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1 (b) A wetland individual permit issued under this section that authorizes a
2 discharge of dredged or fill material in a federal wetland constitutes water quality
3 certification as required by 33 USC 1341 (a). Any other approval issued by the
4 department for which a wetland impact evaluation is required for a federal wetland
5 constitutes water quality certification under 33 USC 1341 (a) with respect to the
6 discharges or activities affecting the federal wetland.

7 (8) MITIGATION PROGRAM. (a) *Contents.* A mitigation program to compensate
8 for adverse impacts to functional values of wetlands shall contain proposed projects
9 for mitigation and a schedule for implementing the projects. The department may
10 not consider mitigation in determining whether to grant authorization to proceed
11 under a general permit under s. 281.36 (3g). These projects may be performed by a
12 person other than the applicant, subject to the department's approval of the projects
13 and schedule.

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

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

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

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1 applicant to conduct mitigation at a site other than an on-site location, subject to par.

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

4 1. Implementation of a project for mitigation by an applicant or other person
5 approved by the department.

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

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

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

14 (e) *Ceded territory*. If a mining operation is located in whole or in part within
15 the ceded territory, any mitigation, including mitigation accomplished through the
16 purchase of mitigation bank credits and the in lieu fee subprogram that is authorized
17 or required by the department, that will be required to compensate for adverse
18 impacts to wetlands located in the ceded territory shall occur within the ceded
19 territory.

20 **(9) SUBSEQUENT PROTECTION FOR WETLANDS.** (a) If a wetland individual permit
21 issued under this section, or other approval that required a wetland impact
22 evaluation, authorizes a mitigation project, the person who is the holder of the permit
23 or approval shall grant a conservation easement under s. 700.40 to the department
24 or shall execute a comparable legal instrument to ensure that a wetland that is being
25 restored, enhanced, created, or preserved will not be destroyed or substantially

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1 degraded by any subsequent proprietor of or holder of interest in the property on
2 which the wetland is located. The department shall suspend the mining permit if the
3 holder of the permit fails to grant the easement or execute this instrument within
4 the time limit set forth in the mining permit. If the holder subsequently grants the
5 conservation easement or executes the instrument, the department shall reinstate
6 the mining permit.

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

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

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

14 1.

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

18 **(10) EXEMPTIONS.** (a) *Artificial wetlands.* All of the following artificial
19 wetlands that are associated with a mining operation or bulk sampling are exempt
20 from the wetland individual permit and mitigation requirements under this section,
21 from the general permit requirements under s. 281.36 (3g), and from any
22 requirement for any other approval for which a wetland impact evaluation is
23 required:

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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 an actively maintained farm drainage or
7 roadside ditch.

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

9 (b) *Other exempted activities.* All of the following activities that are associated
10 with a mining operation or bulk sampling are exempt from the wetland individual
11 permit and mitigation requirements under this section, from the general permit
12 requirements under s. 281.36 (3g), and from any requirement for any other approval
13 for which a wetland impact evaluation is required if the applicant minimizes any
14 adverse effect on the environment as a result of any of these activities:

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

17 2. Construction or maintenance of irrigation ditches.

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

21 4. Maintenance of drainage ditches.

22 (c) An exemption under par. (a) or (b) does not apply to a federal wetland if the
23 exemption conflicts with 33 USC 1344.

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

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

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

4 (c) Any other rule promulgated by the department that relates to wetlands that
5 conflicts with this section.

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

9 (2) APPROVAL REQUIRED. No person may engage in any navigable water activity
10 associated with bulk sampling or mining unless the person has been granted an
11 approval as provided under sub. (4).

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

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

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

19 (b) If a person is applying for more than one approval for a navigable water
20 activity, the person may file a single application. The application shall include any
21 information requested by the department under s. 295.45 (3).

22 (4) REQUIREMENTS. (a) *Generally.* The department shall grant an approval for
23 a navigable water activity if the navigable water activity meets all of the following
24 requirements:

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

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

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

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

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

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

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

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

17 4. Measures to enhance flood storage.

18 5. A mitigation program as provided under s. 295.60 (8).

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

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

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1 department shall determine which measures shall be required, shall approve a
2 schedule for implementation, and shall grant the approval.

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

9 (5) APPROVAL CONDITIONS. The department may impose conditions in an
10 approval for a navigable water activity that it determines to be necessary to ensure
11 that the navigable water activities subject to the approval meet the requirements
12 under sub. (4) (a).

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

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

18 **295.607 Shoreland and floodplain zoning.** (1) (a) In this section:

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

21 2. "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 zoning

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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).

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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, including a withdrawal or use
6 associated with a system or plant under s. 281.41, unless the person has been issued
7 a water withdrawal permit under this section. No person may engage in any
8 withdrawal or use of groundwater, including a withdrawal or use associated with a
9 system or plant under s. 281.41, as part of a mining operation or bulk sampling if the
10 capacity and rate of withdrawal of all wells involved in the withdrawal of
11 groundwater or in the dewatering of mines exceeds 100,000 gallons each day unless
12 the person has been issued a water withdrawal permit under this section.

13 (3) PERMIT APPLICATION. (a) *Application*. A person applying for a water
14 withdrawal permit is required to submit only one application. An application for a
15 water withdrawal permit shall include any information requested by the department
16 under s. 295.45 (3).

17 (am) *Applicant status*. 1. A person is not required to be the owner of a piece
18 of riparian property in order to obtain a permit to withdraw surface water from that
19 piece of riparian property if any of the following applies:

20 a. The person leases the piece of riparian property from the owner.

21 b. The person holds an easement on the piece of riparian property.

22 2. A person is not required to be the owner of a piece of property in order to
23 obtain a permit to withdraw groundwater from that piece of property if any of the
24 following applies:

25 a. The person leases the piece of property from the owner.

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1 b. The person holds an easement on the piece of property.

2 c. The person has obtained permission from the owner to withdraw
3 groundwater from that piece of property.

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

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

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

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

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

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

9 4. The proposed withdrawal and use of the water will not significantly impair
10 the rights of riparian owners or the applicant obtains the consent of the riparian
11 owners.

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

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

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

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

22 1. Environmentally sound and economically feasible water conservation
23 measures.

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

4 3. Protection of important upland groundwater recharge areas.

5 4. Stabilization of shorelands.

6 5. Restoration or enhancement of the natural beneficial uses and values of a
7 stream or river.

8 6. Implementation of any feasible methods to offset impacts to water quality
9 or quantity.

10 7. Supplementation of additional water to water bodies to offset lower water
11 levels.

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

14 9. A mitigation program as provided in s. 295.60 (8).

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

18 11. A riparian restoration project.

19 12. Measures as provided in s. 295.605.

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

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1 measures shall be required, shall approve a schedule for implementation, and shall
2 issue the permit.

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

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

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

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

- 21 1. The location of the withdrawal or use.
- 22 2. The authorized base level of water loss from the withdrawal or use.
- 23 3. The dates on which or seasons during which withdrawal or use of the water
24 may occur.
- 25 4. The purposes for the withdrawal or use of the water.

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1 5. The amount and quality of return flow required and the place of the
2 discharge.

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

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

8 (b) If the department determines that a high capacity well that would be
9 covered by a water withdrawal permit may impair a privately owned high capacity
10 well, the department shall include in the water withdrawal permit conditions that
11 will ensure that the privately owned high capacity well will not be impaired, unless
12 the private high capacity well owner agrees to the impairment.

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

15 2. If the request for a modification under subd. 1. does not result in an increase
16 in an existing withdrawal resulting in a water loss averaging more than 2,000,000
17 gallons per day in any 30-day period above the operator's authorized base level of
18 water loss, within 30 days of receiving the request the department shall approve the
19 request and amend the permit to incorporate the modification.

