

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15           3. References.

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

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

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

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

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

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

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

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

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

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

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

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

1           c. All drainage patterns and surface water drainage control structures both  
2 within the actual fill area and at the perimeter of the mining waste site, including  
3 any berms, ditches, sedimentation basins, pumps, sumps, culverts, pipes, inlets,  
4 velocity breaks, sodding, erosion matting, vegetation, or other methods of erosion  
5 control.

6           d. The method of placing mining waste within each phase.

7           e. Ground surface contours at the time represented by the drawing, indicating  
8 spot elevations for key features.

9           f. Areas to be cleared, grubbed, and stripped of topsoil.

10          g. Borrow areas for liner materials, granular materials for filter beds, berms,  
11 roadway construction, and cover materials.

12          h. All soil stockpiles, including soils to be used for cover, topsoil, liner materials,  
13 filter bed materials, and other excavation.

14          i. Access roads and traffic flow patterns to and within the active fill area.

15          j. All temporary and permanent fencing.

16          k. The methods of screening such as berms, vegetation, or special fencing.

17          L. Leachate collection, control, and treatment systems, including any pipes,  
18 manholes, trenches, berms, collection sumps or basins, pumps, risers, liners, and  
19 liner splices.

20          m. Leachate and groundwater monitoring devices and systems.

21          n. Disposal areas for severe weather operations.

22          o. Support buildings, utilities, gates, and signs.

23          p. Handling areas for the segregation of various types of mining waste.

24          q. Construction notes and references to details.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

16 (j) The final slopes of the completed mining waste site will be no less than <sup>20</sup>20  
17 percent and no greater than 50 percent, unless the mining waste site is specifically  
18 designed for a final use compatible with other slopes.

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

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

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

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

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

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

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

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

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

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

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

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

8 (x) Upstream rainfall catchment areas are minimized.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (b) A mining permit.

18 (c) Any other approval.

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

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



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

3 (a).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 17           1. The application for the mining permit, including the mining plan,  
18 reclamation plan, and mining waste site feasibility study and plan of operation.
- 19           2. Any of the following relating to an approval other than the mining permit:
- 20           a. The application.
- 21           b. A draft approval.
- 22           c. Information or summaries relating to the approval.
- 23           3. The environmental impact statement, environmental impact report, and any  
24 additional supporting information used in the department's evaluation of the  
25 proposed mining.

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

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

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

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

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

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

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

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

1           7. The federal environmental protection agency, U.S. Army Corps of Engineers,  
2 and states potentially affected by the proposed discharge if a water discharge permit  
3 under ch. 283 or a water quality certification for a federal wetland under s. 295.60  
4 <sup>use 107-4</sup> (4) is to be considered at the public informational hearing. ✓

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

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

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

17           11. Any person upon request.

18           12. The applicant.

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

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

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

3 <sup>it approves</sup>  
4 (5) INFORMATIONAL HEARING. The department shall hold a public informational  
hearing before ~~issuing~~ or ~~denying~~ <sup>denies an application for</sup> a mining permit and not less than 30 days after ✓

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

3 (9) APPLICABLE PROCEDURE. The provisions of this section and ss. 295.58 (5) and  
4 (6) and 295.77 concerning public notice, comment, and hearing; issuance of  
5 department decisions; effective date of department decisions; and review of  
6 department decisions; and the duration of approvals apply to any approval,  
7 notwithstanding any provisions related to those matters in s. 44.40 or 169.25, subch.  
8 I or VI of ch. 77, ch. 23, 29, 30, <sup>31</sup>169, 281, 283, 285, 289, or 291, or rules promulgated ✓  
9 under those provisions, except as provided in s. 281.343 (7r) and except that if a  
10 withdrawal of surface water or groundwater is subject to regional review or council  
11 approval under s. 281.346, the applicable provisions related to regional review or  
12 council approval apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10           a. A dwelling house.

11           b. A public building.

12           c. A school.

13           d. A church.

14           e. A cemetery.

15           f. A commercial or institutional building.

16           g. A public road.

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

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

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

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

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

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

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

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

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

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

6 (3) EXCEPTION FROM DENIAL CRITERIA. The department may not deny a mining  
7 permit under sub. (2) (d) to (g) if the person subject to the convictions, forfeiture,  
8 permanent revocation, bankruptcy, or dissolution is a related person but the  
9 applicant shows that the person was not the parent corporation of the applicant, a  
10 person that holds more than a 30 percent ownership in the applicant, or a subsidiary  
11 or affiliate of the applicant in which the applicant holds more than a 30 percent  
12 interest at the time of the convictions, forfeiture, permanent revocation, bankruptcy,  
13 or dissolution.

