including descriptions of all of the
3 following:

4 (a) The sequence of mining operations.

5 (b) The handling of overburden materials.

6 (c) The production, handling, and final disposition of tailings.

7 (d) The milling, concentrating, refining, and other processing of ferrous
8 minerals.

9 (e) The storage, loading, and transportation of the final product.

10 (f) Groundwater and surface water management techniques, including
11 provisions for erosion protection and drainage control, and a water management
12 plan showing water sources, flow paths and rates, storage volumes, and release
13 points.

14 (g) Plans for collection, treatment, and discharge of any water resulting from
15 the mining.

16 (h) Plans for protecting air quality under ch. 285.

17 (hm) A plan for monitoring environmental changes at the mining site.

18 (hr) An assessment of the risk of the occurrence of an accidental health or
19 environmental hazard in connection with the operation of the mine. The assessment
20 shall include, with specificity, a description of the assumptions that the applicant
21 used in making the risk assessment and the contingency measures that the applicant
22 proposes to take in the event of that an accidental health or environmental hazard
23 occurs.

24 (i) Measures for notifying the public and responsible governmental agencies of
25 potentially hazardous conditions, including the movement or accumulation of toxic

1 wastes in groundwater and surface water, soils, and vegetation, and other
2 consequences of the operation of importance to public health, safety, and welfare.

3 (j) All surface facilities associated with the mining site and any use of mining
4 waste in reclamation or the construction of any facility or structure.

5 (k) All geological and geotechnical investigations and drilling programs.

6 (L) A plan for completing and submitting a preblasting survey to the
7 department before any blasting is conducted.

8 **(4) REQUIRED DEMONSTRATIONS.** The applicant shall demonstrate in the mining
9 plan that the proposed mining will be consistent with the reclamation plan under s.
10 295.49 and that all of the following will apply, at a minimum:

11 (a) Handling and storage of all materials on the mining site will be done in an
12 environmentally sound manner.

13 (b) Buildings and other structures will be painted and maintained in a manner
14 that is visually compatible with the surrounding vegetational and earth conditions,
15 except that if a building or other structure cannot be painted and maintained in a
16 manner that is visually compatible or if painting and maintaining a building or other
17 structure in a manner that is visually compatible would cause safety concerns, the
18 building or structure will be made as visually inconspicuous as is practicable.

19 (c) Effective means will be taken to limit access to the mining site to minimize
20 exposure of the public to hazards.

21 (d) The use of mine mill chemicals and processing reagent wastes will be
22 governed by all of the following:

23 1. Reagents and mine mill chemicals will not be used in a manner that will
24 result in substantial harm to public safety or health or to the environment.

1 2. Reagents and mine mill chemicals that consist of or contain water soluble
2 salts or metals will be used in accordance with any applicable approval.

3 3. Reagents will not be used or stored at the mining site if they are not included
4 in the mining waste site feasibility study and plan of operation or in the mining plan,
5 except for reagents for laboratory, testing, research, or experimental purposes.

6 (e) Provisions will be made for back-up equipment in the event of the
7 breakdown of critical operation equipment.

8 (f) The design and operation specifications for mining site facilities include
9 features, which may include emergency power supplies, redundant equipment, or
10 temporary holding facilities, to deal with emergency conditions.

11 (g) Mining site facilities are designed to minimize disturbance to surface areas,
12 to the extent practicable.

13 (h) Where practicable, elevation differences in water-based transport systems
14 will be used for gravity flows to minimize pumping facilities and pressures.

15 (i) The following apply:

16 1. Systems for transporting tailings in slurry through pipelines that are not
17 buried are designed to provide for emergency tailings conveyance or storage in case
18 a pipeline breaks, plugs, freezes, or needs repairs and will be accessible for
19 inspection, emergency repair, and maintenance.

20 2. The location of emergency spill containment areas is consistent with the
21 prevention of substantial environmental pollution of surface waters.

22 3. In the event of a power failure, tailings pipelines will be self draining to a
23 tailings area or an emergency spill containment area or standby pumps and pipelines
24 or standby power is provided.

25 4. More than one emergency spill containment area is provided if necessary.

1 (j) If practicable, all liquid effluents from the mining site will be directed to a
2 common point, for treatment if necessary, before discharge to a natural watercourse.

3 (L) If sanitary wastes will be directed to a tailings area they will be
4 appropriately treated.

5 **295.49 Reclamation plan. (1)** An applicant for a mining permit shall submit
6 as part of the application a reclamation plan, designed to minimize adverse effects
7 to the environment to the extent practicable, that includes all of the following:

8 (a) A description of the manner, location, sequence, and timing of reclamation
9 of the mining site, including the mine, mining waste site, and sites for the disposal
10 of wastes that are not mining wastes.

11 (am) Prereclamation and postreclamation drawings.

12 (b) A map showing the specific reclamation proposal for each area of the mining
13 site.

14 (c) A description of ongoing reclamation procedures during mining.

15 (d) A description of proposed interim and final topography and slope
16 stabilization.

17 (e) A description of the proposed final land use and the relationship to
18 surrounding land and land use.

19 (f) Plans for the long-term care of the mining site, that include all of the
20 following:

21 1. Monitoring of the mine; mining waste sites; sites for the disposal of wastes
22 that are not mining wastes; groundwater quality; and surface water quality.

23 2. The names of persons legally and operationally responsible for long-term
24 care.

1 (g) Projected costs of reclamation, including the estimated cost of fulfilling the
2 reclamation plan.

3 (2) The applicant shall demonstrate in the reclamation plan that all of the
4 following will apply to the proposed reclamation, at a minimum:

5 (a) All toxic and hazardous wastes will be disposed of in conformance with
6 applicable state and federal laws.

7 (b) At the conclusion of mining activity, each tunnel, shaft, and other
8 underground opening will be sealed in a manner that will prevent seepage of water
9 in amounts that may be expected to create a safety, health, or environmental hazard,
10 unless the applicant demonstrates alternative uses for the tunnel, shaft, or other
11 underground opening that do not endanger public health or safety and that conform
12 to applicable environmental protection and mine safety laws and rules.

13 (c) Grading and stabilization of the excavation, sides, benches, and final slope
14 will conform with state and federal environmental and safety requirements and will
15 prevent erosion and environmental pollution to the extent practicable.

16 (d) Grading and stabilization of the mining waste site and sites for the disposal
17 of wastes that are not mining wastes will conform with state and federal
18 environmental and safety requirements.

19 (e) Merchantable by-products will be stabilized.

20 (f) Diversion and drainage of water from the mining site, including the mining
21 waste site and sites for the disposal of wastes that are not mining wastes, will be
22 adequate to prevent erosion and contamination of surface water and groundwater
23 to the extent practicable.

1 (g) Backfilling with tailings, waste rock, overburden, or borrow materials will
2 be conducted where the backfilling will not interfere with the mining and will not
3 cause an applicable groundwater quality standard to be exceeded.

4 (h) All underground and surface runoff waters from the mining site will be
5 managed, impounded, or treated in compliance with any approval that regulates
6 construction site erosion control or storm water management or discharge.

7 (i) All surface structures constructed as part of the mining activities will be
8 removed unless an alternate use is approved in the reclamation plan.

9 (j) Adequate measures will be taken to prevent significant subsidence, but if
10 subsidence does occur, the affected area will be reclaimed.

11 (k) All recoverable topsoil from surface areas disturbed by the mining will be
12 removed and stored in an environmentally acceptable manner for use in reclamation
13 or in the mitigation or minimization of adverse environmental impacts.

14 (L) All disturbed surface areas will be revegetated as soon as practicable after
15 the disturbance to stabilize slopes and minimize air pollution and water pollution,
16 with the objective of reestablishing a variety of plants and animals indigenous to the
17 area immediately prior to mining to the extent practicable.

18 (m) Plant species not indigenous to the area will be used for revegetation only
19 if necessary to provide rapid stabilization of slopes and prevention of erosion and only
20 with the approval of the department, but the objective under par. (L) will be
21 maintained.

22 **(3)** If it is physically or economically impracticable or environmentally or
23 socially undesirable for the reclamation process to return the area affected by mining
24 to its original state, the applicant shall provide, in the reclamation plan, the reasons

1 it would be impracticable or undesirable and a discussion of alternative conditions
2 and uses to which the affected area can be put.

3 **295.51 Mining waste site location criteria; feasibility study, and plan**
4 **of operation. (1) DEFINITIONS.** In this section:

5 (a) "Groundwater flow net" means a drawing showing equipotential contour
6 lines and the direction that groundwater will flow.

7 (c) "Regional" means relating to the area that may affect or be affected by a
8 proposed mining waste site, which ordinarily will not exceed the area within a radius
9 of 5 miles of the mining waste site.

10 (e) "Water budget" means an assessment of water inputs, outputs, and net
11 changes to a natural system or engineered facility over a fixed period.

