

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

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

10 1. The exemption will not result in significant adverse environmental impacts
11 on the mining site or, if the exemption will result in significant adverse
12 environmental impacts on the mining site, the applicant will offset those impacts
13 through a mitigation program, as provided in s. 295.60 (8), through the measures
14 provided in s. 295.605, or through the conservation measures provided in s. 295.61.

15 2. The exemption will not result in significant adverse environmental impacts
16 off of the mining site.

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

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

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

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

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

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

1 (c) If the department fails to meet the 30–day time limit under par. (a) or the
2 10–day time limit under par. (b), the application is administratively complete on the
3 last day of the 30–day time limit or 10–day time limit.

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

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

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

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

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

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

23 a. The application.

24 b. A draft approval.

25 c. Information or summaries relating to the approval.

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

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

6 (b) The department shall distribute a notice that describes the availability of
7 the information under par. (a); the opportunity for written public comment, including
8 an invitation for the submission of written comments by any person within 45 days
9 after the date of the publication of the notice; and the date, time, and location of the
10 public informational hearing and that includes any additional information that a law
11 concerning any approval requires to be provided. The department shall publish the
12 notice as a class 1 notice under ch. 985 and shall publish notice on the department's
13 Internet site. The date on which the department first publishes the notice on its
14 Internet site shall be considered the date of the publication of the notice required to
15 be published under this paragraph. The department shall also send the notice to all
16 of the following:

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

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

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

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

1 5. Any regional planning commission for the area within which the proposed
2 mining site lies.

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

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

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

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

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

22 11. Any person upon request. The department's notice under this subdivision
23 may be given through an electronic notification system established by the
24 department.

25 12. The applicant.

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

4 (c) The department shall coordinate the public comment period for the mining
5 permit with the public comment period for any other approval for the mining
6 operation, except that if an application for an approval is filed too late to allow public
7 comment within the public comment period for the mining permit, the department
8 shall issue separate notice, as described in par. (b), for the approval after the
9 application is filed.

10 (5) INFORMATIONAL HEARING. The department shall hold a public informational
11 hearing before it approves or denies an application for a mining permit and not less
12 than 30 days after the date of the publication of the notice under sub. (4) (b). The
13 department shall hold the public informational hearing in the county where the
14 majority of the proposed mining site is located. The department shall hold a single
15 public informational hearing covering the mining permit, all other approvals, and
16 the environmental impact statement, except that if an application for an approval
17 is filed too late to allow the application to be considered at the public informational
18 hearing for the mining permit, the department shall hold a separate public
19 informational hearing on the approval in the county where the majority of the
20 proposed mining site is located not less than 30 days after the date of the publication
21 of the notice under sub. (4) (b) for the approval. The department shall publish the
22 notice on its Internet site not more than 10 days after the application is considered
23 to be complete under sub. (8) (b) 1. The public informational hearing under this
24 subsection is not a contested case hearing under ch. 227. At the hearing, the

1 department shall take testimony on all of the following with regard to any proposed
2 withdrawal of groundwater or surface water:

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

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

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

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

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

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

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

18 **(7) DEADLINE FOR ACTING ON MINING PERMIT APPLICATION.** (a) No later than the
19 deadline specified by the applicant under s. 295.47 (1) (am) or, if the applicant does
20 not specify a deadline under s. 295.47 (1) (am), no more than 420 days after the day
21 on which the application for a mining permit is administratively complete under sub.
22 (2), the department shall approve the application, and issue a mining permit, or deny
23 the application, in accordance with s. 295.58, unless the department and the
24 applicant agree to extend the deadline. The department and the applicant may agree
25 to not more than one extension and that extension may not exceed 60 days. The

1 department and the applicant may enter into an extension only if one of the following
2 applies:

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

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

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

10 (c) If the department does not comply with the deadline under par. (a),
11 including any extension agreed to by the applicant, the applicant may bring an action
12 for mandamus in the circuit court for the county in which the majority of the proposed
13 mining site is located to compel the department to approve or deny the application.
14 Notwithstanding s. 814.04 (1), in an action under this paragraph the court shall
15 award the applicant its costs, including reasonable attorney fees, if it determines
16 that the department did not comply with the deadline under par. (a).