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

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

19 (b) An approval under s. 295.60 or 295.61 remains valid for the life of the  
20 mining <sup>project</sup>, subject to the enforcement provisions under s. 295.79. ✓

21 (c) An approval issued for a mining project under ch. 23, 29, 30, <sup>31</sup>169, 281, 283, ✓  
22 285, 289, or 291, except for a permit under ch. 283 or 285 that is subject to a federal  
23 requirement limiting its duration, remains valid for the life of the mining project,  
24 subject to the enforcement provisions applicable to the approval.

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

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

8           (8) GENERAL CONTRACTOR OR AFFILIATE. No operator may engage a general  
9 contractor or affiliate to operate a mining site if the general contractor or affiliate has  
10 been convicted of more than one felony for violation of a law for the protection of the  
11 natural environment arising out of the operation of a mining site in the United States  
12 within 10 years before the issuance of the operator's mining permit, unless the  
13 general contractor or affiliate receives the department's approval of a plan to prevent  
14 the occurrence in this state of events similar to the events that directly resulted in  
15 the convictions.

16           **295.59 Bonds and other security.** (1) SECURITY FOR RECLAMATION. (a) Upon  
17 notification that an application for a mining permit has been approved by the  
18 department but before beginning mining, the operator shall furnish one of the  
19 following to the department:

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

23           2. Cash.

24           3. Certificates of deposit.

25           4. Government securities.

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

3 (c) The operator shall furnish the security required under par. (a) in the amount  
4 equal to the estimated cost to the state of fulfilling the reclamation plan, other than  
5 the cost of long-term care of the mining waste site, in relation to the portion of the  
6 mining site that will be disturbed by the end of the following year. The department  
7 shall determine the estimated cost of reclamation of each mining site on the basis of  
8 relevant factors, including the character and nature of the lands to be reclaimed, the  
9 future suitable use of the land involved, the topography of the mining site, the  
10 methods of reclamation being employed, the depth and composition of overburden,  
11 and the depth of the ferrous mineral deposit being mined.

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

20 (2m) PROOF OF FINANCIAL RESPONSIBILITY FOR LONG-TERM CARE OF MINING WASTE  
21 SITE. An operator shall maintain proof of financial responsibility ensuring the  
22 availability of funds for compliance with the long-term care requirements specified  
23 in the waste site feasibility study and plan of operation for a period of 40 years after  
24 closing of the mining waste site. The operator shall furnish the proof of financial  
25 responsibility to the department in one of the following forms:

1

(a) A bond.



2

(b) Cash.

3

(c) Certificates of deposit.

4

(d) Government securities.

5

(e) Insurance.

6

**(3) WRITTEN AUTHORIZATION TO MINE.** Upon approval of the operator's bonds or other security under subs. (1) and (2m), mining application, and certificate of insurance, the department shall issue written authorization to begin mining at the permitted mining site in accordance with the approved mining plan, reclamation plan, and mining waste site feasibility study and plan of operation.

11

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

21

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

25



- X 1           **295.60 Impacts to wetlands. (1) DEFINITIONS.** In this section:
- 2 (a) ~~(b)~~ "Artificial wetland" means a landscape feature where hydrophytic  
3 vegetation may be present as a result of human modifications to the landscape or  
4 hydrology and for which there is no prior wetland or stream history.
- 5 ~~(b)~~ ~~(c)~~ "Ceded territory" means the territory in Wisconsin ceded by the Chippewa  
6 Indians to the United States in the treaty of 1837, 7 Stat. 536, and the treaty of 1842,  
7 7 Stat. 591.
- X 8 (e) "Federal compensatory mitigation requirement" means any mitigation  
9 requirement that is imposed by the federal government.
- X 10 (f) "Federal wetland" means a wetland that is subject to federal jurisdiction  
11 under 33 USC 1344.
- 12 (c) ~~(g)~~ "Functional values and water quality" means the water quality related  
13 wetland functional values and uses specified in sub. (6). <sup>(a) 1. to 7</sup> ✓
- 14 (d) ~~(h)~~ "Impact" means a permanent, temporary, cumulative, secondary, direct or  
15 indirect result that is attributable to a discharge to which the wetland water quality  
16 standards apply.
- 17 (e) ~~(i)~~ "Mitigation" means the restoration, enhancement, or creation of wetlands  
18 to offset significant adverse impacts to other wetlands.
- 19 (f) ~~(j)~~ "Mitigation bank" means a system of accounting for wetland loss and  
20 mitigation that includes one or more sites where wetlands are restored, enhanced,  
21 or created to provide transferable credits to be subsequently applied to offset  
22 significant adverse impacts to other wetlands.
- X 23 (k) "Nonfederal wetland" means a wetland that is not subject to federal  
24 jurisdiction under 33 USC 1344.