12 (f) "Well nest" means 2 or more wells constructed to different depths and
13 installed within 10 feet of each other at the ground surface.

14 **(1e) HAZARDOUS MINING WASTE.** (a) Prior to the informational hearing under s.
15 295.57 (5) the department shall designate any mining wastes identified by the
16 department as hazardous under s. 291.05 (1).

17 (b) The disposal of any mining wastes that are identified by the department as
18 hazardous under s. 291.05 (1) in a mining waste site is subject to this subchapter, and
19 not to chs. NR 660 to 669, Wis. Adm. Code, except as necessary to comply with
20 applicable federal regulations adopted under the federal Resource Conservation and
21 Recovery Act, 42 USC 6901 to 6991m.

22 **(1m) LOCATION CRITERIA.** (a) Except as provided in par. (b), no person may locate
23 or operate a mining waste site, excluding the portion of a mining site from which
24 ferrous minerals are extracted and that is backfilled with mining waste, within 1,000
25 feet of any of the following:

1 1. The nearest edge of the right-of-way of any state trunk highway, as defined
2 in s. 340.01 (60).

3 2. The boundary of any state or national park.

4 3. The boundary of a scenic easement purchased by the department or the
5 department of transportation.

6 4. The boundary of a designated scenic or wild river.

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

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

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

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

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

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

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

4 (bt) No person may locate or operate a mining waste site, excluding the portion
5 of a mining site from which ferrous minerals are extracted and that is backfilled with
6 mining waste, in an area within the property owned by the mining operator and on
7 which the mining site is located if the area is closer than 200 feet to the outer
8 boundary of that property.

9 (c) No person may locate or operate a mining waste site, excluding the portion
10 of a mining site from which ferrous minerals are extracted and that is backfilled with
11 mining waste, within 1,200 feet of any public or private water supply well that
12 provides water for human consumption.

13 (d) No person may locate or operate a mining waste site, excluding the portion
14 of a mining site from which ferrous minerals are extracted and that is backfilled with
15 mining waste, within an area that contains mineral resources that are known at the
16 time the application for the mining permit is issued, are likely to be mined in the
17 future, and lie within 1,000 feet of the surface.

18 **(1s) BACKFILLED WASTE SITE.** For surface mining, the portion of a mining site
19 from which ferrous minerals are extracted and that is backfilled with mining waste
20 and any buildings, structures, roads, or drainage controls associated with that
21 portion of the mining site may be considered a single mining waste site.

22 **(2) GENERAL.** An applicant for a mining permit shall submit as part of the
23 application a mining waste site feasibility study and plan of operation that
24 demonstrates the suitability of the proposed mining waste site for the disposal of
25 mining wastes and that describes the operation of the mining waste site.

1 **(3) WASTE CHARACTERIZATION AND ANALYSIS.** For the purposes of this section, the
2 applicant shall perform waste characterization and analysis, to identify the
3 quantities, variability, and physical, radiological, and chemical properties of each
4 mining waste as necessary to assess the potential environmental impact of handling,
5 storage, and disposal. The applicant may include in the waste characterization and
6 analysis a review of the literature and results from similar existing facilities,
7 materials, or studies. For the purpose of the waste characterization and analysis,
8 the applicant shall conduct testing on representative samples of materials available,
9 on individual mining wastes from the mining process, and if the applicant proposes
10 mixed storage or disposal of individual mining wastes, on composite mining wastes.
11 If physical or chemical segregation of a mining waste is proposed, the applicant shall
12 test each individual waste resulting from the physical or chemical segregation. The
13 applicant shall complete all of the following components of the waste
14 characterization and analysis:

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

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

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

22 (d) Chemical and physical characteristics testing, including testing to
23 determine the leaching potential of the mining wastes and the composition of the
24 resulting leachate, using, at a minimum, the method in federal environmental
25 protection agency publication EPA 600/2-78-054, except that this testing is not

1 required if the applicant demonstrates, based on the analyses in pars. (b) and (c) or
2 on past experience, that there is not a probability for significant environmental
3 damage or a probability of an adverse impact on public health, safety, or welfare.

4 (4) SITE SPECIFIC INFORMATION. In addition to performing the mining waste
5 characterization and analysis under sub. (3), for the purposes of the mining waste
6 site feasibility study and plan of operation, an applicant shall conduct field and
7 laboratory investigations to determine physical, chemical, and biological
8 characteristics of the proposed mining waste site. The applicant shall do all of the
9 following:

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

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

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

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

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

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

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

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

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

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

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

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

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

1 3. Establish a final parameter list for groundwater and surface water based on
2 preliminary sampling and known information concerning the waters in the vicinity
3 of the mine and the mining waste site, consideration of applicable water quality
4 standards, and the geology and composition of the ferrous mineral deposit that will
5 be mined. At a minimum, in the program under this paragraph the applicant shall
6 collect water quality data for all of the following parameters:

- 7 a. Specific conductance.
8 b. Temperature.
9 c. Hydrogen ion concentration (pH).
10 d. Dissolved oxygen.
11 e. The major anions sulfate, chloride, and bicarbonate.
12 f. The major cations calcium, magnesium, potassium, and sodium.
13 g. Other total and dissolved metals, including aluminum, iron, and manganese,
14 that may be introduced by the mining activities.
15 h. General chemistry, including total alkalinity, total organic carbon, gross
16 alpha, gross beta, ammonia, nitrate, total dissolved solids, total hardness, and total
17 suspended solids.

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

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

23 (b) A description of the mining waste characterization and analysis conducted
24 under sub. (3), including a description of the test methods used in evaluating the

1 characteristics of the mining waste and the procedures and records for documenting
2 the chain of custody of the test samples.

3 (c) An existing site conditions plan sheet consisting of a topographic survey of
4 the area, with elevations tied to United States geological survey mean sea level
5 datum, illustrating the property boundaries, proposed boundaries of the mining
6 waste site, survey grid and north arrow, buildings, water supply wells, utility lines,
7 other man-made features, soil boring locations, observation well locations, and other
8 pertinent information.

9 (d) A series of geologic cross-sections illustrating existing topography; soil
10 borings; soil classification; soil properties; interpreted soil stratigraphy; bedrock;
11 well and boring locations and constructions; and stabilized water level readings.

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

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

18 (g) An environmental characterization that describes the structure and
19 functional relationships of ecosystems potentially affected by the proposed mining
20 waste site.

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

23 (i) A land use map, using the existing site conditions plan under par. (c) as a
24 base, showing plant communities, wildlife habitat, places where rare and

1 endangered species have been sighted, archaeological or historic sites, buildings,
2 and areas of social importance.

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

5 (k) Local climatological data for seasonal precipitation, evaporation, air
6 temperature, and wind velocity and direction. The applicant may use an annual
7 record on the proposed mining waste site or adequate data to correlate the proposed
8 mining waste site conditions to an existing observation station as the basis for this
9 data.

10 (L) A discussion of regional conditions, supplemented with maps or
11 cross-sections where appropriate, addressing all of the following:

12 1. Topography.

13 2. Hydrology, including surface water drainage patterns and important
14 hydrologic features such as navigable waters, springs, drainage divides, and
15 wetlands.

16 3. Geology, including the nature and distribution of bedrock and
17 unconsolidated deposits.

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

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

23 6. Climatology.

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

25 8. Zoning.

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

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

4 11. Identification of aquatic and terrestrial ecosystems such as stream orders
5 and classifications.

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

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

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

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

20 2. A series of cross-sections, using the geological cross-sections under par. (d)
21 as the base, that show existing topography, proposed base grades, and final grades.

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

24 4. Proposed methods for leachate control.

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

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

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

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

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

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

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

18 9. The results of engineering and hydrologic modeling to assess mining waste
19 site performance relative to compliance with applicable groundwater quality
20 standards to a depth of not more than 1,000 feet into the Precambrian bedrock or to
21 the final depth of the mining excavation, whichever is greater, and to compliance
22 with applicable surface water quality standards, examining a period equal to the
23 proposed period in which the mining waste site is proposed to operate plus 100 years
24 after closure of the mining waste site. The applicant may also include information
25 from other mining operations and operations for the extraction of nonferrous

1 metallic minerals to substantiate that the proposed mining waste site design,
2 including associated contingency plans and monitoring and response plans, will
3 allow for the operation and closure of the mining waste site in a manner that will not
4 substantially adversely affect groundwater and surface water quality in accordance
5 with applicable standards.

6 10. If the applicant proposes to expand an existing mining waste site, an
7 evaluation of the existing mining waste site design and operation.

8 (p) Preliminary water budgets for the periods before construction, during
9 construction, and after closure of the mining waste site, each addressing
10 climatological situations depicting dry, wet, and average precipitation and
11 evaporation conditions, based on climatological records. In preparing the water
12 budget, the applicant shall consider precipitation, slurry water input and return,
13 evaporation, surface runoff, evapotranspiration, the moisture holding capacity of
14 soil and mining waste, and the velocities and volumes of groundwater flow. In the
15 water budget, the applicant shall describe the estimated amount and quality of
16 seepage and discharge to surface water and groundwater.