20 3. a. If the request for a modification under subd. 1. results in an increase in
21 an existing withdrawal resulting in a water loss averaging more than 2,000,000
22 gallons per day in any 30-day period above the operator's authorized base level of
23 water loss, the department shall determine, using the environmental review process
24 under s. 1.11, whether it is required to prepare an environmental assessment or
25 environmental impact statement and, if so, shall prepare an environmental

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1 assessment or an environmental impact statement. If the department determines,
2 using the environmental review process under s. 1.11, that the operator must
3 prepare an environmental impact report, the department may only request
4 information in the environmental impact report that relates to decisions that the
5 department makes under this section related to the permit and the department shall
6 limit its analysis to an evaluation of the request for the modification.

7 b. The department shall publish a class 1 notice, under ch. 985, and shall
8 publish notice on the department's Internet site, of the availability of information
9 about a request to which this subdivision applies, its proposed decision on the
10 request, the opportunity to comment within 30 days after the date of the publication
11 of the notice, and the opportunity to request a public informational hearing. The
12 department shall also provide the notice to the applicant, the persons specified in s.
13 30.18 (4) (a), and if the modification involves a structure through which water
14 transferred from the Great Lakes basin would be returned to the source watershed
15 through a stream tributary to one of the Great Lakes, the governing body of each city,
16 village, and town through which the stream flows or that is adjacent to the stream
17 downstream from the point at which the water would enter the stream. The
18 department's notice to interested persons under this subd. 3. b. may be given through
19 an electronic notification system established by the department. The date on which
20 the department first publishes notice on its Internet site shall be considered the date
21 of the publication of the notice required to be published under this subd. 3. b.

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

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

13 2. The department shall publish a class 1 notice, under ch. 985, and shall
14 publish notice on the department's Internet site, of the availability of information
15 about a proposed modification under this paragraph, the opportunity to comment
16 within 30 days after the date of the publication of the notice, and the opportunity to
17 request a public informational hearing. The department shall also provide the notice
18 to the applicant, the persons specified in s. 30.18 (4) (a), and if the modification
19 involves a structure through which water transferred from the Great Lakes basin
20 would be returned to the source watershed through a stream tributary to one of the
21 Great Lakes, the governing body of each city, village, and town through which the
22 stream flows or that is adjacent to the stream downstream from the point at which
23 the water would enter the stream. The department's notice to interested persons
24 under this subdivision may be given through an electronic notification system
25 established by the department. The date on which the department first publishes

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1 notice on its Internet site shall be considered the date of the publication of the notice
2 required to be published under this subdivision.

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

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

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

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

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

16 **(8) DAMAGE CLAIMS.** (a) As used in this subsection, “person” does not include
17 a city, village, or town.

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

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

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

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

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

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

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

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

23 **295.62 Mining waste site construction and completion reports.** (1) An
24 operator shall construct a mining waste site substantially in accordance with the
25 approved mining waste site feasibility study and plan of operation.

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1 (2) The operator shall inspect the mining waste site before it is used and ensure
2 that all associated structures are in substantial compliance with the mining waste
3 site feasibility study and plan of operation. The operator shall have a professional
4 engineer, registered as such under ch. 443, document mining waste site construction
5 and render an opinion as to whether the mining waste site has been constructed in
6 substantial conformance with the mining waste site feasibility study and plan of
7 operation. The engineer may use aerial or ground photographs to document the
8 inspection, but photographs do not in themselves constitute compliance with this
9 subsection. The operator shall maintain a complete file describing the items
10 inspected and their condition.

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

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

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1 completes the steps, the operator shall notify the department that the steps have
2 been completed.

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

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

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

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

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

22 (b) The department shall grant a request under par. (a) unless it determines
23 that the requested change makes it impossible for the permit holder to substantially
24 comply with the approved mining plan, reclamation plan, or mining waste site
25 feasibility study and plan of operation. If the department determines that the

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1 requested change would make substantial compliance impossible, it shall follow the
2 procedure in sub. (3).

3 (c) If the request under par. (a) is to cancel any or all of the unmined part of a
4 mining site, the department shall ascertain, by inspection, if mining has occurred on
5 the land. If the department finds that no mining has occurred, the department shall
6 order release of the bond or other security posted for the land being removed from
7 the permitted mining site and cancel or amend the operator's written authorization
8 to conduct mining on the mining site. The department may not approve the removal
9 of land where mining has occurred from a permitted mining site, or release that land
10 from the bond or other security under this subsection, unless the operator has
11 completed reclamation to the satisfaction of the department.

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

- 21 (a) Location and boundary of the mining area.
22 (b) Any mine mill.
23 (c) Any open pit.
24 (d) Stockpiles of overburden.
25 (e) Stockpiles of waste rock.

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1 (f) Ferrous ore stockpiles.

2 (g) Streams, lakes, and reservoirs.

3 (h) Tailings basins.

4 (i) Roads.

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

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

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

13 (m) Elevations of stockpiles and tailings basins.

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

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

19 (p) The date the map was prepared.

20 **(2m)** Annually, the department shall review the bond or other security under
21 s. 295.59 (1) to ascertain its adequacy. If the department after review determines
22 that the amount of the bond or other security should be changed, it shall notify the
23 permit holder of the necessary changes. If the permit holder does not seek a
24 contested case hearing under s. 295.77 (3) within 30 days, the changes are considered
25 to be accepted.

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1 **(3)** If the department finds that a change requested under sub. (1) (a) would
2 make substantial compliance with the approved mining plan, reclamation plan, or
3 mining waste site feasibility study and plan of operation impossible or it finds, based
4 on a review conducted no more frequently than every 5 years, that because of
5 changing conditions, including changes in reclamation costs or reclamation
6 technology, the reclamation plan for a mining site is no longer sufficient to
7 reasonably provide for reclamation of the mining site consistent with this
8 subchapter, it shall require the operator to submit an amended mining plan,
9 reclamation plan, or mining waste site feasibility study and plan of operation and
10 applications for amending any approval associated with the proposed amendments
11 to the mining plan, reclamation plan, or mining waste site feasibility study and plan
12 of operation. The public notice, public comment, and public hearing procedures in
13 s. 295.57 apply to amended plans and applications under this subsection. The
14 department shall approve or deny the amended mining plan, reclamation plan, or
15 mining waste site feasibility study and plan of operation in accordance with s.
16 295.58, within 30 days following the close of the public comment period. The
17 applicant may continue to operate under the existing mining permit until the
18 amended mining permit is issued or denied.

19 **295.635 Required mining waste site inspections, record keeping,**
20 **reporting, and responses. (1) DEFINITIONS.** In this section:

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

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

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

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

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

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

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

13 **(3) ACTIVE DAMS.** The operator shall, at least monthly, inspect active dams and
14 record the findings in the mining waste site operating log. The operator shall record
15 at least all of the following findings:

16 (a) Condition of vegetation on the dam and within 50 feet from the outside base.

17 (b) Piezometric levels within the mass of the dam.

18 (c) Condition of soil surfaces on the top and slopes of the dam and within 50 feet
19 from the outside base.

20 (d) Condition of drainage ditches near the base of the dam.

21 (e) Liquid surface level and amount of freeboard.

22 (f) Condition of spillways, conduits, and water level control structures.

23 **(4) INACTIVE DAMS.** The operator shall inspect inactive dams quarterly and
24 record the findings in the mining waste site operating log. The operator shall record
25 at least all of the following findings:

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1 (a) Condition of soil surfaces on the top and slopes of the dam and within 50 feet
2 from the outside base.

3 (b) Piezometric levels within the mass of the dam if that instrumentation has
4 been determined to be necessary or is required in the long-term care provisions of
5 the mining waste site feasibility study and plan of operation.

6 (c) Condition of spillways, conduits, and water level control structures.