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

3 (h) (m) "Practicable" means available and capable of being implemented after  
4 taking into consideration cost, available technology, and logistics in light of the  
5 overall project purposes and the needs <sup>of</sup> ~~to~~ bulk sampling or a mining operation.

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

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

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

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

14 (L) (r) "Wetland water quality standard" means a water quality standard specified  
15 under sub. (6). ✓

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

19 (3) WETLAND DETERMINATIONS AND DELINEATIONS. For purposes of this section,  
20 wetland determinations and wetland boundary delineations shall be consistent with  
21 the U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual and any final  
22 regional supplement to the manual. The department may rely on wetland  
23 determinations and wetland boundary delineations made by other agencies and  
24 consultants. If the applicant for a wetland permit ~~water quality certification~~ or for any other  
25 approval for an activity involving impacts to wetlands has provided information to

1 the department that is identified in the manual or any final regional supplement as  
2 being sufficient to make a wetland determination or a delineation of boundaries, the  
3 department may visit the site to conduct surveys or gather additional site-specific  
4 quantitative data provided that the department does not discontinue the processing  
5 of the application to do so.

x 6 **(4) WATER QUALITY CERTIFICATION FOR FEDERAL WETLANDS.** (a) For purposes of  
7 issuing a water quality certification that is required pursuant to 33 USC 1341 (a) for  
8 a discharge associated with a mining operation or bulk sampling into a federal  
9 wetland or for issuing any other approval associated with a mining operation for an  
10 activity that involves any impact to a federal wetland, the department shall review  
11 the federal compensatory mitigation requirements proposed as part of the federal  
12 permit application.

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

20 (c) If the department determines that reasonable assurance does not exist  
21 under par. (b), it may impose conditions in the water quality certification or other  
22 approval if such conditions are limited to those that are necessary to offset any  
23 significant adverse impacts to the federal wetland that are not offset by the federal  
24 compensatory mitigation requirements in the federal permit or other approval. Any

WETLAND PERMIT

1 conditions imposed by the department shall permit a mitigation program as provided  
2 in sub. (8).

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

6 (e) The department shall issue a water quality certification under this  
7 subsection if the federal permitting process, including any federal compensatory  
8 mitigation requirement, offsets the significant adverse impacts to the functional  
9 values and water quality of the federal wetland.

x 10 ~~(4) (5) WATER QUALITY CERTIFICATION FOR NONFEDERAL WETLANDS.~~ (a) ~~Certification~~

11 required. No person may discharge dredge or fill material associated with a mining  
12 operation or bulk sampling into a nonfederal wetland unless the discharge is  
13 authorized under a water quality certification issued under this section.

14 (c) ~~(b)~~ Avoidance or minimization of impacts. For purposes of issuing a water  
15 quality certification for a discharge subject to par. (a) or evaluating impacts to

16 nonfederal wetlands for any approval requiring an evaluation of impacts to

17 nonfederal wetlands, the department shall first determine whether any impact to

18 the nonfederal wetland caused by the mining operation or bulk sampling can be

19 avoided or minimized to the extent practicable. If the impacts have been avoided or

20 minimized to the extent practicable, any remaining impacts to nonfederal wetlands

21 may not be a basis for a denial of a water quality certification provided that any

22 remaining significant adverse impacts are offset under a mitigation program under

23 sub. (8). (9)

Wetland permit

Permit

INSERT  
122-13

Wetland permit

Wetland permit

wetland permit

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(d) ~~(c)~~ Siting analysis. 1. An applicant for a ~~water quality certification for a~~

~~nonfederal wetland~~ shall submit a siting analysis to the department for review. In reviewing the siting analysis, the department shall recognize all of the following:

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

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

c. The presumption that nonfederal wetlands will be impacted.

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

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

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

x (5m) <sup>(5)B</sup> EVALUATION OF IMPACTS. The department shall determine the impact of a proposed activity upon the functional values and water quality of a wetland by using wetland ecological evaluation methods <sup>that are</sup> jointly accepted by the U.S. Army Corps of Engineers and the department and <sup>that are</sup> appropriate to the affected wetland.

