

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

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

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

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

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

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

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

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

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

13           1. Whether the department has considered the environmental impact  
14 statement and comments received on it.

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

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

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

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

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

24           1. Hazards resulting in irreparable, substantial physical damage to any of the  
25 following that cannot be prevented under the requirements of this subchapter,

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

- 3 a. A dwelling house.
- 4 b. A public building.
- 5 c. A school.
- 6 d. A church.
- 7 e. A cemetery.
- 8 f. A commercial or institutional building.
- 9 g. A public road.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **295.59 Bonds and other security. (1) SECURITY FOR RECLAMATION.** (a) Upon  
7 notification that an application for a mining permit has been approved by the  
8 department but before beginning mining, the operator shall furnish one of the  
9 following to the department:

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

13 2. Cash.

14 3. Certificates of deposit.

15 4. Government securities.

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

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

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

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

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

- 17 (a) A bond  
18 (b) Cash.  
19 (c) Certificates of deposit.  
20 (d) Government securities.  
21 (e) Insurance.

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

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

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

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

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

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

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



1 (e) "Federal compensatory mitigation requirement" means any mitigation  
2 requirement that is imposed by the federal government.

3 (f) "Federal wetland" means a wetland that is subject to federal jurisdiction  
4 under 33 USC 1344.

5 (g) "Functional values and water quality" means the water quality related  
6 wetland functional values and uses specified in sub. (6).

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

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

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

16 (k) "Nonfederal wetland" means a wetland that is not subject to federal  
17 jurisdiction under 33 USC 1344.

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

20 (m) "Practicable" means available and capable of being implemented after  
21 taking into consideration cost, available technology, and logistics in light of the  
22 overall project purposes and the needs for bulk sampling or a mining operation.

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

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

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

5 (q) "Watershed" means an area of land where all of the water drains into a  
6 common waterway.

7 (r) "Wetland water quality standard" means a water quality standard specified  
8 under sub. (6).

9 (2) SCOPE. This section applies to any water quality certification, or any other  
10 approval that involves an evaluation of impact to wetlands, that is associated with  
11 mining or bulk sampling.

12 (3) WETLAND DETERMINATIONS AND DELINEATIONS. For purposes of this section,  
13 wetland determinations and wetland boundary delineations shall be consistent with  
14 the U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual and any final  
15 regional supplement to the manual. The department may rely on wetland  
16 determinations and wetland boundary delineations made by other agencies and  
17 consultants. If the applicant for a water quality certification or for any other  
18 approval for an activity involving impacts to wetlands has provided information to  
19 the department that is identified in the manual or any final regional supplement as  
20 being sufficient to make a wetland determination or a delineation of boundaries, the  
21 department may visit the site to conduct surveys or gather additional site-specific  
22 quantitative data provided that the department does not discontinue the processing  
23 of the application to do so.

24 (4) WATER QUALITY CERTIFICATION FOR FEDERAL WETLANDS. (a) For purposes of  
25 issuing a water quality certification that is required pursuant to 33 USC 1341 (a) for

1 a discharge associated with a mining operation or bulk sampling into a federal  
2 wetland or for issuing any other approval associated with a mining operation for an  
3 activity that involves any impact to a federal wetland, the department shall review  
4 the federal compensatory mitigation requirements proposed as part of the federal  
5 permit application.

6 (b) For purposes of determining whether to issue a water quality certification  
7 or other approval that requires an evaluation of impacts to federal wetlands, the  
8 department shall determine whether it has reasonable assurance that the federal  
9 permitting process and federal compensatory mitigation requirements will offset  
10 any significant adverse impact to the functional values and water quality of the  
11 federal wetland. If the department determines that reasonable assurance exists, the  
12 department may not impose any additional conditions.

13 (c) If the department determines that reasonable assurance does not exist  
14 under par. (b), it may impose conditions in the water quality certification or other  
15 approval if such conditions are limited to those that are necessary to offset any  
16 significant adverse impacts to the federal wetland that are not offset by the federal  
17 compensatory mitigation requirements in the federal permit or other approval. Any  
18 conditions imposed by the department shall permit a mitigation program as provided  
19 in sub. (8).

20 (d) In imposing conditions under par. (c), the department may not increase the  
21 number of acres to be mitigated under the federal compensatory mitigation  
22 requirements that are applicable to the federal wetland.