7 **(5) DEFECTIVE CONDITIONS OF DAMS POSING RISK OF ADVERSE IMPACT.** When a
8 defective condition that poses a significant risk of adverse impact to the environment
9 is found during an inspection of a dam, the operator shall ensure that it is recorded
10 and corrected at the earliest practicable time. At the earliest practicable time, the
11 operator shall make a written report to the department of the condition and the
12 actions proposed and taken for its correction. Within 5 business days of receipt of a
13 written report, the department may confirm the correction of the condition and
14 specify any necessary additional corrective action. An operator shall consider any
15 of the following items as indicating a condition that requires prompt investigation
16 and that may require corrective action:

17 (a) Seepage on the outer face of the dam accompanied by boils, sand cones, or
18 deltas.

19 (b) Silt accumulations, boils, deltas, or cones in the drainage ditches at the base
20 of the dam.

21 (c) Cracking of soil surface on the top or either face of the dam.

22 (d) Bulging of the outside face of the dam.

23 (e) Seepage, damp areas, or boils in the vicinity of, or erosion around, a conduit
24 through the dam.

25 (f) Any shrinkage of the top or faces of the dam.

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1 **(6) POTENTIAL DEFECTS OF DAMS.** All of the following conditions indicate
2 potential defects and the operator shall closely check them on subsequent
3 inspections for an active dam and conduct an intermediate inspection if they exist
4 for an inactive dam:

5 (a) Patches of overgrown vegetation on the outside face or close to the base of
6 the dam.

7 (b) Surface erosion, gullyng, or wave erosion on the inside of the dam.

8 (c) Surface erosion, gullyng, or damp areas on the outside of the dam, including
9 the berm and the area within 50 feet from the outside base.

10 (d) Erosion below any conduit.

11 (e) Wet areas or soggy soil on the outside of, or in natural soil below, the dam.

12 **(7) RECORD KEEPING RELATED TO DAMS.** (a) The operator shall retain all records
13 relating to dam monitoring, analytical, and verification activities and data,
14 including all original strip chart recordings and instrumentation, calibration, and
15 maintenance records, until termination of operator responsibility, except to the
16 extent that copies of those records have previously been provided to the department.

17 (b) The operator shall maintain in a permanent file all of the following
18 construction records pertaining to any dam in case they are needed for future
19 reference:

20 1. Aerial photos of the construction site before construction.

21 2. Construction drawings and modifications of the drawings.

22 3. Construction specifications and modifications of the specifications.

23 4. Results of all soil tests on foundations and fill materials.

24 5. Logs of borings and engineering geology reports.

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1 6. Copies of construction progress inspections pertinent to core trench, toe
2 drain, internal drains, and other significant phases of the structure including, at the
3 option of the operator, photographs of various structural items.

4 7. Aerial photos of the entire dam taken within 90 days after all construction
5 is completed.

6 8. A description of and justification for all deviations or variances from the
7 construction plans and specifications.

8 **(8) RESPONSES TO UNPLANNED EVENTS.** If a mining waste site has an accidental
9 or emergency discharge, a fire, an explosion, or other unplanned or unpredicted
10 event that is likely to damage human health or the environment, the operator shall
11 follow the procedures set forth in the contingency plan under s. 295.51 (6) (f) and
12 shall report the incident to the department and to county, town, and tribal
13 governmental agencies immediately after the operator has discovered the event.

14 **(9) ANNUAL REPORT.** The operator shall submit to the department an annual
15 summary report concerning the mining waste site containing all of the following:

16 (a) Statistical summaries of annual and cumulative data.

17 (b) A comparison of the summaries under par. (a) to mining waste
18 characterization, leachate characterizations, effluent predictions, and baseline
19 water quality and background water quality data as contained in the approved
20 mining waste site feasibility study and plan of operation.

21 (c) The results of verification procedures and a presentation of the error
22 associated with each parameter reported.

23 (d) Information from monitoring wells that have not been affected, including
24 a discussion of whether the baseline values should be modified due to natural
25 variability and what the new values should be.

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1 (10) APPLICABILITY. This section does not apply to a surface mine that is
2 backfilled with mining waste.

3 **295.64 Mining site monitoring; general.** (1) GENERAL. The department,
4 as a condition of a mining permit, shall require the operator to perform adequate
5 monitoring of environmental changes during the course of the mining and for the
6 additional period of time that is necessary to satisfactorily complete reclamation and
7 completely release the operator from any bonds or other security required. The
8 department may monitor environmental changes concurrently with the operator
9 and for an additional period after the security is released.

10 (2) ANALYSES. (a) The department shall review baseline water quality data
11 with respect to groundwater and monitoring data associated with the mine, mining
12 waste sites, and sites for the disposal of wastes that are not mining wastes at the time
13 of each review of the mining permit or reclamation plan under s. 295.63 (3) and when
14 the operator requests a modification of the mining permit or reclamation plan.

15 (b) An operator shall have bacteriological analyses of water samples and all
16 radiological analyses associated with the mining site performed by the state
17 laboratory of hygiene or at a laboratory certified or approved by the department of
18 health services. An operator shall have other laboratory tests the results of which
19 are submitted to the department under this subchapter performed by a laboratory
20 certified or registered under s. 299.11, except that this requirement does not apply
21 to any of the following:

- 22 1. Physical testing of soil.
- 23 2. Air quality tests.
- 24 3. Tests for hydrogen ion concentration (pH).
- 25 4. Tests for chlorine residual.

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1 5. Tests for temperature.

2 **295.643 Mining waste site monitoring. (1) GENERAL.** The department may
3 require the monitoring of groundwater, surface water, leachate, or other physical
4 features associated with a mining waste site.

5 **(2) PHYSICAL FEATURES.** The department may require the monitoring of air
6 quality, berms, embankments, vegetation growth, and drainage control structures
7 associated with the mining waste site. The department may require monitoring of
8 other chemical or biological conditions, if the department determines that the
9 monitoring is necessary to assess the impact of the mining waste site on critical
10 aquatic and terrestrial ecosystems.

11 **(3) MONITORING WELLS AND OTHER DEVICES. (a)** The department shall require
12 the installation of groundwater monitoring wells at a mining waste site. The
13 department may require installation of leachate monitoring wells, lysimeters,
14 moisture probes, and similar devices and associated water quality sampling and
15 analysis programs to detect the effects of leachate on groundwater.

16 **(b)** The department shall determine the required number of groundwater
17 monitoring wells based on the size of the mining waste site, the design of the mining
18 waste site, the types of mining waste, and the hydrologic and geologic setting of the
19 mining waste site. The department shall ensure that the number of wells is adequate
20 to yield samples representative of the groundwater quality both up gradient and
21 down gradient of the mining waste site.

22 **(c)** An operator shall construct all monitoring wells in accordance with ch. NR
23 141, Wis. Adm. Code, and in such a manner as to prevent, to the extent practicable,
24 the exchange of water between aquifers.

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1 (4) DESTRUCTION OF MONITORING DEVICES. (a) If for any reason a monitoring well
2 or other monitoring device associated with a mining waste site is destroyed or
3 otherwise fails to function properly, the operator shall notify the department in
4 writing within 5 days of discovering the destruction or malfunction.

5 (b) The operator shall either restore the monitoring well or other device or
6 properly abandon it and replace it with a functioning device within 60 days of
7 notifying the department under par. (a) unless the department notifies the operator
8 otherwise in writing within 30 days of receiving notice from the operator.

9 (5) SAMPLING OTHER WELLS. The department may require an operator to sample
10 public or private wells as part of a regular monitoring program or to determine the
11 extent of groundwater contamination associated with a mining waste site. If the
12 owner of a well does not authorize access for sampling, the operator shall promptly
13 notify the department.

14 (6) REQUIRED MONITORING AND ANALYSIS. (a) An operator shall monitor
15 groundwater at locations identified in the waste site feasibility study and plan of
16 operation on a quarterly basis, during March, June, September, and December,
17 unless the department agrees to an alternate schedule. The department may base
18 an alternate schedule on the hydrogeologic system's characteristics, such as flow
19 velocity and stratigraphy, and on fluctuations in quality as determined through
20 background water quality or baseline water quality sampling and mining waste
21 type. The operator shall analyze for the parameters listed in the approved waste site
22 feasibility study and plan of operation.