17 (8) DEADLINE FOR ACTING ON OTHER APPROVALS. (a) Except as provided in par.
18 (c), if an applicant files an application for an approval other than a mining permit
19 no later than 60 days after the day on which the application for the mining permit
20 is administratively complete under sub. (2) or more than 60 days after that day but
21 in time to allow the application to be considered at the public informational hearing
22 for the mining permit under sub. (5), the department shall approve the application,
23 and issue the approval, or deny the application no later than the deadline under sub.
24 (7) (a), including any extension agreed to by the applicant.

1 (b) 1. If an applicant files an application for an approval other than a mining
2 permit too late to allow the application to be considered at the public informational
3 hearing for the mining permit under sub. (5) but before the department issues the
4 decision to grant or deny the application for the mining permit, the application for
5 the approval is considered to be complete on the 30th day after the department
6 receives the application, unless, before that day, the department provides the
7 applicant with written notification that the application is not complete, stating the
8 reason for the determination and describing the specific information necessary to
9 make the application complete. If the department provides such a notice, the
10 applicant shall supplement the application by providing the specified information.
11 The application is considered to be complete when the applicant provides the
12 information.

13 2. Except as provided in subd. 3., the department shall approve the application
14 for an approval described in subd. 1., and issue the approval, or deny the application
15 after the separate public informational hearing for the approval required under sub.
16 (5) and no later than 75 days after the application for the approval is considered to
17 be complete under subd. 1.

18 3. Except as provided in par. (c), the department shall approve or deny the
19 application for an approval described in subd. 1. that is an individual permit for
20 which federal law requires the opportunity for public comment or the ability to
21 request a public hearing prior to issuance of the approval after the separate public
22 informational hearing required for the approval under sub. (5) and no later than 180
23 days after the application is considered to be complete under subd. 1.

1 (c) The deadlines in pars. (a) and (b) do not apply to the application for an air
2 pollution control permit under s. 285.62 for which the department receives an
3 objection from the federal environmental protection agency under s. 285.62 (6).

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

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

14 **(9) APPLICABLE PROCEDURE.** (a) The provisions of this section and ss. 295.58 (5)
15 and (6) and 295.77 concerning public notice, comment, and hearing; issuance of
16 department decisions; effective date of department decisions; and review of
17 department decisions; and the duration of approvals apply to any approval for which
18 the application is filed before the department issues the decision to grant or deny the
19 application for the mining permit, notwithstanding any provisions related to those
20 matters in s. 44.40 or 169.25, subch. I or VI of ch. 77, ch. 23, 29, 30, 31, 169, 281, 283,
21 285, 289, or 291, or rules promulgated under those provisions, except as provided in
22 s. 281.343 (7r) and except that if a withdrawal of surface water or groundwater is
23 subject to regional review or council approval under s. 281.346, the applicable
24 provisions related to regional review or council approval apply.

1 (b) The provisions of ss. 295.58 (5) and (6) and 295.77 concerning review of
2 department decisions and the duration of department decisions apply to any
3 approval for which the application is filed after the department issues the mining
4 permit, notwithstanding any provisions related to those matters in s. 44.40 or
5 169.25, subch. I or VI of ch. 77, ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291, or
6 rules promulgated under those provisions, except as provided in s. 281.343 (7r).

7 **295.58 Mining; department grant or denial of permit. (1) CRITERIA FOR**
8 **APPROVAL.** (a) Except as provided in sub. (2) and except with respect to property
9 specified in s. 41.41 (11), the department shall issue a mining permit if it finds all of
10 the following:

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

13 2. That the waste site feasibility study and plan of operation complies with s.
14 295.51.

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

17 3m. That the proposed mining is likely to meet or exceed the requirements of
18 any municipal floodplain zoning ordinance applicable to the proposed mining under
19 s. 295.607 (3) to the extent that the ordinance has not been made inapplicable to the
20 proposed mining by a local agreement under s. 295.443 (1m).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 (c) An approval issued for a mining project under ch. 23, 29, 30, 31, 169, 281,
13 283, 285, 289, or 291, except for a permit under ch. 283 or 285 that is subject to a
14 federal requirement limiting its duration, remains valid for the life of the mining
15 project, subject to the enforcement provisions applicable to the approval.

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

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

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

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

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

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

13 2. Cash.

14 3. Certificates of deposit.

15 4. Government securities.

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

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

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

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

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

17 (a) A bond.

18 (b) Cash.

19 (c) Certificates of deposit.

20 (d) Government securities.

21 (e) Insurance.

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

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

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

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

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

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

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

1 (c) “Federal wetland” means a wetland that is subject to federal jurisdiction
2 under 33 USC 1344.