17 (q) An analysis of the impact of the mining waste site on aesthetics and how
18 any impact can be minimized or mitigated to the extent practicable.

19 (r) Data regarding the safety factors of tailings basin embankments,
20 considering the following, on a case-by-case basis:

21 1. Geology of the mining waste site including type and homogeneity of the
22 foundation.

23 2. Materials and methods to be used for embankment construction.

24 3. Physical and chemical characteristics of the mining waste as deposited and
25 predicted changes through time.

1 4. The potential area to be affected in case of failure, considering land use and
2 the surrounding environment.

3 5. Requirements of the mine safety and health administration of the federal
4 department of labor.

5 (s) An economic analysis, including an engineer's cost estimate, for mining
6 waste site closure and long-term care.

7 (t) Identification and analysis of alternatives to the design and location of any
8 new proposed mining waste site and discussion of operation alternatives to the
9 extent they have a significant impact on design and location alternatives.

10 (u) An appendix that includes all of the following:

11 1. Boring logs, soil tests, well construction data, and water level
12 measurements.

13 2. A description of the methods and equations used in the analysis of the raw
14 data.

15 3. References.

16 **(6) CONTENTS RELATING TO OPERATION.** An applicant for a mining permit shall
17 submit as part of the mining waste site feasibility study and plan of operation
18 provisions relating to operation of the mining waste site including all of the following:

19 (a) Engineering plans consisting of all of the following:

20 1. An existing site conditions plan sheet indicating site conditions before
21 development to the extent not provided under sub. (5).

22 2. A base grade plan sheet indicating mining waste site base grades or the
23 appearance of the mining waste site if it were excavated in its entirety to the base
24 elevation, before installation of any engineering modifications and before disposal
25 of any mining wastes.

1 3. An engineering modifications plan sheet indicating the appearance of the
2 mining waste site after installation of engineering modifications.

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

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

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

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

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

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

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

- 1 c. All drainage patterns and surface water drainage control structures both
2 within the actual fill area and at the perimeter of the mining waste site, including
3 any berms, ditches, sedimentation basins, pumps, sumps, culverts, pipes, inlets,
4 velocity breaks, sodding, erosion matting, vegetation, or other methods of erosion
5 control.
- 6 d. The method of placing mining waste within each phase.
- 7 e. Ground surface contours at the time represented by the drawing, indicating
8 spot elevations for key features.
- 9 f. Areas to be cleared, grubbed, and stripped of topsoil.
- 10 g. Borrow areas for liner materials, granular materials for filter beds, berms,
11 roadway construction, and cover materials.
- 12 h. All soil stockpiles, including soils to be used for cover, topsoil, liner materials,
13 filter bed materials, and other excavation.
- 14 i. Access roads and traffic flow patterns to and within the active fill area.
- 15 j. All temporary and permanent fencing.
- 16 k. The methods of screening such as berms, vegetation, or special fencing.
- 17 L. Leachate collection, control, and treatment systems, including any pipes,
18 manholes, trenches, berms, collection sumps or basins, pumps, risers, liners, and
19 liner splices.
- 20 m. Leachate and groundwater monitoring devices and systems.
- 21 n. Disposal areas for severe weather operations.
- 22 o. Support buildings, utilities, gates, and signs.
- 23 p. Handling areas for the segregation of various types of mining waste.
- 24 q. Construction notes and references to details.

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

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

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

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

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

1 protection equipment; methods for dust control; method of placing mining waste
2 materials; monitoring; closure of filled areas; leachate control methods; and critical
3 backup equipment.

4 (d) An analysis of the financial responsibility for closure and long-term care
5 from the time of closing of the mining waste site to termination of the obligation to
6 maintain proof of financial responsibility for long-term care.

7 (e) A description of procedures for backfilling all soil borings and monitoring
8 wells when they are abandoned.

9 (f) A contingency plan to prevent or minimize damage to human health or the
10 environment in the event of an accidental or emergency discharge or other condition
11 that does not comply with conditions of the mining permit or other applicable
12 standards. The applicant shall ensure that the plan does all of the following:

13 1. Follows the spill prevention, control, and countermeasures plan in
14 regulations promulgated under 33 USC 1321.

15 2. Indicates, for the monitoring programs required under sub. (5) (o) 8., the
16 levels of substances that if exceeded require the operator to activate the contingency
17 plan.

18 3. Includes a provision for more concentrated and frequent monitoring in the
19 area of any excessive measurement.

20 4. Describes possible accidental or emergency discharges or other unplanned
21 events and identifies the corresponding corrective action or alternative action to be
22 implemented should the criteria for action be exceeded.

23 5. Specifies the action to be taken if an analysis of groundwater samples
24 requires a response.

1 (g) A list of the groundwater and surface water quality parameters for which
2 the applicant will monitor under s. 295.643 and a description of the methods for
3 groundwater and surface water sample collection, preservation, and analysis that
4 will be used.

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

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

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

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

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

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

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

1 (g) Provisions will be made for back-up equipment in the event of the
2 breakdown of critical operating equipment.

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

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

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

16 (j) The final slopes of the completed mining waste site will be no less than 2
17 percent and no greater than 50 percent, unless the mining waste site is specifically
18 designed for a final use compatible with other slopes.

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

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

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

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

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

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

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

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

23 (s) Tailings pipelines will be self-draining to the tailings area or to an
24 emergency spill containment area.

1 (t) The mining waste site is located in the same watershed as the surface
2 facilities for the mining unless it is not practicable to locate the mining waste site in
3 the same watershed as the surface facilities for the mining, as determined on a site
4 specific basis.

5 (u) The disposal of the mining waste will minimize the discharge of
6 environmental pollutants to groundwater to the extent practicable.

7 (w) Tailings pipelines are as short as practicable.

8 (x) Upstream rainfall catchment areas are minimized.

9 (y) The outside of the top of any dam is higher than the inside of the top of the
10 dam so that runoff from the top is forced to the inside of the dam.

11 (z) The mining waste site design includes staged reclamation, if practicable.

12 **(8) LIMITATION ON REGULATION OF CERTAIN MINING WASTE.** The department may
13 not regulate the use of mining waste in reclamation or the construction of any facility
14 or structure except through the department's review of the mining plan and
15 reclamation plan and the approval of the application for the mining permit.

16 **(9) APPLICABILITY OF OTHER LAWS.** Subchapters I to V and VIII of ch. 289 and
17 rules promulgated under those subchapters do not apply to a mining waste site, to
18 the disposal of mining waste in a mining waste site, or to mining wastes used in the
19 reclamation or construction of facilities and structures on the mining site.

20 **295.53 Environmental impact statement. (1) CONSULTANTS.** The
21 department may enter into contracts for environmental consultant services under
22 s. 23.41 to assist in the preparation of an environmental impact statement or to
23 provide assistance to applicants.

24 **(2) NOTICE.** After the department receives an application for a mining permit,
25 it shall notify the public and affected agencies that an environmental impact

1 statement will be prepared for the proposed mine and that the process of identifying
2 major issues under s. NR 150.21 (3), Wis. Adm. Code, is beginning.

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

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

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

24 3. Upon receipt of the environmental impact report, the department shall
25 review the environmental impact report and, if the department finds that the

1 environmental impact report does not contain information reasonably necessary for
2 the department to evaluate the proposed mining project and its environmental
3 effects, the department may request additional information from the applicant.

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

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

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

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

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

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

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

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

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

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

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

22 4. The transfer of land for which amounts were awarded by the department,
23 including under s. 23.09 (17m), 26.38, 28.11 (5r), or 77.895, to fund the acquisition
24 of, or to fund activities conducted on, forest land and any modification of, or

1 amendment to, a forest stewardship management plan or other plan necessitated by
2 the transfer of the land.

3 (d) The public notice, informational hearing, and comment provisions in s.
4 295.57, the provision concerning the effective date of approvals in s. 295.58 (6), and
5 the provisions for review in s. 295.77 apply to an environmental impact statement
6 prepared under this subsection. If the department revises and redistributes an
7 environmental impact statement or portion of an environmental impact statement
8 prepared under this section, the department shall distribute the environmental
9 impact statement or portion of the environmental impact statement as provided in
10 s. 295.57, but the period for public comment is 30 days, rather than 45 days.

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

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

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

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

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

17 (b) A mining permit.

18 (c) Any other approval.

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

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

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

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

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

11 2. The exemption will result in significant adverse environmental impacts, but
12 the applicant will offset those impacts through mitigation, as provided in s. 295.60,
13 through the measures provided in s. 295.605, or through the conservation measures
14 provided in s. 295.61.

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

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

23 **295.57 Application procedure. (1) SUBMISSION.** (a) An applicant shall
24 submit the application for a mining permit as provided in s. 295.47.