23 (b) An operator shall use the methods for groundwater and surface water
24 sample collection, preservation, and analysis that are specified in the approved
25 mining waste site facility study and plan of operation.

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1 (7) WATER ELEVATION MEASUREMENTS. The operator shall make water elevation
2 measurements on a quarterly basis.

3 (8) OPERATIONS REPORT. The department may require an operator to submit an
4 operations report to assess the effectiveness and environmental acceptability of
5 mining waste site operations. The operator may include in the report a discussion
6 of confinement of the active fill area and an analysis of leachate and other
7 monitoring, surface water control and erosion control, revegetation, settlement,
8 volume of the mining waste site utilized, leachate quantity and quality, slope
9 stability, equipment performance, volume and type of waste disposed of, and other
10 relevant parameters.

11 (9) REPORTS OF MONITORING DATA. The operator shall forward to the department,
12 within 60 days after sampling, 3 copies of the monitoring data required by this
13 section to be collected during each quarter.

14 **295.645 Groundwater quality, monitoring, and response. (1)**

15 DEFINITIONS. In this section:

16 (a) “Alternative concentration limit” means the concentration of a substance
17 in groundwater established by the department to replace a groundwater quality
18 standard when the department grants an exemption.

19 (b) “Statistically significantly different” means an amount of change
20 determined by the use of statistical tests for measuring significance at the 95 percent
21 confidence level.

22 (2) DESIGN MANAGEMENT ZONE. (a) Notwithstanding the rule-making authority
23 in s. 160.21 (2) and except as provided under par. (b), for the purposes of ch. 160, the
24 horizontal distance to the boundary of the design management zone for a mining
25 operation is 1,200 feet from the limits of the engineered structures of the mining

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1 waste site, including any wastewater and sludge storage or treatment lagoons, the
2 edge of the mine, and the adjacent mine mill and ferrous mineral processing facilities
3 or at the boundary of the property owned or leased by the applicant or on which the
4 applicant holds an easement, whichever distance is less.

5 (b) When issuing or modifying a mining permit or issuing or reissuing any other
6 approval, the department may expand the design management zone by a horizontal
7 distance of up to an additional 1,200 feet in any direction as provided in this
8 paragraph, but not beyond the boundary of the property owned or leased by the
9 applicant or on which the applicant holds an easement. The department may not
10 expand the design management zone unless the applicant demonstrates all of the
11 following:

12 1. That preventive action limits and enforcement standards or alternative
13 concentration limits cannot be met at the boundary of the design management zone
14 if it is not expanded.

15 2. That preventive action limits and enforcement standards or alternative
16 concentration limits will be met at the boundary of the expanded design
17 management zone.

18 (c) Notwithstanding the rule-making authority in s. 160.21 (2), for the
19 purposes of ch. 160, the vertical distance to the boundary of the design management
20 zone for a mining site, including any mining waste site, extends no deeper than 1,000
21 feet into the Precambrian bedrock or than the final depth of the mining excavation,
22 whichever is greater.

23 (3) POINT OF STANDARDS APPLICATION. (a) Any point at which groundwater is
24 monitored is a point of standards application to determine whether a preventive
25 action limit or an alternative concentration limit to a preventive action limit has been

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1 attained or exceeded for an activity regulated under a mining permit or another
2 approval related to the mining operation. Any of the following is a point of standards
3 application to determine whether an enforcement standard or an alternative
4 concentration limit to an enforcement standard has been attained or exceeded for an
5 activity regulated under a mining permit or another approval related to the mining
6 operation:

- 7 1. Any point of present groundwater use.
- 8 2. Any point beyond the boundary of the property on which the activity is
9 conducted, subject to par. (b).
- 10 3. Any point that is within the boundary of the property on which the activity
11 is conducted but is beyond the design management zone, subject to par. (b).

12 (b) No point at a depth of greater than 1,000 feet into the Precambrian bedrock
13 or than the final depth of the mining excavation, whichever is greater, is a point of
14 standards application under this subsection.

15 (c) Section 160.21 (2) does not apply to an activity regulated under this
16 subchapter.

17 **(4) CHANGE IN GROUNDWATER QUALITY.** If the analysis of samples collected
18 through monitoring indicates that the quality of groundwater is statistically
19 significantly different from either baseline water quality or background water
20 quality and the evaluation of the data shows a reasonable probability that without
21 intervention groundwater quality standards or alternative concentration limits will
22 be attained or exceeded, the operator shall do all of the following:

- 23 (a) Notify the department within 10 days after the operator receives the results
24 of the analysis of the samples.

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1 (b) Determine, if possible, the cause of the difference in water quality, such as
2 a spill, a design failure, or an improper operational procedure.

3 (c) Determine the extent of groundwater contamination or the potential for
4 groundwater contamination.

5 (d) Implement the applicable portions of the approved contingency plan.

6 **(5) RESPONSE CONCERNING PREVENTIVE ACTION LIMITS.** In accordance with s. NR
7 140.24 (1) to (5), Wis. Adm. Code, the department shall evaluate the range of
8 responses proposed by the operator when a preventive action limit or an alternative
9 concentration limit to a preventive action limit is attained or exceeded and the
10 analysis of samples indicates that the quality of groundwater is statistically
11 significantly different from either baseline water quality or background water
12 quality at a point of standards application. In designating the appropriate response,
13 the department shall evaluate the operator's proposed range of responses, including
14 any alternate responses to those identified in s. NR 140.24, Wis. Adm. Code. For any
15 alternate responses, the department shall consider the technical and economic
16 feasibility of alternate responses, the practicality of stopping the further release of
17 the substance, and the risks and benefits of continued mining operations. The
18 department shall designate the appropriate response, except that, notwithstanding
19 s. 160.21 (3) and the rule-making authority under s. 160.21 (1), the department may
20 not prohibit a practice or activity or require closure and abandonment of a mining
21 waste site, including any wastewater and sludge storage or treatment lagoon, unless
22 it has followed the procedures in s. 295.78 and satisfies the requirements of s. 160.23
23 (4) and (6). The department may determine that no response is necessary and that
24 an exemption is not required when the requirements of s. NR 140.24 (5) (a) or (b), Wis.
25 Adm. Code are met.

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1 **(6) RESPONSE CONCERNING ENFORCEMENT STANDARDS.** (a) In accordance with s.
2 NR 140.26 (1) and (2), Wis. Adm. Code, the department shall evaluate the range of
3 responses proposed by the operator based on the responses listed in Table 6 of s. NR
4 140.26, Wis. Adm. Code, when an enforcement standard or an alternative
5 concentration limit to an enforcement standard is attained or exceeded and the
6 analysis of samples indicates that the quality of groundwater is statistically
7 significantly different from either baseline water quality or background water
8 quality at a point of standards application. In designating the appropriate response,
9 the department shall evaluate the operator's proposed range of responses against
10 those identified in Table 6 of s. NR 140.26, Wis. Adm. Code. The department shall
11 designate the appropriate response, except that, notwithstanding ss. 160.21 (3) and
12 160.25 (1) (a) and the rule-making authority under s. 160.21 (1), the department may
13 not prohibit a practice or activity or require closure and abandonment of a mining
14 waste site, including any wastewater and sludge storage or treatment lagoon, unless
15 it has followed the procedures in s. 295.78 and all of the following apply:

- 16 1. The department bases its decision upon reliable test data.
- 17 2. The department determines, to a reasonable certainty, by the greater weight
18 of the credible evidence, that no other remedial action would prevent the violation
19 of the enforcement standard at the point of standards application.
- 20 3. The department establishes the basis for the boundary and duration of the
21 prohibition.
- 22 4. The department ensures that any prohibition imposed is reasonably related
23 in time and scope to maintaining compliance with the enforcement standard at the
24 point of standards application.

