

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

4           11. A riparian restoration project.

5           12. Measures as provided in s. 295.605.

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

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

20           (e) *Use of nonriparian waters.* Water withdrawn in accordance with a water  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

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

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

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

7 1. The location of the withdrawal or use.

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

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

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

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

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

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

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

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

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

6           3. a. If the request for a modification under subd. 1. results in an increase in  
7 an existing withdrawal resulting in a water loss averaging more than 2,000,000  
8 gallons per day in any 30-day period above the operator's authorized base level of  
9 water loss, the department shall determine whether it is required, under ch. NR 150,  
10 Wis. Adm. Code, to prepare an environmental assessment or environmental impact  
11 statement and, if so, shall prepare an environmental assessment or an  
12 environmental impact statement. If the department determines that, under ch. NR  
13 150, Wis. Adm. Code, the operator must prepare an environmental impact report, the  
14 department may only request information in the environmental impact report that  
15 relates to decisions that the department makes under this section related to the  
16 permit and the department shall limit its analysis to an evaluation of the request for  
17 the modification.

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

1 of each city, village, and town through which the stream flows or that is adjacent to  
2 the stream downstream from the point at which the water would enter the stream.

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

6 (b) 1. The department may propose modifications to any of the conditions in the  
7 water withdrawal permit. If it proposes a modification, the department shall  
8 determine whether it is required, under ch. NR 150, Wis. Adm. Code, to prepare an  
9 environmental assessment or environmental impact statement and, if so, shall  
10 prepare an environmental assessment or an environmental impact statement. If the  
11 department determines that, under ch. NR 150, Wis. Adm. Code, the operator must  
12 prepare an environmental impact report, the department may only request  
13 information in the environmental impact report that relates to decisions that the  
14 department makes under this section related to the permit and the department shall  
15 limit its analysis to an evaluation of the proposed modification.

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

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

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

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

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

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

14           **(8) DAMAGE CLAIMS.** (a) As used in this subsection, "person" does not include  
15 a city, village, or town.

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

23           (c) The city, village, or town in which is located the private water supply that  
24 is the subject of a complaint under par. (a) shall, upon request, supply necessary  
25 amounts of water to replace the water formerly obtained from the damaged private

1 supply. Responsibility to supply water begins at the time the complaint is filed and  
2 ends at the time the decision of the department made at the conclusion of the hearing  
3 is implemented.

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

23 (e) If the department concludes after the hearing that bulk sampling or mining  
24 is not the cause of any damage, reimbursement to the city, village, or town for the

1 costs of supplying water under par. (c), if any, is the responsibility of the person who  
2 filed the complaint.

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

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

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

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

21 **295.62 Mining waste site construction and completion reports.** (1) An  
22 operator shall construct a mining waste site substantially in accordance with the  
23 approved mining waste site feasibility study and plan of operation.

24 (2) The operator shall inspect the mining waste site before it is used and ensure  
25 that all associated structures are in substantial compliance with the mining waste

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

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

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

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



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

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

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

8           **295.63 Modifications; reporting.** (1) (a) An operator at any time may  
9 request a change to a mining permit, the mining plan, the reclamation plan, or the  
10 mining waste site feasibility study and plan of operation for any mining site that the  
11 operator owns or leases, or request cancellation of the mining permit for any or all  
12 of the unmined part of a mining site. The operator shall submit an application for  
13 the change or cancellation in the form of a letter giving notice to the department of  
14 the proposed change or cancellation and shall identify in the letter the tract of land  
15 to be affected by a change in the mining plan, reclamation plan, or mining waste site  
16 feasibility study and plan of operation or to be removed from the permitted mining  
17 site.

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

24           (c) If the request under par. (a) is to cancel any or all of the unmined part of a  
25 mining site, the department shall ascertain, by inspection, if mining has occurred on

1 the land. If the department finds that no mining has occurred, the department shall  
2 order release of the bond or other security posted for the land being removed from  
3 the permitted mining site and cancel or amend the operator's written authorization  
4 to conduct mining on the mining site. The department may not approve the removal  
5 of land where mining has occurred from a permitted mining site, or release that land  
6 from the bond or other security under this subsection, unless the operator has  
7 completed reclamation to the satisfaction of the department.

8 (2) The operator shall furnish the department with a report for each mining  
9 site within 30 days after the end of every 12-month period after issuance of the  
10 <sup>mining</sup> permit, within 30 days after completion of all mining at the mining site, and within  
11 30 days after completion of the mining plan and of the reclamation plan, describing  
12 any reclamation work accomplished, or experimental reclamation work performed,  
13 during the preceding year. The operator shall include in the reports an annual plan  
14 map, color-coded and with a legend, showing all of the following, as of December 31  
15 of the previous year, or as near to December 31 of the previous year as mining  
16 operations permit:

- 17 (a) Location and boundary of the mining area.
- 18 (b) Any mine mill.
- 19 (c) Any open pit.
- 20 (d) Stockpiles of overburden.
- 21 (e) Stockpiles of waste rock.
- 22 (f) Ferrous ore stockpiles.
- 23 (g) Streams, lakes, and reservoirs.
- 24 (h) Tailings basins.
- 25 (i) Roads.