1 (b) The department and the state geologist shall protect as confidential any
2 information, other than effluent data, contained in an application for a mining
3 permit, upon a showing that the information is entitled to protection as a trade
4 secret, as defined in s. 134.90 (1) (c), and any information relating to production or
5 sales figures or to processes or production unique to the applicant or that would tend
6 to adversely affect the competitive position of the applicant if made public.

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

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

22 (c) If the department fails to meet the 30-day time limit under par. (a) or the
23 10-day time limit under par. (b), the application is administratively complete on the
24 last day of the 30-day time limit or 10-day time limit.

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

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

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

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

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

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

20 a. The application.

21 b. A draft approval.

22 c. Information or summaries relating to the approval.

23 3. The environmental impact statement, environmental impact report, and any
24 additional supporting information used in the department's evaluation of the
25 proposed mining.

1 4. The department's analyses and preliminary determinations relating to any
2 approval.

3 (b) The department shall distribute a notice that describes the availability of
4 the information under par. (a); the opportunity for written public comment, including
5 an invitation for the submission of written comments by any person within 45 days
6 after the notice is published; and the date, time, and location of the public
7 informational hearing and that includes any additional information that a law
8 concerning any approval requires to be provided. The department shall publish the
9 notice as a Class I notice under ch. 985. The department shall also send the notice
10 to all of the following:

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

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

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

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

20 5. Any regional planning commission for the area within which the proposed
21 mining site lies.

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

1 7. The federal environmental protection agency, U.S. Army Corps of Engineers,
2 and states potentially affected by the proposed discharge if a water discharge permit
3 under ch. 283 or a water quality certification for a federal wetland under s. 295.60
4 (4) is to be considered at the public informational hearing.

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

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

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

17 11. Any person upon request.

18 12. The applicant.

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

22 (c) The department shall coordinate the public comment period for the mining
23 permit with the public comment period for any other approval for the mining
24 operation, except that if an application for an approval is filed too late to allow public
25 comment within the public comment period for the mining permit, the department

1 shall issue separate notice, as described in par. (b), for the approval after the
2 application is filed.

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

17 (a) The public rights in any body of water and the related environment that may
18 be injured by the proposed withdrawal of groundwater or surface water.

19 (b) The public benefits provided by increased employment, economic activity,
20 and tax revenues from the proposed mining operation.

21 (c) The direct and indirect social and economic costs and benefits of the
22 proposed mining operation.

23 (d) Whether the proposed withdrawal of groundwater or surface water will
24 consume nonsurplus water.

25 (e) The rights of competing users of the groundwater or surface water.

1 (f) Any other water withdrawal issues identified by the department as relevant
2 to the decision of whether to issue or deny a permit.

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

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

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

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

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

22 (c) If the department does not comply with the deadline under par. (a),
23 including any extension agreed to by the applicant, the applicant may bring an action
24 for mandamus to compel the department to approve or deny the application.
25 Notwithstanding s. 814.04 (1), in an action under this paragraph the court shall

1 award the applicant its costs, including reasonable attorney fees, if it determines
2 that the department did not comply with the deadline under par. (a).

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

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

16 (c) Paragraphs (a) and (b) do not apply to the application for an air pollution
17 control permit under s. 285.62.

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

22 **(8m) SUBMISSION OF TECHNICAL REVIEW TO GREAT LAKES REGIONAL BODY.** If an
23 applicant files an application under s. 281.346 for an approval for a withdrawal of
24 surface water or groundwater that is subject to regional review or council approval,
25 the department shall provide its technical review, as defined in s. 281.346 (1) (u), to

1 the regional body, as defined in s. 281.346 (1) (q), no later than 90 days after the
2 applicant files the application for the approval.

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

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

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

19 2. That the waste site feasibility study and plan of operation complies with s.
20 295.51.

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

23 3m. That the proposed mining is likely to meet or exceed the regulations that
24 apply to municipal floodplain zoning ordinances contained in the uniform rules

1 promulgated by the department for preparation and implementation of municipal
2 floodplain zoning ordinances.

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

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

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

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

19 1. Whether the department has considered the environmental impact
20 statement and comments received on it.

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

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

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

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

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

6 1. Hazards resulting in irreparable, substantial physical damage to any of the
7 following that cannot be prevented under the requirements of this subchapter,
8 avoided to the extent practicable by removal from the area of hazard, or mitigated
9 by purchase or by obtaining the consent of the owner:

10 a. A dwelling house.

11 b. A public building.

12 c. A school.

13 d. A church.

14 e. A cemetery.

15 f. A commercial or institutional building.

16 g. A public road.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (c) An approval issued for a mining project under ch. 23, 29, 30, 169, 281, 283,
22 285, 289, or 291, except for a permit under ch. 283 or 285 that is subject to a federal
23 requirement limiting its duration, remains valid for the life of the mining project,
24 subject to the enforcement provisions applicable to the approval.

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

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

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

16 **295.59 Bonds and other security. (1) SECURITY FOR RECLAMATION.** (a) Upon
17 notification that an application for a mining permit has been approved by the
18 department but before beginning mining, the operator shall furnish one of the
19 following to the department:

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

23 2. Cash.

24 3. Certificates of deposit.

25 4. Government securities.

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

3 (c) The operator shall furnish the security required under par. (a) in the amount
4 equal to the estimated cost to the state of fulfilling the reclamation plan, other than
5 the cost of long-term care of the mining waste site, in relation to the portion of the
6 mining site that will be disturbed by the end of the following year. The department
7 shall determine the estimated cost of reclamation of each mining site on the basis of
8 relevant factors, including the character and nature of the lands to be reclaimed, the
9 future suitable use of the land involved, the topography of the mining site, the
10 methods of reclamation being employed, the depth and composition of overburden,
11 and the depth of the ferrous mineral deposit being mined.

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

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

- 1 (a) A bond
- 2 (b) Cash.
- 3 (c) Certificates of deposit.
- 4 (d) Government securities.
- 5 (e) Insurance.

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

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

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

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

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

5 (cm) “Ceded territory” means the territory in Wisconsin ceded by the Chippewa
6 Indians to the United States in the treaty of 1837, 7 Stat. 536, and the treaty of 1842,
7 7 Stat. 591.

8 (e) “Federal compensatory mitigation requirement” means any mitigation
9 requirement that is imposed by the federal government.

10 (f) “Federal wetland” means a wetland that is subject to federal jurisdiction
11 under 33 USC 1344.

12 (g) “Functional values and water quality” means the water quality related
13 wetland functional values and uses specified in sub. (6).

14 (h) “Impact” means a permanent, temporary, cumulative, secondary, direct or
15 indirect result that is attributable to a discharge to which the wetland water quality
16 standards apply.

17 (i) “Mitigation” means the restoration, enhancement, or creation of wetlands
18 to offset significant adverse impacts to other wetlands.

19 (j) “Mitigation bank” means a system of accounting for wetland loss and
20 mitigation that includes one or more sites where wetlands are restored, enhanced,
21 or created to provide transferable credits to be subsequently applied to offset
22 significant adverse impacts to other wetlands.

23 (k) “Nonfederal wetland” means a wetland that is not subject to federal
24 jurisdiction under 33 USC 1344.

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

3 (m) "Practicable" means available and capable of being implemented after
4 taking into consideration cost, available technology, and logistics in light of the
5 overall project purposes and the needs for bulk sampling or a mining operation.

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

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

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

12 (q) "Watershed" means an area of land where all of the water drains into a
13 common waterway.

14 (r) "Wetland water quality standard" means a water quality standard specified
15 under sub. (6).

16 **(2) SCOPE.** This section applies to any water quality certification, or any other
17 approval that involves an evaluation of impact to wetlands, that is associated with
18 mining or bulk sampling.

19 **(3) WETLAND DETERMINATIONS AND DELINEATIONS.** For purposes of this section,
20 wetland determinations and wetland boundary delineations shall be consistent with
21 the U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual and any final
22 regional supplement to the manual. The department may rely on wetland
23 determinations and wetland boundary delineations made by other agencies and
24 consultants. If the applicant for a water quality certification or for any other
25 approval for an activity involving impacts to wetlands has provided information to

1 the department that is identified in the manual or any final regional supplement as
2 being sufficient to make a wetland determination or a delineation of boundaries, the
3 department may visit the site to conduct surveys or gather additional site-specific
4 quantitative data provided that the department does not discontinue the processing
5 of the application to do so.

6 (4) WATER QUALITY CERTIFICATION FOR FEDERAL WETLANDS. (a) For purposes of
7 issuing a water quality certification that is required pursuant to 33 USC 1341 (a) for
8 a discharge associated with a mining operation or bulk sampling into a federal
9 wetland or for issuing any other approval associated with a mining operation for an
10 activity that involves any impact to a federal wetland, the department shall review
11 the federal compensatory mitigation requirements proposed as part of the federal
12 permit application.