23 (e) The department shall issue a water quality certification under this  
24 subsection if the federal permitting process, including any federal compensatory

1 mitigation requirement, offsets the significant adverse impacts to the functional  
2 values and water quality of the federal wetland.

3 (5) WATER QUALITY CERTIFICATION FOR NONFEDERAL WETLANDS. (a) *Certification*  
4 *required.* No person may discharge dredge or fill material associated with a mining  
5 operation or bulk sampling into a nonfederal wetland unless the discharge is  
6 authorized under a water quality certification issued under this section.

7 (b) *Avoidance or minimization of impacts.* For purposes of issuing a water  
8 quality certification for a discharge subject to par. (a) or evaluating impacts to  
9 nonfederal wetlands for any approval requiring an evaluation of impacts to  
10 nonfederal wetlands, the department shall first determine whether any impact to  
11 the nonfederal wetland caused by the mining operation or bulk sampling can be  
12 avoided or minimized to the extent practicable. If the impacts have been avoided or  
13 minimized to the extent practicable, any remaining impacts to nonfederal wetlands  
14 may not be a basis for a denial of a water quality certification provided that any  
15 remaining significant adverse impacts are offset under a mitigation program under  
16 sub. (8).

17 (c) *Siting analysis.* 1. An applicant for a water quality certification for a  
18 nonfederal wetland shall submit a siting analysis to the department for review. In  
19 reviewing the siting analysis, the department shall recognize all of the following:

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

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

24 c. The presumption that nonfederal wetlands will be impacted.

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

4           3. If it is impracticable to avoid an impact to, or the use of, a nonfederal wetland,  
5 the applicant shall identify in the siting analysis, and the department shall review,  
6 those configurations that would result in impacts to the fewest acres of nonfederal  
7 wetlands to the extent practicable. The department shall determine which  
8 configuration will minimize the impacts to the fewest acres.

9           4. After the department makes the determination under subd. 3., the  
10 department shall evaluate the impact of the mining operation to the functional  
11 values and water quality of the nonfederal wetland.

12           **(5m) EVALUATION OF IMPACTS.** The department shall determine the impact of a  
13 proposed activity upon the functional values and water quality of a wetland by using  
14 wetland ecological evaluation methods jointly accepted by the U.S. Army Corps of  
15 Engineers and the department and appropriate to the affected wetland.

16           **(6) WETLAND WATER QUALITY STANDARDS.** The following wetland water quality  
17 standards shall apply to any water quality certification under sub. (4) or (5):

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

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

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

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

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

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

12           6. Habitat for resident and transient wildlife species, including mammals,  
13 birds, reptiles, and amphibians, for breeding, resting, nesting, escape cover, travel  
14 corridors, and food.

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

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

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

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

- 4           a. Water currents and erosion and sedimentation patterns.
- 5           b. Water temperature variations.
- 6           c. The chemical, nutrient, and dissolved oxygen regime of the wetland.
- 7           d. The movement of aquatic fauna.
- 8           e. The pH of the wetland.
- 9           f. Water levels or elevations.

10          6. Adverse effects on existing habitat and populations of animals and  
11 vegetation found in wetlands.

12           **(6m) SCOPE OF EVALUATION.** For purposes of issuing a water quality certification  
13 under sub. (4) or (5), the department shall evaluate whether an activity will result  
14 in a significant adverse impact to the functional values and water quality associated  
15 with a wetland by doing all of the following:

16           (a) Comparing the functional values and water quality of the wetland with  
17 other wetlands located within the boundaries of the mining site or within the same  
18 water management unit as the mining site and with other waters of the state that  
19 are located in the same water management unit.

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

22           **(7) APPROVAL BY DEPARTMENT; NONFEDERAL WETLANDS.** The department shall  
23 issue a water quality certification under this section for a nonfederal wetland, if the  
24 department determines all of the following:

1 (a) All practicable measures will be taken to minimize the adverse impacts to  
2 wetlands.

3 (b) Any significant adverse impacts to functional values and water quality that  
4 remain are offset through a mitigation program under sub. (8).

5 (8) MITIGATION PROGRAM. (a) *Contents.* A mitigation program to offset  
6 significant adverse impacts to functional values and water quality of wetlands shall  
7 contain all of the following:

8 1. Proposed projects for mitigation and a schedule for implementing the  
9 projects. These projects may be performed by a person other than the applicant,  
10 subject to the department's approval of the projects and schedule.