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1 5. If the substance involved is naturally occurring, unless the substance
2 involved is carcinogenic, teratogenic, or mutagenic in humans, the department
3 considers the existence of the background concentration of the substance in
4 evaluating response options to the noncompliance with the enforcement standard or
5 alternative concentration limit for that substance and determines that the proposed
6 prohibition will result in the protection of or substantial improvement in
7 groundwater quality notwithstanding the background concentrations of the
8 substance.

9 (b) The department may only require a remedial action to be taken if the
10 remedial action is reasonably related in time and scope to the substance, activity, or
11 practice that caused the enforcement standard or alternative concentration limit to
12 an enforcement standard to be attained or exceeded and the quality of groundwater
13 to be statistically significantly different from either baseline water quality or
14 background water quality at the point of standards application.

15 (c) If nitrates or any substance of welfare concern attains or exceeds an
16 enforcement standard and if the analysis of samples indicates that the quality of
17 groundwater is statistically significantly different from either baseline or
18 background water quality, then the department shall evaluate whether the
19 enforcement standard was attained or exceeded in whole or in part due to high
20 background water quality concentrations of the substance and whether the
21 additional concentrations represent a public welfare concern before it designates the
22 appropriate response and, notwithstanding ss. 160.21 (3) and 160.25 (1) (a) and the
23 rule-making authority under s. 160.21 (1), the department may not prohibit a
24 practice or activity or require closure and abandonment of a mining waste site,

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1 including any wastewater and sludge storage or treatment lagoon, unless it has
2 followed the procedures in s. 295.78 and par. (a) 1. to 4. apply.

3 (d) If compliance with an enforcement standard is achieved at a point of
4 standards application, then sub. (5) applies. *

5 **(6m) MANDATORY INTERVENTION BOUNDARY FOR MINING WASTE SITE AND MINE.** (a)
6 Except as provided under par. (am), the horizontal distance to the mandatory
7 intervention boundary for a mining waste site is 300 feet from the outer waste
8 boundary or the outer edge of the excavation, unless the boundary of the design
9 management zone is within 600 feet of the outer waste boundary or the outer edge
10 of the excavation, in which case the mandatory intervention boundary is one-half
11 the distance from the outer waste boundary or the outer edge of the excavation to the
12 boundary of the design management zone.

13 (am) The department may reduce the mandatory intervention boundary under
14 par. (a) by a horizontal distance of up to 150 feet if the department determines that
15 the reduction is necessary to adequately identify and respond to potential
16 groundwater quality issues.

17 (b) An operator shall monitor groundwater quality at locations approved by the
18 department along the mandatory intervention boundary, except for any portion of
19 the mandatory intervention boundary that is within another mandatory
20 intervention boundary, and within the mandatory intervention boundary. When
21 approving locations for monitoring, the department shall ensure that duplicative
22 monitoring is not required within overlapping mandatory intervention boundaries.

23 (c) 1. Notwithstanding sub. (5), if a preventive action limit or an enforcement
24 standard has been exceeded beyond the mandatory intervention boundary, the

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1 department shall require a response in accordance with s. NR 140.24, Wis. Adm.
2 Code, except that s. NR 140.24 (5), Wis. Adm. Code, does not apply.

3 2. If sampling results indicate that an enforcement standard or a preventive
4 action limit has been exceeded within, but not beyond, the mandatory intervention
5 boundary and a comparison of sampling results to the results of modeling indicates
6 that the sampling results are consistent with the design and expected performance
7 of the mining waste site, the operator may recommend a no response action, and the
8 department may approve a no response action if that is authorized under s. NR
9 140.24 (5), Wis. Adm. Code.

10 (7) ENVIRONMENTAL ANALYSIS NOT REQUIRED. An action under sub. (5) or (6) with
11 respect to a specific site does not constitute a major state action under s. 1.11 (2).

12 (8) EXEMPTIONS TO GROUNDWATER QUALITY STANDARDS. When issuing or
13 modifying a mining permit or issuing or reissuing any other approval, the
14 department may grant an exemption from a groundwater quality standard and
15 establish an alternative concentration limit to a groundwater quality standard.

16 (9) APPLICABILITY OF OTHER LAW. Chapter NR 140, Wis Adm. Code, applies to
17 mining operations and mining sites, including mining waste sites, only to the extent
18 that it does not conflict with this section.

19 **295.65 Successors.** (1) When one operator succeeds to the interest of another
20 in an uncompleted mining operation by sale, assignment, lease, or otherwise, the
21 department shall release the first operator from the duties imposed upon the first
22 operator by this subchapter as to the mining operation and transfer the mining
23 permit and any approvals under ss. 295.60, 295.605, and 295.61 to the successor
24 operator if all of the following apply:

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1 (a) The successor operator agrees to comply with the requirements of this
2 subchapter.

3 (b) The successor operator discloses whether it has forfeited any performance
4 security because of noncompliance with any mining laws within the previous 10
5 years, posts any bond or other security required under s. 295.59, and assumes all
6 responsibilities of all applicable approvals granted to the predecessor operator.

7 (2) The department is not required to prepare an environmental impact
8 statement or an environmental assessment for the purposes of this section.

9 **295.66 Cessation of mining or reclamation.** If there is a cessation of
10 mining or reclamation for 30 days or more that is not set forth in either the mining
11 plan or the reclamation plan, the operator shall notify the department of the
12 cessation within 48 hours of the cessation of mining and shall begin stabilization of
13 the mining site. The department may require the operator to provide technical,
14 engineering, and any other information that the operator believes shows that its
15 actions to stabilize the mining site are adequate. If the department determines, after
16 reviewing the information provided by the operator, that the proposed stabilization
17 of the mining site will result in a substantial adverse impact to the environment, the
18 department shall order the operator to begin additional measures to protect the
19 environment, including, if the cessation is reasonably anticipated to extend for a
20 protracted period of time, reclamation according to the reclamation plan or part of
21 the reclamation plan. Usual and regular shutdown of operations on weekends, for
22 maintenance or repair of equipment or facilities, or for other customary reasons do
23 not constitute a cessation of mining.

24 **295.67 Determination of abandonment of mining.** (1) Except as provided
25 in sub. (2), abandonment of mining occurs if there is a cessation of mining, not set

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1 forth in an operator's mining plan or reclamation plan or by any other sufficient
2 written or constructive notice, extending for more than 6 consecutive months.

3 (2) Abandonment of mining does not occur if all of the following apply:

4 (a) The cessation of mining is due either to labor strikes or to unforeseen
5 developments such as adverse market conditions.

6 (b) The cessation of mining does not continue beyond the time, not to exceed
7 5 years, specified by the department.

8 (c) The mining site is maintained in an environmentally stable manner during
9 the cessation of mining.

10 (d) The reclamation of the mining site continues according to the reclamation
11 plan during the cessation of mining to the extent practicable.

12 **295.68 Certificates of completion and release of security.** (1) Upon the
13 petition of the operator, but not less than 4 years after notification to the department
14 by the operator of the completion of the reclamation plan or not less than one year
15 after notification to the department by the operator of the completion of the
16 reclamation plan as to a portion of the mining site, if the department finds that the
17 operator has completed reclamation of any portion of the mining site in accordance
18 with the reclamation plan and this subchapter, the department shall issue a
19 certificate of completion setting forth a description of the area reclaimed and a
20 statement that the operator has fulfilled its duties under the reclamation plan as to
21 that area.

22 (2) Upon the issuance of any certificate of completion under sub. (1) for any
23 portion of the mining site, but not for the entire mining site, the department shall
24 allow the operator to reduce the amount of the bond or other security provided under
25 s. 295.59 (1) to an amount equal to the estimated cost of reclamation of the portion

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1 of the mining site that is disturbed or for which reclamation has been completed but
2 no certificate of completion has been issued.