13 (b) For purposes of determining whether to issue a water quality certification
14 or other approval that requires an evaluation of impacts to federal wetlands, the
15 department shall determine whether it has reasonable assurance that the federal
16 permitting process and federal compensatory mitigation requirements will offset
17 any significant adverse impact to the functional values and water quality of the
18 federal wetland. If the department determines that reasonable assurance exists, the
19 department may not impose any additional conditions.

20 (c) If the department determines that reasonable assurance does not exist
21 under par. (b), it may impose conditions in the water quality certification or other
22 approval if such conditions are limited to those that are necessary to offset any
23 significant adverse impacts to the federal wetland that are not offset by the federal
24 compensatory mitigation requirements in the federal permit or other approval. Any

1 conditions imposed by the department shall permit a mitigation program as provided
2 in sub. (8).

3 (d) In imposing conditions under par. (c), the department may not increase the
4 number of acres to be mitigated under the federal compensatory mitigation
5 requirements that are applicable to the federal wetland.

6 (e) The department shall issue a water quality certification under this
7 subsection if the federal permitting process, including any federal compensatory
8 mitigation requirement, offsets the significant adverse impacts to the functional
9 values and water quality of the federal wetland.

10 **(5) WATER QUALITY CERTIFICATION FOR NONFEDERAL WETLANDS.** (a) *Certification*
11 *required.* No person may discharge dredge or fill material associated with a mining
12 operation or bulk sampling into a nonfederal wetland unless the discharge is
13 authorized under a water quality certification issued under this section.

14 (b) *Avoidance or minimization of impacts.* For purposes of issuing a water
15 quality certification for a discharge subject to par. (a) or evaluating impacts to
16 nonfederal wetlands for any approval requiring an evaluation of impacts to
17 nonfederal wetlands, the department shall first determine whether any impact to
18 the nonfederal wetland caused by the mining operation or bulk sampling can be
19 avoided or minimized to the extent practicable. If the impacts have been avoided or
20 minimized to the extent practicable, any remaining impacts to nonfederal wetlands
21 may not be a basis for a denial of a water quality certification provided that any
22 remaining significant adverse impacts are offset under a mitigation program under
23 sub. (8).

1 (c) *Siting analysis.* 1. An applicant for a water quality certification for a
2 nonfederal wetland shall submit a siting analysis to the department for review. In
3 reviewing the siting analysis, the department shall recognize all of the following:

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

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

8 c. The presumption that nonfederal wetlands will be impacted.

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

12 3. If it is impracticable to avoid an impact to, or the use of, a nonfederal wetland,
13 the applicant shall identify in the siting analysis, and the department shall review,
14 those configurations that would result in impacts to the fewest acres of nonfederal
15 wetlands to the extent practicable. The department shall determine which
16 configuration will minimize the impacts to the fewest acres.

17 4. After the department makes the determination under subd. 3., the
18 department shall evaluate the impact of the mining operation to the functional
19 values and water quality of the nonfederal wetland.

20 **(5m) EVALUATION OF IMPACTS.** The department shall determine the impact of a
21 proposed activity upon the functional values and water quality of a wetland by using
22 wetland ecological evaluation methods jointly accepted by the U.S. Army Corps of
23 Engineers and the department and appropriate to the affected wetland.

24 **(6) WETLAND WATER QUALITY STANDARDS.** The following wetland water quality
25 standards shall apply to any water quality certification under sub. (4) or (5):

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

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

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

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

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

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

19 6. Habitat for resident and transient wildlife species, including mammals,
20 birds, reptiles, and amphibians, for breeding, resting, nesting, escape cover, travel
21 corridors, and food.

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

24 (b) All of the following shall be minimized in order to avoid significant adverse
25 impacts for the purpose of maintaining or enhancing the functional values and water

1 quality identified under par. (a), and any minimization of the following must be taken
2 into account in the department's evaluation of significant adverse impacts:

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

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

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

19 **(6m)** SCOPE OF EVALUATION. For purposes of issuing a water quality certification
20 under sub. (4) or (5), the department shall evaluate whether an activity will result
21 in a significant adverse impact to the functional values and water quality associated
22 with a wetland by doing all of the following:

- 23 (a) Comparing the functional values and water quality of the wetland with
24 other wetlands located within the boundaries of the mining site or within the same

1 water management unit as the mining site and with other waters of the state that
2 are located in the same water management unit.

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

5 **(7) APPROVAL BY DEPARTMENT; NONFEDERAL WETLANDS.** The department shall
6 issue a water quality certification under this section for a nonfederal wetland, if the
7 department determines all of the following:

8 (a) All practicable measures will be taken to minimize the adverse impacts to
9 wetlands.

10 (b) Any significant adverse impacts to functional values and water quality that
11 remain are offset through a mitigation program under sub. (8).

12 **(8) MITIGATION PROGRAM.** (a) *Contents.* A mitigation program to offset
13 significant adverse impacts to functional values and water quality of wetlands shall
14 contain all of the following:

15 1. Proposed projects for mitigation and a schedule for implementing the
16 projects. These projects may be performed by a person other than the applicant,
17 subject to the department's approval of the projects and schedule.

18 2. If the program is applicable to a federal wetland, all federal compensatory
19 mitigation requirements associated with the federal wetland application.

20 (b) *Option of applicant.* An applicant submitting a program under par. (a) may
21 submit options for mitigation. These options may include any combination of the
22 types of mitigation specified in par. (d). In preparing the program, the applicant shall
23 identify and consider mitigation that could be conducted within the same watershed
24 in which the mining site is located.

1 (c) *Ratios for mitigation.* The amount of mitigation required may not exceed
2 1.5 acres of mitigation for each acre of adversely impacted wetland. For purpose of
3 credits in a mitigation bank, each acre that is subject to mitigation shall count as at
4 least one credit.

5 (d) *Sequence.* If it is not practicable or ecologically preferable to conduct
6 mitigation at an on-site location or if there is no on-site location that will provide
7 sufficient wetland acreage, the department shall allow the applicant to conduct
8 mitigation at a site other than an on-site location, subject to par. (e). Mitigation
9 under a program under par. (a) shall be accomplished through the following types:

10 1. Implementation of a project for mitigation.

11 2. Purchase of mitigation credits from a mitigation bank for a site in a
12 mitigation bank that is located anywhere in the state subject to par. (e).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 1m. Enter into a contract under s. 30.20.

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

15 3. Seek authorization under a general permit issued under s. 30.12, 30.123,
16 30.19, or 30.20.

17 (b) If a person is applying for more than one permit or contract 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, 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. Mitigation as provided under s. 295.60.

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.

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 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 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.

7 (5) PERMIT 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 meet the requirements under par. (a).

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

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

16 **295.607 Shoreland and floodplain zoning.** (1) (a) In this section:

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

19 2. "Floodplain zoning ordinance" means a municipal floodplain zoning
20 ordinance adopted under s. 87.30.

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

23 (2) (a) The department may not prohibit a development or construction activity
24 to be located in an area that would otherwise be prohibited under a shoreland

1 ordinance if the development or construction activity is authorized by the
2 department as part of a mining operation covered by a mining permit under s. 295.58.

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

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

14 **295.61 Withdrawals of surface waters and groundwater. (1)**

15 DEFINITIONS. In this section:

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

17 (b).

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

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

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

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

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

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

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

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

3 (i) “Withdrawal” has the meaning given in s. 281.35 (1) (m).

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

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

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

1 shall approve the location of each high capacity well as part of the permit issued
2 under sub. (4).

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

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

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

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

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

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

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

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

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

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

9 1. Environmentally sound and economically feasible water conservation
10 measures.

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

14 3. Protection of important upland groundwater recharge areas.

15 4. Stabilization of shorelands.

16 5. Restoration or enhancement of the natural beneficial uses and values of a
17 stream or river.

18 6. Implementation of any feasible methods to offset impacts to water quality
19 or quantity.

20 7. Supplementation of additional water to water bodies to offset lower water
21 levels.

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

24 9. Mitigation as provided in s. 295.60.

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

4 11. A riparian restoration project.

5 12. Measures as provided in s. 295.605.

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

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

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

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

1 department's determination as to whether to approve or deny the permit for other
2 water withdrawal activities that are subject to the application.

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

7 1. The location of the withdrawal or use.

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

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

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

12 5. The amount and quality of return flow required and the place of the
13 discharge.

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

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

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

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

1 2. If the request for a modification under subd. 1. does not result in an increase
2 in an existing withdrawal resulting in a water loss averaging more than 2,000,000
3 gallons per day in any 30-day period above the operator's authorized base level of
4 water loss, within 30 days of receiving the request the department shall approve the
5 request and amend the permit to incorporate the modification.

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

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

1 of each city, village, and town through which the stream flows or that is adjacent to
2 the stream downstream from the point at which the water would enter the stream.

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

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

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

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

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

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

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

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

14 **(8) DAMAGE CLAIMS.** (a) As used in this subsection, “person” does not include
15 a city, village, or town.