3 (d) “Fill material” has the meaning given in 33 CFR 323.2 (e), as the meaning
4 exists on July 1, 2012.

5 (e) “Mitigation” means the restoration, enhancement, creation, or preservation
6 of wetlands to compensate for adverse impacts to other wetlands.

7 (f) “Mitigation bank” means a system of accounting for wetland loss and
8 compensation that includes one or more sites where wetlands are restored,
9 enhanced, created, or preserved to provide credits to be subsequently applied or
10 purchased in order to compensate for adverse impacts to other wetlands.

11 (g) “On-site location” means a location that is on a mining site or within
12 one-half mile of an outer boundary of a mining site.

13 (h) “Practicable” means reasonably available and capable of being
14 implemented after taking into consideration cost, site availability, available
15 technology, logistics, and proximity to the proposed project site, in light of the overall
16 purpose and scope of the project.

17 (i) “Water basin” means the Lake Michigan basin, the Lake Superior basin, or
18 the Mississippi River basin or other water basin established by the department.

19 (j) “Water management unit” means a subdivision of a water basin that is
20 established on a hydrological basis by the department.

21 (k) “Water quality standard” means a wetland water quality standard specified
22 under sub. (5) or any other water quality standard set by rule under s. 281.15.

23 (L) “Wetland impact evaluation” means an evaluation of impacts to a wetland.

24 **(1m) APPLICABILITY.** Subsections (2) to (11) do not apply to a wetland individual
25 permit or other approval that requires a wetland impact evaluation if the operator

1 files the application for the wetland individual permit or other approval after the
2 department issues the mining permit for the mining operation.

3 (2) WETLAND DETERMINATIONS AND DELINEATIONS. For purposes of this section,
4 wetland determinations and wetland boundary delineations shall be consistent with
5 the U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual and any final
6 regional supplement to the manual. Any owner or lessee of land, or a holder of an
7 easement in land, may request that the department provide a wetland determination
8 or wetland boundary delineation for an application for a wetland individual permit
9 under this section or for another approval for which a wetland impact evaluation is
10 required. The department may rely on wetland determinations and wetland
11 boundary delineations made by other agencies and consultants. If the applicant has
12 provided information to the department that is identified in the manual or any final
13 regional supplement as being sufficient to make a wetland determination or a
14 delineation of boundaries, the department may visit a mining site to conduct surveys
15 or gather additional site-specific quantitative data provided that the department
16 does not discontinue the processing of the application to do so.

17 (3) SCOPE; DISCHARGES; OTHER IMPACTS. (a) *Scope*. Except as otherwise provided
18 under this section, this section applies to wetland individual permits and any other
19 approvals for which wetland impact evaluations are required.

20 (b) *Discharges of dredged or fill material*. No person may discharge dredged
21 material or fill material associated with a mining operation or bulk sampling unless
22 the discharge is authorized under a wetland individual permit issued under this
23 section or under a wetland general permit issued under s. 281.36 (3g). The
24 department may not issue a wetland individual permit unless it makes a finding
25 under sub. (6) (a) that the discharge will comply with all applicable water quality

1 standards. Section 281.36 (3g) and (11), and the rules promulgated under s. 281.36
2 (3g) and (11), apply to authorizations to proceed under general permits.
3 Notwithstanding s. 281.36 (3g) (h) 2., a person receiving authorization to proceed
4 under a wetland general permit for a mining activity other than bulk sampling may
5 not proceed until a mining permit is issued.

6 (c) *Other impacts.* For an approval which requires a wetland impact evaluation
7 for an activity other than a discharge of dredged material or fill material, the
8 approval may not be issued unless the department determines that the activity will
9 comply with all applicable water quality standards.

10 (4) REVIEW BY DEPARTMENT. (a) *Avoidance or minimization of impacts.* When
11 applying for a wetland individual permit or for another approval for which a wetland
12 impact evaluation is required, an applicant shall include in the application an
13 analysis of the practicable alternatives that will avoid and minimize the adverse
14 impacts on wetland functional values and that will not result in any other significant
15 adverse environmental consequences.

16 (b) *Practicable alternatives.* The department shall review the analysis of
17 practicable alternatives included in the application under par. (a). The department
18 shall limit its review to those practicable alternatives that are located at the site of
19 the discharge or other activity and that are located adjacent to that site if the
20 applicant has demonstrated that the proposed project causing the discharge or other
21 activity will result in a demonstrable economic public benefit.