11 2. If the program is applicable to a federal wetland, all federal compensatory  
12 mitigation requirements associated with the federal wetland application.

13 (b) *Option of applicant.* An applicant submitting a program under par. (a) may  
14 submit options for mitigation. These options may include any combination of the  
15 types of mitigation specified in par. (d). In preparing the program, the applicant shall  
16 identify and consider mitigation that could be conducted within the same watershed  
17 in which the mining site is located.

18 (c) *Ratios for mitigation.* The amount of mitigation required may not exceed  
19 1.5 acres of mitigation for each acre of adversely impacted wetland. For purpose of  
20 credits in a mitigation bank, each acre that is subject to mitigation shall count as at  
21 least one credit.

22 (d) *Sequence.* If it is not practicable or ecologically preferable to conduct  
23 mitigation at an on-site location or if there is no on-site location that will provide  
24 sufficient wetland acreage, the department shall allow the applicant to conduct



1 mitigation at a site other than an on-site location, subject to par. (e). Mitigation  
2 under a program under par. (a) shall be accomplished through the following types:

3 1. Implementation of a project for mitigation.

4 2. Purchase of mitigation credits from a mitigation bank for a site in a  
5 mitigation bank that is located anywhere in the state subject to par. (e).

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

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

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

16 (9) MINING PERMIT. Any water quality certification issued by the department,  
17 including all of the conditions imposed as part of the certification, shall be included  
18 in the mining permit.

19 (10) CONSERVATION EASEMENTS. (a) A person who is the holder of a water quality  
20 certification that authorizes mitigation to be implemented by the holder of the  
21 certification at an on-site location shall grant a conservation easement under s.  
22 700.40 to the department to ensure that the wetland that is subject to the mitigation  
23 will not be destroyed or substantially degraded by any subsequent proprietor or  
24 holder of interest in the property on which the wetland is located. The department  
25 shall suspend the mining permit if the holder of the permit fails to grant the

1 easement within the time limit set forth in the mining permit. If the holder  
2 subsequently grants the conservation easement to the department, the department  
3 shall reinstate the mining permit.

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

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

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

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

13 (11) EXEMPTIONS. (a) *Artificial wetlands*. All of the following artificial wetlands  
14 that are associated with a mining operation are exempt from the water quality  
15 certification provisions and mitigation provisions under this section and under any  
16 other statute or rule relating to impacts on wetlands:

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

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

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

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

1           (c) *Other exempted activities.* For nonfederal wetlands, all of the following  
2 activities that are associated with a mining operation or bulk sampling are exempt  
3 from the water quality provisions and mitigation provisions under this section and  
4 any other law relating to impact on wetlands if the applicant minimizes any adverse  
5 effect on the environment as a result of the activities:

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

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

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

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

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

15           (b) Any rule promulgated by the department relating to wetlands that conflicts  
16 with this section, except that no rule promulgated by the department under s. 281.36  
17 applies to a mining operation or bulk sampling.

18           **295.605 Impacts to navigable waters. (1) DEFINITION.** In this section,  
19 “navigable water activity” means an activity for which a permit or contract is  
20 required under s. 30.12, 30.123, 30.19, 30.195, or 30.20.

21           **(2) PERMIT OR CONTRACT REQUIRED.** No person may engage in any navigable  
22 water activity associated with bulk sampling or mining unless the person has been  
23 issued a permit or entered into a contract as provided under sub. (4).

1           **(3) APPLICATION; RIPARIAN STATUS.** (a) Any person who intends to engage in a  
2 navigable water activity associated with bulk sampling or mining need not be a  
3 riparian owner to do any of the following:

4           1. Apply for and be issued an individual permit for a navigable water activity  
5 under s. 30.12, 30.123, 30.19, or 30.195.

6           1m. Enter into a contract under s. 30.20.

7           2. Engage in an activity that is exempt under s. 30.12, 30.123, 30.19, 30.195,  
8 or 30.20.

9           3. Seek authorization under a general permit issued under s. 30.12, 30.123,  
10 30.19, or 30.20.

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

15           **(4) REQUIREMENTS.** (a) *Generally.* The department shall issue a permit, or enter  
16 into a contract, for a navigable water activity if the navigable water activity meets  
17 all of the following requirements:

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

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

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

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

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

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

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

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

10 4. Measures to enhance flood storage.