3 (3) Upon issuance of a certificate or certificates of completion of reclamation
4 for the entire mining site, the department shall require the operator to maintain a
5 bond or other security under s. 295.59 (1) equal to at least 10 percent of the cost to
6 the state of reclamation of the entire mining site, except that if the mining site in the
7 mining plan is less than 10 acres, the department may release the bond or other
8 security after issuance of the certificate of completion for the entire mining site.

9 (4) After 10 years after the issuance of a certificate or certificates of completion
10 for the entire mining site, the department shall release the remaining bond or other
11 security provided under s. 295.59 (1) if the department finds that the reclamation
12 plan has been complied with.

13 **295.69 Termination of proof of financial responsibility for long-term**
14 **care of mining waste site.** (1) One year after closure, and annually thereafter
15 until the department terminates the obligation to maintain proof of financial
16 responsibility for long-term care of a mining waste site under sub. (2) (c), an operator
17 who has carried out all necessary long-term care during the preceding year, may
18 apply to the department for a reduction in the amount of the proof of financial
19 responsibility provided under s. 295.59 (2m) equal to the costs of long-term care for
20 that year. The operator shall provide an itemized list of costs incurred. If the
21 department determines that the costs incurred are in accordance with the long-term
22 care requirements in the approved waste site feasibility study and plan of operation
23 and that adequate funds exist to complete required long-term care for the remainder
24 of the 40-year period on which the amount of the proof of financial responsibility was
25 originally determined, the department shall authorize in writing a reduction in the

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1 amount of proof of financial responsibility provided. The department shall make its
2 determinations within 90 days of an application.

3 (2) (a) An operator may apply to the department for termination of its
4 obligation to maintain proof of financial responsibility for long-term care of the
5 mining waste site under s. 295.59 (2m) at any time after the mining waste site has
6 been closed for 20 years by submitting an application that demonstrates that
7 continuation of the obligation to maintain proof of financial responsibility for
8 long-term care is not necessary for adequate protection of public health or the
9 environment. The burden is on the operator to prove by a preponderance of the
10 evidence that continuation of the obligation to maintain proof of financial
11 responsibility for long-term care is not necessary for adequate protection of public
12 health or the environment.

13 (b) Within 30 days of receiving an application under par. (a), the department
14 shall provide notice to the public of the application for termination of the obligation
15 to maintain proof of financial responsibility for long-term care. In the notice, the
16 department shall invite the submission of written comments by any person on the
17 application within 30 days of the date of the publication of the notice. The
18 department shall provide the notice by publishing a class 1 notice under ch. 985 in
19 the official newspaper designated under s. 985.04 or 985.05 or, if none exists, in a
20 newspaper likely to give notice in the area of the mining waste site, and shall publish
21 notice on the department's Internet site. The date on which the department first
22 publishes the notice on its Internet site shall be considered the date of the publication
23 of the notice required to be published under this paragraph. The department shall
24 also send the notice to the operator.

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1 (c) Within 120 days of the date of the publication of the notice under par. (b),
2 the department shall determine either that proof of financial responsibility for
3 long-term care of the mining waste site is no longer required, in which case the
4 applicant is relieved of the responsibility of providing proof of financial responsibility
5 for long-term care, or that proof of financial responsibility for long-term care of the
6 mining waste site is still required, in which case the applicant may not submit
7 another application under par. (a) until at least 5 years have elapsed since the
8 previous application.

9 **295.695 Inspections by the department.** (1) Any duly authorized officer,
10 employee, or representative of the department who has received the safety training
11 under 30 CFR 48.31 may enter and inspect any property, premises, or place on or at
12 which any mining operation or facility is located or is being constructed or installed
13 at any reasonable time for the purpose of ascertaining the state of compliance with
14 this subchapter and the provisions of chs. 281, 283, 285, 289, 291, 292, and 299 and
15 rules promulgated under those chapters that are applicable to the mining operation.
16 No person may refuse entry or access to any authorized representative of the
17 department who requests entry for purposes of inspection, and who presents
18 appropriate credentials.

19 (2) No person may obstruct, hamper, or interfere with any inspection
20 authorized in sub. (1).

21 (3) The department shall furnish to the operator a written report on any
22 inspection setting forth all observations, relevant information, and data that relate
23 to compliance status.

24 **295.73 Fees.** (1) (a) Except as provided in par. (b), an applicant for a mining
25 permit is not required to pay any application or filing fee for any approval other than

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1 a mining permit, notwithstanding any fee required under ch. 23, 29, 30, 31, 169, 281,
2 283, 285, 289, or 291, or rules promulgated under those chapters.

3 (b) An applicant for a mining permit shall pay any fee required under s. 281.343
4 (3) (c) 1.

5 (3) (a) The department shall assess an applicant a fee equal to its costs, other
6 than costs of a contract under par. (d), for evaluating the mining project, including
7 the costs for consultants retained by the department to evaluate the application for
8 the mining permit and the application for any other approval, or \$2,000,000,
9 whichever is less.

10 (b) The applicant shall pay the fees under par. (a) as follows:

11 1. One hundred thousand dollars shall be paid at the time that the bulk
12 sampling plan is filed under s. 295.45 or at the time that the notice of the intention
13 to file a mining permit application is filed, whichever is first.

14 2. Two hundred fifty thousand dollars when the department provides cost
15 information demonstrating that the payment under subd. 1. has been fully allocated
16 against actual costs.

17 3. Two hundred fifty thousand dollars when the department provides cost
18 information demonstrating that the payment under subd. 2. has been fully allocated
19 against actual costs.

20 4. Two hundred fifty thousand dollars when the department provides cost
21 information demonstrating that the payment under subd. 3. has been fully allocated
22 against actual costs.

23 5. Two hundred fifty thousand dollars when the department provides cost
24 information demonstrating that the payment under subd. 4. has been fully allocated
25 against actual costs.

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1 6. Two hundred fifty thousand dollars when the department provides cost
2 information demonstrating that the payment under subd. 5. has been fully allocated
3 against actual costs.

4 7. Two hundred fifty thousand dollars when the department provides cost
5 information demonstrating that the payment under subd. 6. has been fully allocated
6 against actual costs.

7 8. Two hundred fifty thousand dollars when the department provides cost
8 information demonstrating that the payment under subd. 7. has been fully allocated
9 against actual costs.

10 9. One hundred fifty thousand dollars when the department provides cost
11 information demonstrating that the payment under subd. 8. has been fully allocated
12 against actual costs.

13 (c) After the department approves or denies the application for a mining permit
14 or, if the applicant withdraws the application for a mining permit, after the applicant
15 withdraws the application, the department shall refund to the applicant any amount
16 paid by the applicant under par. (a) but not fully allocated against the department's
17 actual costs.

18 (d) In addition to the fees under par. (a), if the department contracts under s.
19 295.53 (1) with a consultant to assist in preparation of an environmental impact
20 statement and awards the contract on the basis of competitive bids, the applicant
21 shall pay the full costs as provided in the contract.

22 (4) Subchapter VI of ch. 289 does not apply to mining waste disposed of in a
23 mining waste site covered by a mining permit, except that an operator shall pay the
24 fees specified in ss. 289.63 (4), 289.64 (3), and 289.67 (1) (d).

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1 **295.75 Effect of other laws.** (1) Except as provided in sub. (2), if there is a
2 conflict between a provision in this subchapter and a provision in ch. 23, 29, 30, 31,
3 160, 169, 281, 283, 285, 289, or 291 or in a rule promulgated under one of those
4 chapters, the provision in this subchapter controls.

5 (2) (a) If there is a conflict between a provision in this subchapter and a
6 provision in s. 281.343, the provision in s. 281.343 controls.

7 (b) If there is a conflict between a provision in this subchapter and a provision
8 in s. 281.346, the provision in s. 281.346 controls, except as provided in s. 295.57 (9).