22 (c) *Assessing impacts.* In its review under this subsection, the department shall
23 consider all of the following factors when it assesses the impacts to wetland
24 functional values;

1 1. The direct impacts of the proposed discharge or other activity to wetland
2 functional values.

3 2. The cumulative impacts attributable to the proposed discharge or other
4 activity that may occur to wetland functional values based on past impacts or
5 reasonably anticipated impacts caused by similar discharges or activities in the area
6 affected by the discharge or activity.

7 3. Potential secondary impacts of the proposed discharge or other activity to
8 wetland functional values.

9 4. The impact on functional values resulting from the mitigation program
10 under sub. (8)

11 5. The net positive or negative environmental impact of the mining operation.

12 (d) *Assessing impacts; geographical scope.* In its review under this subsection,
13 the department shall evaluate whether the discharge or other activity will result in
14 a significant adverse impact to wetland functional values by doing all of the
15 following:

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

20 2. Taking into consideration the floristic province in which the mining site is
21 located.

22 (e) *Method for assessing impacts.* In issuing a wetland individual permit under
23 this section or in conducting a wetland impact evaluation, the department shall
24 determine the impact of a proposed discharge or other activity upon the wetland
25 functional values by using wetland ecological evaluation methods that are jointly

1 accepted by the U.S. Army Corps of Engineers and the department and that are
2 appropriate to the affected wetland.

3 (f) *General permits.* Paragraphs (a) to (e) do not apply to authorizations to
4 proceed under a general permit issued under s. 281.36 (3g).

5 (5) WETLAND WATER QUALITY STANDARDS. The following wetland water quality
6 standards apply to any wetland individual permit issued under this section or to any
7 wetland impact evaluation:

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

13 1. Storm and flood water storage and retention and the moderation of water
14 level fluctuation extremes.

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

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

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

22 5. Habitat for aquatic organisms in the food web including fish, crustaceans,
23 mollusks, insects, annelids, and planktonic organisms and the plants and animals
24 upon which these aquatic organisms feed and depend upon for their needs in all life
25 stages.

1 6. Habitat for resident and transient wildlife species, including mammals,
2 birds, reptiles, and amphibians, for breeding, resting, nesting, escape cover, travel
3 corridors, and food.

4 7. Recreational, cultural, educational, scientific, and natural scenic beauty
5 values and uses.

6 (b) All of the following shall be minimized in order to avoid significant adverse
7 impacts for the purpose of maintaining or enhancing the wetland functional values
8 identified under par. (a), and any minimization of the following must be taken into
9 account in the department's evaluation of significant adverse impacts:

10 1. The use of liquids, fill, or other solids or gases.

11 2. The presence of floating or submerged debris, oil, or other material.

12 3. The use of materials producing color, odor, taste, or unsightliness.

13 4. The presence of concentrations or combinations of substances that are toxic
14 or harmful to human, animal, or plant life.

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

18 a. Water currents and erosion and sedimentation patterns.

19 b. Water temperature variations.

20 c. The chemical, nutrient, and dissolved oxygen regime of the wetland.

21 d. The movement of aquatic fauna.

22 e. The pH of the wetland.

23 f. Water levels or elevations.

24 6. Adverse effects on existing habitat and populations of animals and
25 vegetation found in wetlands.

1 **(6) DECISION BY DEPARTMENT.** (a) The department shall make a finding that a
2 a discharge of dredged material or fill material is in compliance with all applicable
3 water quality standards and shall issue a wetland individual permit if the
4 department determines that all of the following apply:

5 1. The proposed project of which the discharge is a part represents the least
6 environmentally damaging practicable alternative taking into consideration
7 practicable alternatives that avoid wetland impacts.

8 2. All practicable measures to minimize the adverse impacts to wetland
9 functional values will be taken.

10 3. The proposed discharge will not result in significant adverse impact to
11 wetland functional values, subject to par. (b); in significant adverse impact to water
12 quality; or in other significant adverse environmental consequences.

13 (b) Notwithstanding par. (a) 3., if significant adverse impacts to wetland
14 functional values will remain after the adverse impacts have been avoided and
15 minimized to the extent practicable, the department shall issue the permit if the
16 department determines that the remaining impacts will be compensated for under
17 a mitigation program under sub. (8).