(6) WETLAND WATER QUALITY STANDARDS. The following wetland water quality standards <sup>ed</sup> shall apply to any ~~water quality certification under sub. (4) or (5).~~ <sup>wetland permit issued under this section</sup>

1 (a) Adverse impacts to the functional values and water quality of wetlands and  
2 adverse impacts to other waters of the state that are influenced by wetlands shall be  
3 minimized, and any significant adverse impacts remaining after minimization shall  
4 be subject to a mitigation program under sub. <sup>(a)</sup>~~(b)~~. For purposes of this section,  
5 functional values and uses consist of all of the following: ✓

6 1. Storm and flood water storage and retention and the moderation of water  
7 level fluctuation extremes.

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

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

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

15 5. Habitat for aquatic organisms in the food web including fish, crustaceans,  
16 mollusks, insects, annelids, and planktonic organisms and the plants and animals  
17 upon which these aquatic organisms feed and depend upon for their needs in all life  
18 stages.

19 6. Habitat for resident and transient wildlife species, including mammals,  
20 birds, reptiles, and amphibians, for breeding, resting, nesting, escape cover, travel  
21 corridors, and food.

22 7. Recreational, cultural, educational, scientific, and natural scenic beauty  
23 values and uses.

24 (b) All of the following shall be minimized in order to avoid significant adverse  
25 impacts for the purpose of maintaining or enhancing the functional values and water

1 quality identified under par. (a), and any minimization of the following must be taken  
2 into account in the department's evaluation of significant adverse impacts:

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

8 5. Adverse effects on hydrological conditions necessary to support the biological  
9 and physical characteristics that are naturally present in wetlands. For purposes  
10 of this subdivision, the hydrological conditions include <sup>e</sup>of all of the following: ✓

- 11 a. Water currents and erosion and sedimentation patterns.
- 12 b. Water temperature variations.
- 13 c. The chemical, nutrient, and dissolved oxygen regime of the wetland.
- 14 d. The movement of aquatic fauna.
- 15 e. The pH of the wetland.
- 16 f. Water levels or elevations.

17 6. Adverse effects on existing habitat and populations of animals and  
18 vegetation found in wetlands.

x (19) (B) (7) (6m) SCOPE OF EVALUATION. For purposes of issuing a <sup>wetland permit</sup> ~~water quality certification~~  
20 under <sup>this section</sup> ~~sub. (4) or (5)~~, the department shall evaluate whether an activity will result  
21 in a significant adverse impact to the functional values and water quality associated  
22 with a wetland by doing all of the following:

- 23 (a) Comparing the functional values and water quality of the wetland with  
24 other wetlands located within the boundaries of the mining site or within the same

1 water management unit as the mining site and with other waters of the state that  
2 are located in the same water management unit.

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

x 5 <sup>(8)</sup> ~~(7)~~ APPROVAL BY DEPARTMENT, NONFEDERAL WETLANDS. The department shall  
6 issue a <sup>wetland permit</sup> ~~water quality certification~~ under this section for a <sup>nonfederal</sup> wetland, if the  
7 department determines <sup>that</sup> all of the following: <sup>will apply</sup>

8 (a) All practicable measures will be taken to minimize <sup>any</sup> ~~the~~ adverse impacts to  
9 wetlands.

10 (b) Any significant adverse impacts <sup>is</sup> to functional values and water quality that  
11 remain <sup>is</sup> ~~are~~ offset through a mitigation program under sub. <sup>(9)</sup> ~~(8)~~.

x 12 <sup>(9)</sup> ~~(8)~~ MITIGATION PROGRAM. (a) *Contents*. A mitigation program to offset  
13 significant adverse impacts to functional values and water quality of wetlands shall  
14 contain all of the following:

15 <sup>MA</sup> ~~(8)~~ Proposed projects for mitigation and a schedule for implementing the  
16 projects. These projects may be performed by a person other than the applicant,  
17 subject to the department's approval of the projects and schedule.

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

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



1 (c) Ratios for mitigation. The amount of mitigation required may not exceed  
2 1.5 acres of mitigation for each acre of adversely impacted wetland. For purpose of  
3 credits in a mitigation bank, each acre that is subject to mitigation shall count as at  
4 least one credit.