9 **295.77 Review.** (1) LIMITS ON CONTESTED CASE HEARINGS. No person is entitled
10 to a contested case hearing on a decision by the department on an exploration license
11 or an approval that is required before bulk sampling may be implemented. No person
12 is entitled to a contested case hearing on a decision by the department on a mining
13 permit application or any other approval, except as provided in subs. (2) and (3).

14 (2) CONTESTED CASE HEARINGS; AFTER INITIAL MINING PERMIT DECISION OR DECISION
15 ON AMENDED PLAN. (a) *Entitlement.* 1. A person is entitled to a contested case hearing
16 on a decision by the department related to a mining permit for a proposed mining
17 operation, including a decision related to the environmental impact statement for
18 the proposed mining operation, or on any decision that is related to an approval
19 associated with the proposed mining operation and that is issued no later than the
20 day on which the department issues its decision on the application for the mining
21 permit, only if the person is entitled to a contested case hearing on the decision under
22 s. 227.42 and the person requests the hearing within 30 days after the department
23 issues the decision to approve or deny the application for the mining permit.

24 2. A person is entitled to a contested case hearing on a decision by the
25 department related to an amended mining plan, reclamation plan, or mining waste

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1 site feasibility study and plan of operation required under s. 295.63 (3) or to any
2 amendment to an approval associated with the amended mining plan, reclamation
3 plan, or mining waste site feasibility study and plan of operation only if the person
4 is entitled to a contested case hearing on the decision under s. 227.42 and the person
5 requests the hearing within 30 days after the department issues the decision to
6 approve or deny the amended mining plan, reclamation plan, or mining waste site
7 feasibility study and plan of operation.

8 3. All issues raised by all persons requesting a contested case hearing in
9 accordance with subd. 1. or 2. in connection with the same mining operation shall be
10 considered in one contested case hearing.

11 (b) *Deadline for decision.* 1. The hearing examiner presiding over a contested
12 case hearing under this subsection shall issue a final decision on the case no more
13 than 150 days after the department issues the decision to grant or deny the mining
14 permit or to approve or deny the amended mining plan, reclamation plan, or mining
15 waste site feasibility study and plan of operation.

16 2. If the hearing examiner does not issue a final decision by the deadline under
17 subd. 1., the decision of the department being reviewed by the hearing examiner is
18 affirmed.

19 (c) *Restriction on orders.* The hearing examiner presiding over a contested case
20 hearing under this subsection may not issue an order prohibiting activity authorized
21 under a decision of the department that is being reviewed in the contested case
22 hearing.

23 (d) *Judicial review.* A person seeking judicial review of the decision in a
24 contested case hearing under this subsection shall comply with the requirements for
25 service and filing in s. 227.53 (1) (a) and shall commence the action, in the circuit

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1 court for the county in which the majority of the proposed mining site is located, no
2 more than 30 days after service of the decision or, if the hearing examiner does not
3 issue a final decision by the deadline under par. (b) 1., no more than 30 days after that
4 deadline.

5 (3) **CONTESTED CASE HEARINGS ON OTHER DECISIONS** A person is entitled to a
6 contested case hearing on a decision by the department related to a mining operation
7 that is issued after the department issues the decision to approve the application for
8 the mining permit for the mining operation, other than a decision described in sub.
9 (2) (a) 2., if the person is entitled to a contested case hearing under s. 227.42 and
10 complies with the requirements for service and filing in s. 227.53 (1) (a).

11 **295.78 Mining and reclamation; orders.** (1) (a) If the department finds a
12 violation of law or any unapproved deviation from the mining plan, reclamation plan,
13 or mining waste site feasibility study and plan of operation at a mining site under
14 a mining permit, the department shall do one of the following:

15 1. Issue an order requiring the operator to comply with the law, mining plan,
16 reclamation plan, or mining waste site feasibility study and plan of operation within
17 a specified time.

18 2. Require the alleged violator to appear before the department for a hearing
19 and answer the department's charges.

20 3. Request the department of justice to initiate action under s. 295.79.

21 (b) Any order issued under par. (a) 1. following a hearing takes effect
22 immediately. Any other order takes effect 10 days after the date the order is served,
23 unless the person named in the order requests in writing a hearing before the
24 department within the 10-day period.

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1 (c) If no hearing on an order issued under par. (a) 1. was held and if the
2 department receives a request for a hearing within 10 days after the date the order
3 is served, the department shall provide due notice and hold a hearing. If after the
4 hearing the department finds that no violation has occurred, it shall rescind its order.

5 (d) If an operator fails to comply with an order issued under par. (a) 1. within
6 the time for compliance specified in the order, the department shall suspend the
7 mining permit until the operator fully complies with the order, except that if the
8 operator seeks review of the order under s. 295.77 (3), mining may continue until the
9 final disposition of the action, except as provided under sub. (4).

10 (e) The department shall inform the department of justice of a suspension
11 under par. (d) within 14 days. After receiving notice of a suspension, the department
12 of justice may commence an action under s. 295.79.

13 (2) If reclamation of a mining site is not proceeding in accordance with the
14 reclamation plan and the operator has not begun to rectify deficiencies within the
15 time specified in an order, or if the reclamation is not properly completed in
16 conformance with the reclamation plan within one year after completion or
17 abandonment of mining on any portion of the mining site, unless because of acts of
18 God, such as adverse weather affecting grading, planting, and growing conditions,
19 the department, with the staff, equipment, and material under its control, or by
20 contract with others, shall take the actions that are necessary for the reclamation of
21 mined areas. The operator is liable for the cost to the state of reclamation conducted
22 under this subsection.

23 (3) The department shall cancel all other mining permits held by an operator
24 who refuses to reclaim a mining site in compliance with the reclamation plan after
25 the completion of mining or after the cancellation of a mining permit. The

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1 department may not issue any mining permit for that mining site or any other
2 mining site in this state to an operator who refused to reclaim the mining site in
3 compliance with the reclamation plan.

4 (4) At any time that the department determines that the continuance of mining
5 constitutes an immediate and substantial threat to public health and safety or the
6 environment, the department may request the department of justice to institute an
7 action in circuit court of the county in which the mine is located for a restraining
8 order or injunction or other appropriate remedy to stop mining until the immediate
9 and substantial threat is eliminated.

10 (5) Section 281.346 (7m) does not apply to a water withdrawal associated with
11 a mining operation for which a mining permit has been issued.

12 **295.79 Enforcement; penalties.** (1) The department of justice shall enforce
13 this subchapter and any order issued under this subchapter. The circuit court of the
14 county where the violation occurred has jurisdiction to enforce this subchapter or any
15 orders issued under this subchapter, by injunction or other appropriate relief.

16 (2) (a) Any person who authorizes or engages in mining without a mining
17 permit and written authorization to mine under s. 295.59 (3) shall forfeit all profits
18 obtained from those illegal activities and not more than \$5,000 for each day during
19 which the mine was in operation.

20 (b) A person to whom par. (a) applies is also liable to the department for the full
21 cost of reclaiming the affected area of land and any damages caused by the mining.

22 (c) If the violator of par. (a) is a corporation, limited liability company,
23 partnership, or association, any officer, director, member, manager, or partner who
24 knowingly authorizes, supervises, or contracts for mining is also subject to the
25 penalties in this subsection.

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1 (3) Any person who makes or causes to be made in an application or report
2 required by this subchapter a statement known to the person to be false or
3 misleading in any material respect or who refuses to submit information required by
4 a mining permit or by this subchapter may be fined not less than \$1,000 nor more
5 than \$5,000. If the false or misleading statement is material to the issuance of the
6 mining permit and the mining permit would not have been issued had the false or
7 misleading statement not been made, the court may revoke the mining permit. If any
8 violation under this subsection is repeated the court may revoke the mining permit.