18 (c) The department may not deny an approval for an activity for which a
19 wetland impact evaluation is required, other than a discharge of dredged material
20 or fill material, on the basis of the impacts from the activity on wetlands if the
21 department determines that all of the following apply:

22 1. The proposed project of which the activity is a part represents the least
23 environmentally damaging practicable alternative taking into consideration
24 practicable alternatives that avoid wetland impacts.

1 2. All practicable measures to minimize the adverse impacts to wetland
2 functional values will be taken.

3 3. The proposed activity will not result in significant adverse impact to wetland
4 functional values, subject to par. (d); in significant adverse impact to water quality;
5 or in other significant adverse environmental consequences.

6 (d) Notwithstanding par. (c) 3., if significant adverse impacts to wetland
7 functional values will remain after the adverse impacts have been avoided and
8 minimized to the extent practicable, the department may not deny the permit on the
9 basis of the impacts from the activity on wetlands if the department determines that
10 the remaining impacts will be compensated for under a mitigation program under
11 sub. (8).

12 (e) Paragraphs (a) to (d) do not apply to authorizations to proceed under a
13 general permit issued under s. 281.36 (3g).

14 (7) FEDERAL WETLANDS. (a) For a wetland individual permit under this section
15 which involves a federal wetland or for any other approval for which a wetland
16 impact evaluation for a federal wetland is required, any mitigation program
17 submitted by the applicant under sub. (8) shall include all the federal mitigation
18 measures proposed by the applicant. The department shall review the federal
19 mitigation measures and shall determine whether it has reasonable assurance that
20 these will compensate for any significant adverse impacts to wetland functional
21 values, any significant adverse impacts to water quality, and any other significant
22 adverse environmental consequences. The department shall recognize all federal
23 compensatory mitigation measures as being eligible for the purpose of making this
24 determination. If the department determines that reasonable assurance exists, the
25 department may not impose any additional conditions on the permit or other

1 approval. If the department determines that reasonable assurance does not exist,
2 it may impose conditions on the permit or other approval that are in addition to
3 required federal compensatory mitigation measures, but such conditions shall be
4 limited to those that are necessary to compensate for any significant adverse impacts
5 to wetland functional values, any significant adverse impacts to water quality, and
6 any other significant adverse environmental consequences that will remain after
7 completion of the federal mitigation measures. Any conditions imposed by the
8 department may be satisfied through a mitigation program as provided in sub. (8).
9 In imposing any conditions under this paragraph, the department may not require
10 that the number of acres to be mitigated be greater than the number that is required
11 under federal law.

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

18 (8) MITIGATION PROGRAM. (a) *Definition.* Notwithstanding s. 295.60 (1) (i), in
19 this section “water basin” means the Lake Michigan basin, the Lake Superior basin,
20 or the Mississippi River basin.

21 (am) *Contents.* A mitigation program to compensate for adverse impacts to
22 functional values of wetlands shall contain proposed projects for mitigation and a
23 schedule for implementing the projects. The department may not consider
24 mitigation in determining whether to grant authorization to proceed under a general

1 permit under s. 281.36 (3g). These projects may be performed by a person other than
2 the applicant, subject to the department's approval of the projects and schedule.

3 (b) *Option of applicant.* An applicant submitting a program under par. (am)
4 may submit options for mitigation. These options may include any combination of
5 the types of mitigation specified in par. (dm). In preparing the program, the
6 applicant shall identify and consider mitigation that could be conducted within the
7 same watershed in which the mining site is located.

8 (c) *Ratios for mitigation.* The amount of mitigation required may not exceed
9 1.5 acres of mitigation for each acre of adversely impacted wetland. For purpose of
10 credits in a mitigation bank, each acre that is subject to mitigation shall count as at
11 least one credit.

12 (d) *Sequence of mitigation.* If it is not practicable or ecologically preferable to
13 conduct mitigation at an on-site location or if there is no on-site location that will
14 provide sufficient wetland acreage, the department shall require that the applicant
15 conduct mitigation within the same watershed in which the wetland to be affected
16 is located, unless mitigation in the same watershed is not practicable or ecologically
17 preferable. If mitigation within the same watershed is not practicable or ecologically
18 preferable, the department shall require that the applicant conduct mitigation
19 within the same water basin in which the wetland to be affected is located. If
20 mitigation in the same water basin is not practicable or ecologically preferable, the
21 applicant may conduct mitigation at a site elsewhere in the state.