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

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

1 supply. Responsibility to supply water begins at the time the complaint is filed and
2 ends at the time the decision of the department made at the conclusion of the hearing
3 is implemented.

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

23 (e) If the department concludes after the hearing that bulk sampling or mining
24 is not the cause of any damage, reimbursement to the city, village, or town for the

1 costs of supplying water under par. (c), if any, is the responsibility of the person who
2 filed the complaint.

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

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

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

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

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

24 **(2)** The operator shall inspect the mining waste site before it is used and ensure
25 that all associated structures are in substantial compliance with the mining waste

1 site feasibility study and plan of operation. The operator shall have a professional
2 engineer, registered as such under ch. 443, document mining waste site construction
3 and render an opinion as to whether the mining waste site has been constructed in
4 substantial conformance with the mining waste site feasibility study and plan of
5 operation. The engineer may use aerial or ground photographs to document the
6 inspection, but photographs do not in themselves constitute compliance with this
7 subsection. The operator shall maintain a complete file describing the items
8 inspected and their condition.

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

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

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

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 permit, within 30 days after completion of all mining at the mining site, and within
11 30 days after completion of the mining plan and of the reclamation plan, describing
12 any reclamation work accomplished, or experimental reclamation work performed,
13 during the preceding year. The operator shall include in the reports an annual plan
14 map, color-coded and with a legend, showing all of the following, as of December 31
15 of the previous year, or as near to December 31 of the previous year as mining
16 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.

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.

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

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

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

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

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

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

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

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

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

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

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

20 **(5) DEFECTIVE CONDITIONS OF DAMS POSING RISK OF ADVERSE IMPACT.** When a
21 defective condition that poses a significant risk of adverse impact to the environment
22 is found during an inspection of a dam, the operator shall ensure that it is recorded
23 and corrected at the earliest practicable time. At the earliest practicable time, the
24 operator shall make a written report to the department of the condition and the
25 actions proposed and taken for its correction. Within 5 business days of receipt of a

1 written report, the department may confirm the correction of the condition and
2 specify any necessary additional corrective action. An operator shall consider any
3 of the following items as indicating a condition that requires prompt investigation
4 and that may require corrective action:

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

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

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

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

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

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

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

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

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

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

23 (d) Erosion below any conduit.

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

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

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

- 9 1. Aerial photos of the construction site before construction.
- 10 2. Construction drawings and modifications of the drawings.
- 11 3. Construction specifications and modifications of the specifications.
- 12 4. Results of all soil tests on foundations and fill materials.
- 13 5. Logs of borings and engineering geology reports.
- 14 6. Copies of construction progress inspections pertinent to core trench, toe
15 drain, internal drains, and other significant phases of the structure including, at the
16 option of the operator, photographs of various structural items.
- 17 7. Aerial photos of the entire dam taken within 90 days after all construction
18 is completed.
- 19 8. A description of and justification for all deviations or variances from the
20 construction plans and specifications.

21 **(8) RESPONSES TO UNPLANNED EVENTS.** If a mining waste site has an accidental
22 or emergency discharge, a fire, an explosion, or other unplanned or unpredicted
23 event that is likely to damage human health or the environment, the operator shall
24 follow the procedures set forth in the contingency plan under s. 295.51 (6) (f) and

1 shall report the incident to the department and to county, town, and tribal
2 governmental agencies immediately after the operator has discovered the event.

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

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

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

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

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

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

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

24 **(2) ANALYSES.** (a) The department shall review baseline water quality data
25 with respect to groundwater and monitoring data associated with the mine, mining

1 waste sites, and sites for the disposal of wastes that are not mining wastes at the time
2 of each review of the mining permit or reclamation plan under s. 295.63 (3) and when
3 the operator requests a modification of the mining permit or reclamation plan.

4 (b) An operator shall have bacteriological analyses of water samples and all
5 radiological analyses associated with the mining site performed by the state
6 laboratory of hygiene or at a laboratory certified or approved by the department of
7 health services. An operator shall have other laboratory tests the results of which
8 are submitted to the department under this subchapter performed by a laboratory
9 certified or registered under s. 299.11, except that this requirement does not apply
10 to any of the following:

- 11 1. Physical testing of soil.
- 12 2. Air quality tests.
- 13 3. Tests for hydrogen ion concentration (pH).
- 14 4. Tests for chlorine residual.
- 15 5. Tests for temperature.

16 **295.643 Mining waste site monitoring. (1) GENERAL.** The department may
17 require the monitoring of groundwater, surface water, leachate, or other physical
18 features associated with a mining waste site.

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

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

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

12 (c) An operator shall construct all monitoring wells in accordance with ch. NR
13 141, Wis. Adm. Code, and in such a manner as to prevent, to the extent practicable,
14 the exchange of water between aquifers.

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

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

23 **(5) SAMPLING OTHER WELLS.** The department may require an operator to sample
24 public or private wells as part of a regular monitoring program or to determine the
25 extent of groundwater contamination associated with a mining waste site. If the

1 owner of a well does not authorize access for sampling, the operator shall promptly
2 notify the department.

3 **(6) REQUIRED MONITORING AND ANALYSIS.** (a) An operator shall monitor
4 groundwater at locations identified in the waste site feasibility study and plan of
5 operation on a quarterly basis, during March, June, September, and December,
6 unless the department agrees to an alternate schedule. The department may base
7 an alternate schedule on the hydrogeologic system's characteristics, such as flow
8 velocity and stratigraphy, and on fluctuations in quality as determined through
9 background water quality or baseline water quality sampling and mining waste
10 type. The operator shall analyze for the parameters listed in the approved waste site
11 feasibility study and plan of operation.

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

15 **(7) WATER ELEVATION MEASUREMENTS.** The operator shall make water elevation
16 measurements on a quarterly basis.

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

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

4 **295.645 Groundwater quality, monitoring, and response. (1)**

5 DEFINITIONS. In this section:

6 (a) “Alternative concentration limit” means the concentration of a substance
7 in groundwater established by the department to replace a groundwater quality
8 standard when the department grants an exemption.

9 (b) “Statistically significantly different” means an amount of change
10 determined by the use of statistical tests for measuring significance at the 95 percent
11 confidence level.

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

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

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

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

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

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

21 1. Any point of present groundwater use.

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

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

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

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

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

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

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

16 (c) Determine the extent of groundwater contamination or the potential for
17 groundwater contamination.

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

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

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

14 **(6) RESPONSE CONCERNING ENFORCEMENT STANDARDS.** (a) In accordance with s.
15 NR 140.26 (1) and (2), Wis. Adm. Code, the department shall evaluate the range of
16 responses proposed by the operator based on the responses listed in Table 6 of s. NR
17 140.26, Wis. Adm. Code, when an enforcement standard or an alternative
18 concentration limit to an enforcement standard is attained or exceeded and the
19 analysis of samples indicates that the quality of groundwater is statistically
20 significantly different from either baseline water quality or background water
21 quality at a point of standards application. In designating the appropriate response,
22 the department shall evaluate the operator's proposed range of responses against
23 those identified in Table 6 of s. NR 140.26, Wis. Adm. Code. The department shall
24 designate the appropriate response, except that, notwithstanding ss. 160.21 (3) and
25 160.25 (1) (a) and the rule-making authority under s. 160.21 (1), the department may

1 not prohibit a practice or activity or require closure and abandonment of a mining
2 waste site, including any wastewater and sludge storage or treatment lagoon, unless
3 it has followed the procedures in s. 295.78 and all of the following apply:

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

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

8 3. The department establishes the basis for the boundary and duration of the
9 prohibition.

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

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

21 (b) The department may only require a remedial action to be taken if the
22 remedial action is reasonably related in time and scope to the substance, activity, or
23 practice that caused the enforcement standard or alternative concentration limit to
24 an enforcement standard to be attained or exceeded and the quality of groundwater

1 to be statistically significantly different from either baseline water quality or
2 background water quality at the point of standards application.

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

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

17 **(6m)** MANDATORY INTERVENTION BOUNDARY FOR MINING WASTE SITE AND MINE. (a)
18 Except as provided under par. (am), the horizontal distance to the mandatory
19 intervention boundary for a mining waste site is 300 feet from the outer waste
20 boundary or the outer edge of the excavation, unless the boundary of the design
21 management zone is within 600 feet of the outer waste boundary or the outer edge
22 of the excavation, in which case the mandatory intervention boundary is one-half
23 the distance from the outer waste boundary or the outer edge of the excavation to the
24 boundary of the design management zone.

1 (am) The department may reduce the mandatory intervention boundary under
2 par. (a) by a horizontal distance of up to 150 feet if the department determines that
3 the reduction is necessary to adequately identify and respond to potential
4 groundwater quality issues.