*I*  
*types of mitigation*  
*Sequence*

5 (d) *Sequence*. If it is not practicable or ecologically preferable to conduct  
6 mitigation at an on-site location or if there is no on-site location that will provide  
7 sufficient wetland acreage, the department shall allow the applicant to conduct  
8 mitigation at a site other than an on-site location, subject to par. (e). Mitigation  
9 under a program under par. (a) *may* be accomplished through *any of* the following types:

- 10 1. Implementation of a project for mitigation.
- 11 2. Purchase of mitigation credits from a mitigation bank for a site in a
- 12 mitigation bank that is located anywhere in the state, subject to par. (e).
- 13 3. Purchase of mitigation credits from a mitigation bank established prior to
- 14 February 1, 2002, if the department determines that the bank sponsor is in
- 15 compliance with any applicable memorandum of understanding between the bank
- 16 sponsor and the department.
- 17 4. Participation in the in lieu fee subprogram, if such a subprogram is
- 18 established under s. 281.36 (3r) (e). *I*

19 (e) *Ceded Territory.* If a mining operation is located in whole or in part within the ceded territory,  
20 any mitigation, including mitigation accomplished through the purchase of  
21 mitigation bank credits and the in lieu fee subprogram that is authorized or  
22 required by the department, shall occur within the ceded territory.

23 *(10)* ~~(9)~~ MINING PERMIT. Any *wetland permit* ~~water quality certification~~ issued *under this section* ~~by the department~~,  
24 including all of the conditions imposed as part of the *wetland permit* ~~certification~~, shall be included  
25 in the mining permit.

x

ⓑ (11)

wetland permit

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(10) CONSERVATION EASEMENTS. (a) A person who is the holder of a water quality certification that authorizes mitigation to be implemented by the holder of the certification at an on-site location shall grant a conservation easement under s. 700.40 to the department to ensure that the wetland that is subject to the mitigation will not be destroyed or substantially degraded by any subsequent proprietor of or holder of interest in the property on which the wetland is located. The department shall suspend the mining permit if the holder of the permit fails to grant the easement within the time limit set forth in the mining permit. If the holder subsequently grants the conservation easement to the department, the department shall reinstate the mining permit.

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

1. The department determines that part or all of the wetland subject to the mitigation ceases to be a wetland.
2. The person who is required to grant the conservation easement did not contribute to the loss of the wetland as specified in subd. 1.
3. Any subsequent proprietor of or holder of interest in the property on which the wetland specified in subd. 1. is located did not contribute to the loss of the wetland.

ⓑ (12) (11) EXEMPTIONS. (a) Artificial wetlands. All of the following artificial wetlands that are associated with a mining operation are exempt from the water quality certification provisions and mitigation provisions under this section and under any other law relating to impacts on wetlands:

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

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

6           3. An artificial wetland that is actively maintained farm drainage and roadside  
7 ditches.

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

9           (b) ~~(c)~~ *Other exempted activities.* For nonfederal wetlands, <sup>A</sup> all of the following  
10 activities that are associated with a mining operation or bulk sampling are exempt  
11 from the <sup>wetland permitting</sup> ~~water quality~~ provisions and mitigation provisions under this section and  
12 any other law relating to impact<sup>S</sup> on wetlands if the applicant minimizes any adverse  
13 effect on the environment as a result of <sup>any of these</sup> ~~the~~ activities:

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

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

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

20           <sup>B</sup> (13) ~~(12)~~ RELATIONSHIP TO OTHER LAWS. None of the following apply to a mining  
21 operation or bulk sampling:

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

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

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

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

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

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

12           1m. Enter into a contract under s. 30.20.

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

15           3. Seek authorization under a general permit issued under s. 30.12, 30.123,  
16 30.19, or 30.20.

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

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

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

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

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

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

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

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

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

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

15           4. Measures to enhance flood storage.

16           5. Mitigation as provided under s. 295.60.

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

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

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

7 (5) PERMIT CONDITIONS. The department may impose conditions in a permit for  
 8 a navigable water activity that it determines to be necessary to ensure that the  
 9 navigable water activities subject to the permit meet the requirements under par. (a).  
 10 *sub. (4)*

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

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

17 **295.607 Shoreland and floodplain zoning.** (1) (a) In this section:

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

20 2. "Floodplain zoning ordinance" means a municipal floodplain zoning  
 21 ordinance adopted under s. 87.30.

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

24 (2) (a) The department may not prohibit a development or construction activity  
 to be located in an area that would otherwise be prohibited under a shoreland

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Ordinance

if the development or construction activity is authorized by the department as part of a mining operation covered by a mining permit under s. 295.58.

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

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

X 14 **295.61 Withdrawals of surface waters and groundwater. (1)**

15 DEFINITIONS. In this section:

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

17 (b).

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

14           3. Protection of important upland groundwater recharge areas.

15           4. Stabilization of shorelands.

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

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

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

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

24           9. Mitigation as provided in s. 295.60.