22 (dm) *Types of mitigation.* Mitigation under a program under par. (am) may be
23 accomplished through any of the following types:

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

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

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

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

9 (e) *Ceded territory.* If a mining operation is located in whole or in part within
10 the ceded territory, any mitigation, including mitigation accomplished through the
11 purchase of mitigation bank credits and the in lieu fee subprogram that is authorized
12 or required by the department, that will be required to compensate for adverse
13 impacts to wetlands located in the ceded territory shall occur within the ceded
14 territory. If the department determines under par. (d) that mitigation will occur
15 within a certain watershed or water basin and if the watershed or water basin is not
16 located totally in the ceded territory, the mitigation shall occur within that part of
17 the watershed or water basin that is located in the ceded territory.

18 (9) **SUBSEQUENT PROTECTION FOR WETLANDS.** (a) If a wetland individual permit
19 issued under this section, or other approval that required a wetland impact
20 evaluation, authorizes a mitigation project, the person who is the holder of the permit
21 or approval shall grant a conservation easement under s. 700.40 to the department
22 or shall execute a comparable legal instrument to ensure that a wetland that is being
23 restored, enhanced, created, or preserved will not be destroyed or substantially
24 degraded by any subsequent proprietor of or holder of interest in the property on
25 which the wetland is located. The department shall suspend the mining permit if the

1 holder of the permit fails to grant the easement or execute this instrument within
2 the time limit set forth in the mining permit. If the holder subsequently grants the
3 conservation easement or executes the instrument, the department shall reinstate
4 the mining permit.

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

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

10 2. The person who is required to grant the conservation easement or execute
11 the legal instrument did not contribute to the loss of the wetland specified in subd.
12 1.

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

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

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

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

3 3. An artificial wetland that is an actively maintained farm drainage or
4 roadside ditch.

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

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

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

14 2. Construction or maintenance of irrigation ditches.

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

18 4. Maintenance of drainage ditches.

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

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

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

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

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

3 **295.605 Impacts to navigable waters. (1) DEFINITION.** In this section,
4 “navigable water activity” means an activity for which an approval is required under
5 s. 30.12, 30.123, 30.19, 30.195, or 30.20.

6 **(1m) LIMITATION.** This section does not apply to any navigable water activity
7 associated with a mining operation if the application for the approval for the
8 navigable water activity is filed after the department issues a mining permit for the
9 mining operation.

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

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

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

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

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

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

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, but not less than one acre,
14 of navigable waters in exchange for each acre of navigable waters that is significantly
15 impacted.

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

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

18 4. Measures to enhance flood storage.

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

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

21 (bg) *Measures excluded from consideration*. In determining if a navigable
22 water activity meets the requirements under par. (a) with regard to a navigable
23 water, the department may not consider any proposed measure under par. (b) if the
24 navigable water is any of the following:

1 1. A perennial stream, if the drainage area of the portion of the stream
2 upstream from the farthest downstream point of the navigable water activity is more
3 than 2 square miles. In this subdivision, “perennial stream” means a stream that
4 has a continuous flow every day of every year in which there is average precipitation.

5 2. A navigable water, other than a stream, that is more than 2 acres in area
6 every day of every year in which there is average precipitation and that is not a
7 freeze-out pond, as defined in s. 29.001 (29).

8 3. A class I, class II, or class III trout stream.

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

16 (c) *Applicability of requirements.* The requirements that are specified in par.
17 (a) 1. to 4. are in lieu of any requirements required for approvals under ss. 30.12 (3m)
18 (c), 30.123 (8) (c), 30.19 (4) (c), 30.195 (2) (c), and 30.20, including those that relate
19 to the state’s or public’s interests, and shall be used, in conjunction with the measures
20 required under par. (b), in any evaluation by the department pursuant to 33 USC
21 1341.

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

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

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

6 **295.607 Shoreland and floodplain zoning.** (1) (a) In this section:

7 1. “Development or construction activity” means a waste site, structure,
8 building, fill, or other development or construction activity.

9 2. “Shoreland zoning ordinance” means a shoreland zoning ordinance or
10 regulation adopted under s. 59.692, 61.351, 62.231, or 281.31.

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

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

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

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

2 DEFINITIONS. In this section:

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

4 (b).

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

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

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

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

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

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

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

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

15 (i) “Withdrawal” has the meaning given in s. 281.35 (1) (m).