11 5. Mitigation as provided under s. 295.60.

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

13 (bn) *Plan review; finding*. In reviewing the plan, the department may require  
14 that measures that are in addition to, or in conjunction with, one or more of the  
15 measures specified in par. (b) 1. to 6. be included in the plan. After reviewing the plan  
16 and application, if the department finds that the requirements under par. (a) will be  
17 met by implementing some or all of the measures contained in the plan, the  
18 department shall determine which measures shall be required, shall approve a  
19 schedule for implementation, and shall issue the permit or enter into the contract.

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

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

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

7 (b) Sections 30.208, 30.209, and 30.2095 and any rules promulgated under  
8 those sections, do not apply to any navigable water activity that is subject to this  
9 section.

10 **295.607 Shoreland and floodplain zoning.** (1) (a) In this section:

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

13 2. "Floodplain zoning ordinance" means a <sup>municipal</sup> floodplain zoning ordinance <sup>that</sup>  
14 ~~regulation~~ adopted under s. 87.30.

15 3. "Shoreland zoning ordinance" means a shoreland zoning ordinance or  
16 regulation adopted under s. 59.692, 61.351, 62.231, or 281.31.

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

21 (b) A development or construction activity located in an area that would  
22 otherwise be prohibited under a shoreland zoning ordinance does not violate the  
23 applicable ordinance if the development or construction activity is authorized by the  
24 department as part of a mining operation covered by a mining permit under s. 295.58.

1 No shoreland zoning variance is required for a development or construction activity  
2 located as provided under this paragraph.

3 (3) (a) Except as provided in par (b), the department may not prohibit a  
4 development or construction activity to be located in an area that would otherwise  
5 be prohibited under a floodplain zoning ordinance if the development or construction  
6 activity is authorized by the department as part of a mining operation covered by a  
7 mining permit under s. 295.58. No floodplain zoning variance is required for a  
8 development or construction activity located as provided under this paragraph.

9 (b) The department may prohibit a development or construction activity  
10 described under par. (a) to the extent necessary to enable the county, city, or village  
11 in which the activity is conducted to meet the minimum criteria established under  
12 44 CFR Part 60 for participation in the National Flood Insurance Program  
13 administered by the Federal Insurance and Mitigation Administration of the  
14 Federal Emergency Management Agency.

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15 **295.61 Withdrawals of surface waters and groundwater. (1)**

16 DEFINITIONS. In this section:

17 (a) "Authorized base level of water loss" has the meaning given in s. 281.35 (1)

18 (b).

19 (b) "Environmentally sound and economically feasible water conservation  
20 measures" has the meaning given in s. 281.346 (1) (i).

21 (c) "Great Lakes basin" has the meaning given in s. 281.35 (1) (d).

22 (d) "High capacity well" has the meaning given in s. 281.34 (1) (b).

23 (e) "Interbasin diversion" has the meaning given in s. 281.35 (1) (g).

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

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

2 (g) Unless the context otherwise requires, "use" includes dewatering.

3 (h) "Water loss" has the meaning given in s. 281.35 (1) (L).

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

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

12 (3) PERMIT APPLICATION. (a) *Application*. Any person applying for a water  
13 withdrawal permit is required to submit only one application. A person applying for  
14 such a permit need not be a riparian owner. An application for a water withdrawal  
15 permit shall include any information requested by the department under s. 295.45  
16 (3).

17 (b) *Siting analysis*. If withdrawal of water at a mining operation or for bulk  
18 sampling will involve one or more high capacity wells, the department shall require  
19 an applicant for a water withdrawal permit to submit a siting analysis for the  
20 purpose of determining the location of the high capacity wells. The analysis shall  
21 include alternate proposed locations for each high capacity well. In evaluating a  
22 submitted analysis, the department shall recognize there is a need for mining waste  
23 sites, processing facilities, including wastewater and sludge storage or treatment  
24 lagoons, to be contiguous to the location of the ferrous mineral deposit, and shall  
25 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 <sup>beginning with 1978,</sup> annually according to the  
19 method under s. 70.375 (6). Pending the final decision on any appeal from an order  
20 issued under this paragraph, the operator shall provide water as ordered by the  
21 department. The existence of the relief under this section is not a bar to any other  
22 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.