5 (b) An operator shall monitor groundwater quality at locations approved by the
6 department along the mandatory intervention boundary, except for any portion of
7 the mandatory intervention boundary that is within another mandatory
8 intervention boundary, and within the mandatory intervention boundary. When
9 approving locations for monitoring, the department shall ensure that duplicative
10 monitoring is not required within overlapping mandatory intervention boundaries.

11 (c) 1. Notwithstanding sub. (5), if a preventive action limit or an enforcement
12 standard has been exceeded beyond the mandatory intervention boundary, the
13 department shall require a response in accordance with s. NR 140.24, Wis. Adm.
14 Code, except that s. NR 140.24 (5), Wis. Adm. Code, does not apply.

15 2. If sampling results indicate that an enforcement standard or a preventive
16 action limit has been exceeded within, but not beyond, the mandatory intervention
17 boundary and a comparison of sampling results to the results of modeling indicates
18 that the sampling results are consistent with the design and expected performance
19 of the mining waste site, the operator may recommend a no response action, and the
20 department may approve a no response action if that is authorized under s. NR
21 140.24 (5), Wis. Adm. Code.

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

24 **(8) EXEMPTIONS TO GROUNDWATER QUALITY STANDARDS.** When issuing or
25 modifying a mining permit or issuing or reissuing any other approval, the

1 department may grant an exemption from a groundwater quality standard and
2 establish an alternative concentration limit to a groundwater quality standard.

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

6 **295.65 Successors.** (1) When one operator succeeds to the interest of another
7 in an uncompleted mining operation by sale, assignment, lease, or otherwise, the
8 department shall release the first operator from the duties imposed upon the first
9 operator by this subchapter as to the mining operation and transfer the mining
10 permit and any approvals under ss. 295.60, 295.605, and 295.61 to the successor
11 operator if all of the following apply:

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

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

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

20 **295.66 Cessation of mining or reclamation.** If there is a cessation of
21 mining or reclamation for 30 days or more that is not set forth in either the mining
22 plan or the reclamation plan, the operator shall notify the department of the
23 cessation within 48 hours of the cessation of mining and shall begin stabilization of
24 the mining site. The department may require the operator to provide technical,
25 engineering, and any other information that the operator believes shows that its

1 actions to stabilize the mining site are adequate. If the department determines, after
2 reviewing the information provided by the operator, that the proposed stabilization
3 of the mining site will result in a substantial adverse impact to the environment, the
4 department shall order the operator to begin additional measures to protect the
5 environment, including, if the cessation is reasonably anticipated to extend for a
6 protracted period of time, reclamation according to the reclamation plan or part of
7 the reclamation plan. Usual and regular shutdown of operations on weekends, for
8 maintenance or repair of equipment or facilities, or for other customary reasons do
9 not constitute a cessation of mining.

10 **295.67 Determination of abandonment of mining.** (1) Except as provided
11 in sub. (2), abandonment of mining occurs if there is a cessation of mining, not set
12 forth in an operator's mining plan or reclamation plan or by any other sufficient
13 written or constructive notice, extending for more than 6 consecutive months.

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

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

17 (b) The cessation of mining does not continue beyond the time, not to exceed
18 5 years, specified by the department.

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

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

23 **295.68 Certificates of completion and release of security.** (1) Upon the
24 petition of the operator, but not less than 4 years after notification to the department
25 by the operator of the completion of the reclamation plan or not less than one year

1 after notification to the department by the operator of the completion of the
2 reclamation plan as to a portion of the mining site, if the department finds that the
3 operator has completed reclamation of any portion of the mining site in accordance
4 with the reclamation plan and this subchapter, the department shall issue a
5 certificate of completion setting forth a description of the area reclaimed and a
6 statement that the operator has fulfilled its duties under the reclamation plan as to
7 that area.

8 (2) Upon the issuance of any certificate of completion under sub. (1) for any
9 portion of the mining site, but not for the entire mining site, the department shall
10 allow the operator to reduce the amount of the bond or other security provided under
11 s. 295.59 (1) to an amount equal to the estimated cost of reclamation of the portion
12 of the mining site that is disturbed or for which reclamation has been completed but
13 no certificate of completion has been issued.

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

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

24 **295.69 Termination of proof of financial responsibility for long-term**
25 **care of mining waste site. (1)** One year after closure, and annually thereafter

1 until the department terminates the obligation to maintain proof of financial
2 responsibility for long-term care of a mining waste site under sub. (2) (c), an operator
3 who has carried out all necessary long-term care during the preceding year, may
4 apply to the department for a reduction in the amount of the proof of financial
5 responsibility provided under s. 295.59 (2m) equal to the costs of long-term care for
6 that year. The operator shall provide an itemized list of costs incurred. If the
7 department determines that the costs incurred are in accordance with the long-term
8 care requirements in the approved waste site feasibility study and plan of operation
9 and that adequate funds exist to complete required long-term care for the remainder
10 of the 40-year period on which the amount of the proof of financial responsibility was
11 originally determined, the department shall authorize in writing a reduction in the
12 amount of proof of financial responsibility provided. The department shall make its
13 determinations within 90 days of an application.

14 (2) (a) An operator may apply to the department for termination of its
15 obligation to maintain proof of financial responsibility for long-term care of the
16 mining waste site under s. 295.59 (2m) at any time after the mining waste site has
17 been closed for 20 years by submitting an application that demonstrates that
18 continuation of the obligation to maintain proof of financial responsibility for
19 long-term care is not necessary for adequate protection of public health or the
20 environment. The burden is on the operator to prove by a preponderance of the
21 evidence that continuation of the obligation to maintain proof of financial
22 responsibility for long-term care is not necessary for adequate protection of public
23 health or the environment.

24 (b) Within 30 days of receiving an application under par. (a), the department
25 shall provide notice to the public of the application for termination of the obligation

1 to maintain proof of financial responsibility for long-term care. In the notice, the
2 department shall invite the submission of written comments by any person on the
3 application within 30 days of the day on which the notice is published. The
4 department shall provide the notice by publishing a class 1 notice under ch. 985 in
5 the official newspaper designated under s. 985.04 or 985.05 or, if none exists, in a
6 newspaper likely to give notice in the area of the mining waste site. The department
7 shall also send the notice to the operator.

8 (c) Within 120 days of the day on which the department publishes the notice
9 under par. (b), the department shall determine either that proof of financial
10 responsibility for long-term care of the mining waste site is no longer required, in
11 which case the applicant is relieved of the responsibility of providing proof of
12 financial responsibility for long-term care, or that proof of financial responsibility
13 for long-term care of the mining waste site is still required, in which case the
14 applicant may not submit another application under par. (a) until at least 5 years
15 have elapsed since the previous application.

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

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

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

6 **295.73 Fees.** (1) (a) Except as provided in par. (b), an applicant for a mining
7 permit is not required to pay any application or filing fee for any approval other than
8 a mining permit, notwithstanding any fee required under ch. 23, 29, 30, 169, 281,
9 283, 285, 289, or 291, or rules promulgated under those chapters.

10 (b) An applicant for a mining permit shall pay any fee required under s. 281.343

11 (3) (c) 1.

12 (3) (a) The department shall assess an applicant a fee equal to its costs, other
13 than costs of a contract under par. (d), for evaluating the mining project, including
14 the costs for consultants retained by the department to evaluate the application for
15 the mining permit and the application for any other approval, or \$2,000,000,
16 whichever is less.

17 (b) The applicant shall pay the fees under par. (a) as follows:

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

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

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

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

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

10 6. Two hundred fifty thousand dollars when the department provides cost
11 information demonstrating that the payment under subd. 5. has been fully allocated
12 against actual costs.

13 7. Two hundred fifty thousand dollars when the department provides cost
14 information demonstrating that the payment under subd. 6. has been fully allocated
15 against actual costs.

16 8. Two hundred fifty thousand dollars when the department provides cost
17 information demonstrating that the payment under subd. 7. has been fully allocated
18 against actual costs.

19 9. One hundred fifty thousand dollars when the department provides cost
20 information demonstrating that the payment under subd. 8. has been fully allocated
21 against actual costs.

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

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

3 (d) In addition to the fees under par. (a), if the department contracts under s.
4 295.53 (1) with a consultant to assist in preparation of an environmental impact
5 statement and awards the contract on the basis of competitive bids, the applicant
6 shall pay the full costs as provided in the contract.

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

10 **295.75 Effect of other laws. (1)** Except as provided in sub. (2), if there is a
11 conflict between a provision in this subchapter and a provision in ch. 23, 29, 30, 160,
12 169, 281, 283, 285, 289, or 291 or in a rule promulgated under one of those chapters,
13 the provision in this subchapter controls.

14 (2) (a) If there is a conflict between a provision in this subchapter and a
15 provision in s. 281.343, the provision in s. 281.343 controls.

16 (b) If there is a conflict between a provision in this subchapter and a provision
17 in s. 281.346, the provision in s. 281.346 controls, except as provided in s. 295.57 (9).