16 (2) PERMIT REQUIRED. No person may engage in any withdrawal or use of surface
17 water as part of a mining operation or bulk sampling, including a withdrawal or use
18 associated with a system or plant under s. 281.41, unless the person has been issued
19 a water withdrawal permit under this section. No person may engage in any
20 withdrawal or use of groundwater, including a withdrawal or use associated with a
21 system or plant under s. 281.41, as part of a mining operation or bulk sampling if the
22 capacity and rate of withdrawal of all wells involved in the withdrawal of
23 groundwater or in the dewatering of mines exceeds 100,000 gallons each day unless
24 the person has been issued a water withdrawal permit under this section.

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

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

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

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

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

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

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

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

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

1 shall approve the location of each high capacity well as part of the permit issued
2 under sub. (4).

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

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

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

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

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

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

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

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

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

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

9 1. Environmentally sound and economically feasible water conservation
10 measures.

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

14 3. Protection of important upland groundwater recharge areas.

15 4. Stabilization of shorelands.

16 5. Restoration or enhancement of the natural beneficial uses and values of a
17 stream or river.

18 6. Implementation of any feasible methods to offset impacts to water quality
19 or quantity.

20 7. Supplementation of additional water to water bodies to offset lower water
21 levels.

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

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

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

4 11. A riparian restoration project.

5 12. Measures as provided in s. 295.605.

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

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

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

22 (f) *Limits on permit denials.* If the department determines that one of the water
23 withdrawal activities subject to an application for a water withdrawal permit does
24 not meet the requirements for issuing the permit under par. (a) and will not be
25 authorized under the permit, the failure to authorize the activity may not affect the

1 department's determination as to whether to approve or deny the permit for other
2 water withdrawal activities that are subject to the application.

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

7 1. The location of the withdrawal or use.

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

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

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

12 5. The amount and quality of return flow required and the place of the
13 discharge.

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

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

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

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

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

6 3. a. If the request for a modification under subd. 1. results in an increase in
7 an existing withdrawal resulting in a water loss averaging more than 2,000,000
8 gallons per day in any 30–day period above the operator’s authorized base level of
9 water loss, the department shall determine, using the environmental review process
10 under s. 1.11, whether it is required to prepare an environmental assessment or
11 environmental impact statement and, if so, shall prepare an environmental
12 assessment or an environmental impact statement. If the department determines,
13 using the environmental review process under s. 1.11, that the operator must
14 prepare an environmental impact report, the department may only request
15 information in the environmental impact report that relates to decisions that the
16 department makes under this section related to the permit and the department shall
17 limit its analysis to an evaluation of the request for the modification.

18 b. The department shall publish a class 1 notice, under ch. 985, and shall
19 publish notice on the department’s Internet site, of the availability of information
20 about a request to which this subdivision applies, its proposed decision on the
21 request, the opportunity to comment within 30 days after the date of the publication
22 of the notice, and the opportunity to request a public informational hearing. The
23 department shall also provide the notice to the applicant, the persons specified in s.
24 30.18 (4) (a), and if the modification involves a structure through which water
25 transferred from the Great Lakes basin would be returned to the source watershed

1 through a stream tributary to one of the Great Lakes, the governing body of each city,
2 village, and town through which the stream flows or that is adjacent to the stream
3 downstream from the point at which the water would enter the stream. The
4 department's notice to interested persons under this subd. 3. b. may be given through
5 an electronic notification system established by the department. The date on which
6 the department first publishes notice on its Internet site shall be considered the date
7 of the publication of the notice required to be published under this subd. 3. b.

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

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

23 2. The department shall publish a class 1 notice, under ch. 985, and shall
24 publish notice on the department's Internet site, of the availability of information
25 about a proposed modification under this paragraph, the opportunity to comment

1 within 30 days after the date of the publication of the notice, and the opportunity to
2 request a public informational hearing. The department shall also provide the notice
3 to the applicant, the persons specified in s. 30.18 (4) (a), and if the modification
4 involves a structure through which water transferred from the Great Lakes basin
5 would be returned to the source watershed through a stream tributary to one of the
6 Great Lakes, the governing body of each city, village, and town through which the
7 stream flows or that is adjacent to the stream downstream from the point at which
8 the water would enter the stream. The department's notice to interested persons
9 under this subdivision may be given through an electronic notification system
10 established by the department. The date on which the department first publishes
11 notice on its Internet site shall be considered the date of the publication of the notice
12 required to be published under this subdivision.