9 (4) (a) Any person who commits a violation of this subchapter or any permit or
10 order issued under this subchapter, except for the violations enumerated in subs. (2)
11 and (3), shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each
12 day of continued violation is a separate offense, except that no forfeiture may be
13 imposed during the time that continued mining is authorized under s. 295.63 (3).
14 While an order is suspended, stayed, or enjoined, this penalty does not accrue.

15 (b) In addition to the penalties provided under par. (a), the court may award
16 the department of justice the reasonable and necessary expenses of the investigation
17 and prosecution of the violation, including attorney fees. The department of justice
18 shall deposit in the state treasury for deposit into the general fund all moneys that
19 the court awards to the department or the state under this paragraph. These moneys
20 shall be credited to the appropriation account under s. 20.455 (1) (gh).

21 (5) Any person having an interest that is or may be adversely affected may
22 intervene as a matter of right, in any enforcement action brought under this section.

23 **SECTION 97.** 299.85 (7) (a) 2. and 4. of the statutes are amended to read:

24 299.85 (7) (a) 2. Notwithstanding minimum or maximum forfeitures specified
25 in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969,

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1 29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and
2 (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2),
3 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97,
4 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a),
5 295.19 (3) (a) and (b) 1., 295.37 (2), 295.79 (2) and (4), 299.15 (4), 299.51 (5), 299.53
6 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if a regulated entity that qualifies
7 under sub. (2) for participation in the Environmental Compliance Audit Program
8 corrects violations that it discloses in a report that meets the requirements of sub.
9 (3) within 90 days after the department receives the report that meets the
10 requirements of sub. (3), the regulated entity may not be required to forfeit more than
11 \$500 for each violation, regardless of the number of days during which the violation
12 continues.

13 4. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314
14 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m)
15 (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and
16 (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57
17 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a),
18 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b)
19 1., 295.37 (2), 295.79 (2) and (4), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62 (3) (a)
20 and (c), and 299.97 (1), if the department approves a compliance schedule under sub.
21 (6) and the regulated entity corrects the violations according to the compliance
22 schedule, the regulated entity may not be required to forfeit more than \$500 for each
23 violation, regardless of the number of days during which the violation continues.

24 **SECTION 98.** 299.95 of the statutes is amended to read:

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1 **299.95 Enforcement; duty of department of justice; expenses.** The
2 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
3 ss. 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan approvals,
4 permits, and water quality certifications of the department, except those
5 promulgated or issued under ss. 285.57, 285.59, and 299.64 and except as provided
6 in ss. 285.86 and 299.85 (7) (am). ~~The~~ Except as provided in s. 295.79 (1), the circuit
7 court for Dane county or for any other county where a violation occurred in whole or
8 in part has jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this chapter or
9 the rule, special order, license, plan approval, permit, or certification by injunctive
10 and other relief appropriate for enforcement. For purposes of this proceeding where
11 chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan
12 approval, permit or certification prohibits in whole or in part any pollution, a
13 violation is considered a public nuisance. The department of natural resources may
14 enter into agreements with the department of justice to assist with the
15 administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid
16 to the department of justice under these agreements shall be credited to the
17 appropriation account under s. 20.455 (1) (k).

18 **SECTION 99.** 323.60 (1) (gm) of the statutes is created to read:

19 323.60 (1) (gm) “Minerals” mean unbeneficiated metallic ore but does not
20 include mineral aggregates such as stone, sand, and gravel.

21 **SECTION 100.** 323.60 (5) (d) 3. of the statutes is amended to read:

22 323.60 (5) (d) 3. All facilities with 10 or more employees in major group
23 classifications 10 to 13 in the standard industrial classification manual, 1987
24 edition, published by the U.S. office of management and budget, at which a toxic
25 chemical is used at or above an applicable threshold quantity, except that compliance

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1 with the toxic chemical release form requirements under this subdivision is not
2 required for the placement of a toxic chemical in a storage or disposal site or facility
3 that is located at a facility with a permit under ch. 293 or a mining permit under
4 subch. III of ch. 295 if the toxic chemical consists of or is contained in merchantable
5 by-products, as defined in s. 293.01 (7) or 295.41 (25), minerals as defined in s. ~~293.01~~
6 ~~(8)~~, or refuse, as defined in s. 293.01 (25) or 295.41 (41).

7 **SECTION 101.** 706.01 (9) of the statutes is amended to read:

8 706.01 (9) “Mining company” means any person or agent of a person who has
9 a prospecting permit under s. 293.45 or a mining permit under s. ~~293.45~~ ~~or 293.49~~
10 or 295.58.

11 **SECTION 102.** 710.02 (2) (d) of the statutes is amended to read:

12 710.02 (2) (d) An exploration mining lease as defined in s. 107.001 (1) and land
13 used for mining and associated activities under chs. 293 and 295.

14 **SECTION 103. Nonstatutory provisions.**

15 (1) RULES.

16 (a) The department of natural resources shall promulgate rules revising
17 chapters NR 130, 131, 132, and 182, Wisconsin Administrative Code, that are in
18 effect on the effective date of this paragraph and revising any other rules
19 promulgated under section 293.13 (1) (a) of the statutes that are in effect on the
20 effective date of this paragraph to clarify that chapters NR 130, 131, 132, and 182,
21 Wisconsin Administrative Code, and any other rules promulgated under section
22 293.13 (1) (a) of the statutes do not apply to ferrous metallic mining.

23 (b) The department of natural resources shall promulgate rules revising
24 chapters NR 500 to 555 and 660 to 679, Wisconsin Administrative Code, that are in
25 effect on the effective date of this paragraph and revising any other rules

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1 promulgated under sections 289.05 and 289.06 (1) of the statutes that are in effect
2 on the effective date of this paragraph so that the rules are consistent with
3 subchapter III of chapter 295, of the statutes, as created by this act.

4 (c) The department of natural resources shall promulgate rules revising any
5 rules of the department that are in effect on the effective date of this paragraph, in
6 addition to the rules under paragraphs (a) and (b), that provide exemptions for
7 nonferrous mining or associated activities to provide the same exemptions for
8 ferrous mining and associated activities.

9 (d) The department of natural resources shall present the statement of scope
10 of the rules required under paragraphs (a) to (c) to the governor for approval under
11 section 227.135 (2) of the statutes no later than the 30th day after the effective date
12 of this paragraph. The department of natural resources shall submit in proposed
13 form the rules required under paragraphs (a) to (c) to the legislative council staff
14 under section 227.15 (1) of the statutes no later than the first day of the 5th month
15 beginning after the governor approves the statement of scope of the rules.

16

(END)

Tradewell, Becky

From: Esser, Jennifer
Sent: Wednesday, January 16, 2013 8:23 AM
To: Tradewell, Becky; Gibson-Glass, Mary; Kite, Robin
Cc: Konopacki, Larry; Wagner, Michael W - DOR; Nelson, Elise - PSC; Bruhn, Michael L - DNR; Schoenfeldt, Eileen - GOV
Subject: FW: Mining Bill

Hi,

Was hoping that you could please move both LRB 0762/1 and LRB 1129/1 through the fiscal note process so our agencies have a chance to get working on these.

Thanks again for all your help. Have a great day.

Jen

From: Wagner, Michael W - DOR [<mailto:MichaelW.Wagner@revenue.wi.gov>]
Sent: Wednesday, January 16, 2013 8:16 AM
To: Esser, Jennifer
Subject: Mining Bill

Jen,

I realize that the mining bill is probably just going out for co-sponsorship post-press conference this morning.

However, so we can get working on the fiscal estimate in earnest, could you please have LRB submit the draft through the fiscal note system? That way we can work on our estimate prior to the bill's formal introduction.

Thanks,

Mike Wagner
Legislative Advisor, Dept. of Revenue
(608) 266-7817

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Basford, Sarah

From: Emerson, James
Sent: Friday, January 18, 2013 12:07 PM
To: LRB.Legal
Subject: Draft Review: LRB -1129/1 Topic: Iron mining regulation

Please Jacket LRB -1129/1 for the ASSEMBLY.