18 **295.77 Review. (1)** A person is entitled to a contested case hearing on a
19 decision by the department under this subchapter or on a decision by the department
20 relating to the issuance of an approval only if the person is entitled to a contested case
21 hearing under s. 227.42 and the person is aggrieved by one of the following:

22 (a) A decision under s. 295.58 to grant or deny a mining permit or a decision
23 to grant or deny a related approval.

24 (b) A final decision on the environmental impact statement for a proposed
25 mine.

1 **(2)** A person is only entitled to a contested case hearing under sub. (1) if the
2 person requests the hearing within 30 days after the department issues the decision
3 to grant or deny the mining permit, except that if the request concerns an approval
4 on which the department issues a decision, as authorized under s. 295.57 (8) (b) or
5 (c), after the deadline under s. 295.57 (8) (a), a person may request a contested case
6 hearing on that decision within 30 days after the department issues that decision.

7 **(3)** (a) The hearing examiner presiding over a contested case hearing under this
8 section shall issue a final decision on the case no more than 150 days after the
9 department issues the decision to grant or deny the mining permit, except that if the
10 contested case concerns an approval on which the department issues a decision, as
11 authorized under s. 295.57 (8) (b) or (c), after the deadline under s. 295.57 (8) (a), the
12 hearing examiner shall issue a final decision on the case no more than 150 days after
13 the department issues the decision on that approval.

14 (b) If the hearing examiner does not issue a final decision by the deadline under
15 par. (a), the decision of the department being reviewed by the hearing examiner is
16 affirmed.

17 (c) The hearing examiner may not issue an order prohibiting activity
18 authorized under a decision of the department being reviewed in the contested case
19 hearing.

20 **(4)** (a) A person seeking judicial review of the decision in a contested case
21 hearing under this section shall comply with the requirements for service and filing
22 in s. 227.53 (1) (a).

23 (b) A person seeking judicial review of a decision under this subchapter shall
24 commence the action no more than 30 days after the decision is filed.

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

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

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

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

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

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

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

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

4 **(2)** If reclamation of a mining site is not proceeding in accordance with the
5 reclamation plan and the operator has not begun to rectify deficiencies within the
6 time specified in an order, or if the reclamation is not properly completed in
7 conformance with the reclamation plan within one year after completion or
8 abandonment of mining on any portion of the mining site, unless because of acts of
9 God, such as adverse weather affecting grading, planting, and growing conditions,
10 the department, with the staff, equipment, and material under its control, or by
11 contract with others, shall take the actions that are necessary for the reclamation of
12 mined areas. The operator is liable for the cost to the state of reclamation conducted
13 under this subsection.

14 **(3)** The department shall cancel all other mining permits held by an operator
15 who refuses to reclaim a mining site in compliance with the reclamation plan after
16 the completion of mining or after the cancellation of a mining permit. The
17 department may not issue any mining permit for that mining site or any other
18 mining site in this state to an operator who refused to reclaim the mining site in
19 compliance with the reclamation plan.

20 **(4)** At any time that the department determines that the continuance of mining
21 constitutes an immediate and substantial threat to public health and safety or the
22 environment, the department may request the department of justice to institute an
23 action in circuit court of the county in which the mine is located for a restraining
24 order or injunction or other appropriate remedy to stop mining until the immediate
25 and substantial threat is eliminated.

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

3 **295.79 Enforcement; penalties. (1)** The department of justice shall enforce
4 this subchapter and any order issued under this subchapter. The circuit court of the
5 county where the violation occurred has jurisdiction to enforce this subchapter or any
6 orders issued under this subchapter, by injunction or other appropriate relief.

7 **(2)** (a) Any person who authorizes or engages in mining without a mining
8 permit and written authorization to mine under s. 295.59 (3) shall forfeit all profits
9 obtained from those illegal activities and not more than \$5,000 for each day during
10 which the mine was in operation.

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

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

17 **(3)** Any person who makes or causes to be made in an application or report
18 required by this subchapter a statement known to the person to be false or
19 misleading in any material respect or who refuses to submit information required by
20 a mining permit or by this subchapter may be fined not less than \$1,000 nor more
21 than \$5,000. If the false or misleading statement is material to the issuance of the
22 mining permit and the mining permit would not have been issued had the false or
23 misleading statement not been made, the court may revoke the mining permit. If any
24 violation under this subsection is repeated the court may revoke the mining permit.

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

7 (b) In addition to the penalties provided under par. (a), the court may award
8 the department of justice the reasonable and necessary expenses of the investigation
9 and prosecution of the violation, including attorney fees. The department of justice
10 shall deposit in the state treasury for deposit into the general fund all moneys that
11 the court awards to the department or the state under this paragraph. These moneys
12 shall be credited to the appropriation account under s. 20.455 (1) (gh).

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

15 **SECTION 102.** 299.85 (7) (a) 2. and 4. of the statutes are amended to read:

16 299.85 **(7)** (a) 2. Notwithstanding minimum or maximum forfeitures specified
17 in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969,
18 29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and
19 (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2),
20 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97,
21 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a),
22 295.19 (3) (a) and (b) 1., 295.37 (2), 295.79 (2), (3), and (4), 299.15 (4), 299.51 (5),
23 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if a regulated entity that
24 qualifies under sub. (2) for participation in the Environmental Compliance Audit
25 Program corrects violations that it discloses in a report that meets the requirements

1 of sub. (3) within 90 days after the department receives the report that meets the
2 requirements of sub. (3), the regulated entity may not be required to forfeit more than
3 \$500 for each violation, regardless of the number of days during which the violation
4 continues.

5 4. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314
6 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m)
7 (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and
8 (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57
9 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a),
10 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b)
11 1., 295.37 (2), 295.79 (2), (3), and (4), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62
12 (3) (a) and (c), and 299.97 (1), if the department approves a compliance schedule
13 under sub. (6) and the regulated entity corrects the violations according to the
14 compliance schedule, the regulated entity may not be required to forfeit more than
15 \$500 for each violation, regardless of the number of days during which the violation
16 continues.

17 **SECTION 103.** 299.95 of the statutes is amended to read:

18 **299.95 Enforcement; duty of department of justice; expenses.** The
19 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
20 ss. 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan approvals,
21 permits, and water quality certifications of the department, except those
22 promulgated or issued under ss. 285.57, 285.59, and 299.64 and except as provided
23 in ss. 285.86 and 299.85 (7) (am). The Except as provided in s. 295.79 (1), the circuit
24 court for Dane county or for any other county where a violation occurred in whole or
25 in part has jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this chapter or

1 the rule, special order, license, plan approval, permit, or certification by injunctive
2 and other relief appropriate for enforcement. For purposes of this proceeding where
3 chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan
4 approval, permit or certification prohibits in whole or in part any pollution, a
5 violation is considered a public nuisance. The department of natural resources may
6 enter into agreements with the department of justice to assist with the
7 administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid
8 to the department of justice under these agreements shall be credited to the
9 appropriation account under s. 20.455 (1) (k).

10 **SECTION 104.** 323.60 (1) (gm) of the statutes is created to read:

11 323.60 (1) (gm) "Minerals" mean unbeneficiated metallic ore but does not
12 include mineral aggregates such as stone, sand, and gravel.

13 **SECTION 105.** 323.60 (5) (d) 3. of the statutes is amended to read:

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

24 **SECTION 106.** 710.02 (2) (d) of the statutes is amended to read:

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

3 **SECTION 107. Nonstatutory provisions.**

4 (1) RULES.

5 (a) The department of natural resources shall submit in proposed form rules
6 revising chapters NR 130, 131, 132, and 182, Wisconsin Administrative Code, that
7 are in effect on the effective date of this paragraph and revising any other rules
8 promulgated under section 293.13 (1) (a) of the statutes that are in effect on the
9 effective date of this paragraph to the legislative council staff under section 227.15
10 (1) of the statutes no later than the first day of the 5th month beginning after the
11 effective date of this paragraph. The proposed revised rules shall clarify that
12 chapters NR 130, 131, 132, and 182, Wisconsin Administrative Code, and any other
13 rules promulgated under section 293.13 (1) (a) of the statutes do not apply to ferrous
14 metallic mining.

15 (b) The department of natural resources shall submit in proposed form rules
16 revising chapters NR 500 to 555 and 600 to 679, Wisconsin Administrative Code, that
17 are in effect on the effective date of this paragraph and revising any other rules
18 promulgated under sections 289.05 and 289.06 (1) of the statutes that are in effect
19 on the effective date of this paragraph to the legislative council staff under section
20 227.15 (1) of the statutes no later than the first day of the 5th month beginning after
21 the effective date of this paragraph. The department shall revise the rules in
22 chapters NR 500 to 555 and 600 to 679, Wisconsin Administrative Code, and any
23 other rules promulgated under sections 289.05 and 289.06 (1) of the statutes so that
24 they are consistent with subchapter III of chapter 295, of the statutes, as created by
25 this act.