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

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

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

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

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

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

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

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

16 (d) If the department concludes after the hearing that bulk sampling or mining
17 is the principal cause of the damage to the private water supply, it shall issue an order
18 to the operator requiring the provision of water to the person found to be damaged
19 in a like quantity and quality to that previously obtained by the person and for a
20 period of time that the water supply, if undamaged, would be expected to provide a
21 beneficial use, requiring reimbursement to the city, village, or town for the cost of
22 supplying water under par. (c), if any, and requiring the payment of compensation
23 for any damages unreasonably inflicted on the person as a result of damage to the
24 person’s water supply. The department shall order the payment of full compensatory
25 damages up to \$75,000 per claimant. The department shall issue its written findings

1 and order within 60 days after the close of the hearing. Any judgment awarded in
2 a subsequent action for damages to a private water supply caused by bulk sampling
3 or mining shall be reduced by any award of compensatory damages previously made
4 under this subsection for the same injury and paid by the operator. The department
5 shall change the dollar amount under this paragraph annually, beginning with 1978,
6 according to the method under s. 70.375 (6). Pending the final decision on any appeal
7 from an order issued under this paragraph, the operator shall provide water as
8 ordered by the department. The existence of the relief under this section is not a bar
9 to any other statutory or common law remedy for damages.

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

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

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

23 (b) Any costs paid to a city, village, or town through the investment and local
24 impact fund under par. (a) shall be reimbursed to the fund by the city, village, or town

1 if the city, village, or town receives funds from any other source for the costs incurred
2 under par. (a).

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

8 **295.62 Mining waste site construction and completion reports. (1)** An
9 operator shall construct a mining waste site substantially in accordance with the
10 approved mining waste site feasibility study and plan of operation.

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

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

24 (4) (a) Within 5 business days of receipt of written notice from an operator that
25 the mining waste site has been constructed in substantial compliance with the

1 mining waste site feasibility study and plan of operation, the department shall either
2 review and inspect the mining waste site to ensure that it was constructed according
3 to the approved mining waste site feasibility study and plan of operation or notify the
4 operator that the department will not conduct a review and inspection before
5 disposal of mining waste in the mining waste site. Within 3 business days of any
6 review and inspection, the department shall notify the operator that the mining
7 waste site may be used for the disposal of mining waste or identify all steps that must
8 be completed to bring the mining waste site into substantial compliance with the
9 mining waste site feasibility study and plan of operation. After the operator
10 completes the steps, the operator shall notify the department that the steps have
11 been completed.

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

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

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

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

21 **295.63 Modifications; reporting.** (1) (a) An operator at any time may
22 request a change to a mining permit, the mining plan, the reclamation plan, or the
23 mining waste site feasibility study and plan of operation for any mining site that the
24 operator owns or leases, or request cancellation of the mining permit for any or all
25 of the unmined part of a mining site. The operator shall submit an application for

1 the change or cancellation in the form of a letter giving notice to the department of
2 the proposed change or cancellation and shall identify in the letter the tract of land
3 to be affected by a change in the mining plan, reclamation plan, or mining waste site
4 feasibility study and plan of operation or to be removed from the permitted mining
5 site.

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

12 (c) If the request under par. (a) is to cancel any or all of the unmined part of a
13 mining site, the department shall ascertain, by inspection, if mining has occurred on
14 the land. If the department finds that no mining has occurred, the department shall
15 order release of the bond or other security posted for the land being removed from
16 the permitted mining site and cancel or amend the operator's written authorization
17 to conduct mining on the mining site. The department may not approve the removal
18 of land where mining has occurred from a permitted mining site, or release that land
19 from the bond or other security under this subsection, unless the operator has
20 completed reclamation to the satisfaction of the department.

21 (2) The operator shall furnish the department with a report for each mining
22 site within 30 days after the end of every 12-month period after issuance of the
23 mining permit, within 30 days after completion of all mining at the mining site, and
24 within 30 days after completion of the mining plan and of the reclamation plan,
25 describing any reclamation work accomplished, or experimental reclamation work

1 performed, during the preceding year. The operator shall include in the reports an
2 annual plan map, color-coded and with a legend, showing all of the following, as of
3 December 31 of the previous year, or as near to December 31 of the previous year as
4 mining operations permit:

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

6 (b) Any mine mill.

7 (c) Any open pit.

8 (d) Stockpiles of overburden.

9 (e) Stockpiles of waste rock.

10 (f) Ferrous ore stockpiles.

11 (g) Streams, lakes, and reservoirs.

12 (h) Tailings basins.

13 (i) Roads.

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

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

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

22 (m) Elevations of stockpiles and tailings basins.

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