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

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

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

9           (m) Elevations of stockpiles and tailings basins.

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

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

15          (p) The date the map was prepared.

16          (3) If the department finds that a change requested under sub. (1) (a) would  
17 make substantial compliance with the approved mining plan, reclamation plan, or  
18 mining waste site feasibility study and plan of operation impossible or it finds, based  
19 on a review conducted no more frequently than every 5 years, that because of  
20 changing conditions, including changes in reclamation costs or reclamation  
21 technology, the reclamation plan for a mining site is no longer sufficient to  
22 reasonably provide for reclamation of the mining site consistent with this  
23 subchapter, it shall require the operator to submit an amended mining plan,  
24 reclamation plan, or mining waste site feasibility study and plan of operation and  
25 applications for amending any approval associated with the proposed amendments

1 to the mining plan, reclamation plan, or mining waste site feasibility study and plan  
2 of operation. The public notice, public comment, and public hearing procedures in  
3 s. 295.57 apply to amended plans and applications under this subsection. The  
4 department shall approve or deny the amended mining plan, reclamation plan, or  
5 mining waste site feasibility study and plan of operation in accordance with s.  
6 295.58, within 30 days following the close of the public comment period. The  
7 applicant may continue to operate under the existing mining permit until the  
8 amended mining permit is issued or denied.

9 **295.635 Required mining waste site inspections, record keeping,**  
10 **reporting, and responses. (1) DEFINITIONS.** In this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20          **(5) DEFECTIVE CONDITIONS OF DAMS POSING RISK OF ADVERSE IMPACT.** When a  
21 defective condition that poses a significant risk of adverse impact to the environment  
22 is found during an inspection of a dam, the operator shall ensure that it is recorded  
23 and corrected at the earliest practicable time. At the earliest practicable time, the  
24 operator shall make a written report to the department of the condition and the  
25 actions proposed and taken for its correction. Within 5 business days of receipt of a

1 written report, the department may confirm the correction of the condition and  
2 specify any necessary additional corrective action. An operator shall consider any  
3 of the following items as indicating a condition that requires prompt investigation  
4 and that may require corrective action:

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

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

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

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

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

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

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

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

20 (b) Surface erosion, gulying, or wave erosion on the inside of the dam.

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

23 (d) Erosion below any conduit.

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

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

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

- 9           1. Aerial photos of the construction site before construction.
- 10          2. Construction drawings and modifications of the drawings.
- 11          3. Construction specifications and modifications of the specifications.
- 12          4. Results of all soil tests on foundations and fill materials.
- 13          5. Logs of borings and engineering geology reports.
- 14          6. Copies of construction progress inspections pertinent to core trench, toe  
15 drain, internal drains, and other significant phases of the structure including, at the  
16 option of the operator, photographs of various structural items.
- 17          7. Aerial photos of the entire dam taken within 90 days after all construction  
18 is completed.
- 19          8. A description of and justification for all deviations or variances from the  
20 construction plans and specifications.

21           **(8) RESPONSES TO UNPLANNED EVENTS.** If a mining waste site has an accidental  
22 or emergency discharge, a fire, an explosion, or other unplanned or unpredicted  
23 event that is likely to damage human health or the environment, the operator shall  
24 follow the procedures set forth in the contingency plan under s. 295.51 (6) (f) and

1 shall report the incident to the department and to county, town, and tribal  
2 governmental agencies immediately after the operator has discovered the event.

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

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

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

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

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

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

17 **295.64 Mining site monitoring; general.** (1) GENERAL. The department,  
18 as a condition of a mining permit, shall require the operator to perform adequate  
19 monitoring of environmental changes during the course of the mining and for the  
20 additional period of time that is necessary to satisfactorily complete reclamation and  
21 completely release the operator from any bonds or other security required. The  
22 department may monitor environmental changes concurrently with the operator  
23 and for an additional period after the security is released.

24 (2) ANALYSES. (a) The department shall review baseline water quality data  
25 with respect to groundwater and monitoring data associated with the mine, mining



1 waste sites, and sites for the disposal of wastes that are not mining wastes at the time  
2 of each review of the mining permit or reclamation plan under s. 295.63 (3) and when  
3 the operator requests a modification of the mining permit or reclamation plan.

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

- 11 1. Physical testing of soil.
- 12 2. Air quality tests.
- 13 3. Tests for hydrogen ion concentration (pH).
- 14 4. Tests for chlorine residual.
- 15 5. Tests for temperature.

16 **295.643 Mining waste site monitoring. (1) GENERAL.** The department may  
17 require the monitoring of groundwater, surface water, leachate, or other physical  
18 features associated with a mining waste site.

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

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

6           (b) The department shall determine the required number of groundwater  
7 monitoring wells based on the size of the mining waste site, the design of the mining  
8 waste site, the types of mining waste, and the hydrologic and geologic setting of the  
9 mining waste site. The department shall ensure that the number of wells is adequate  
10 to yield samples representative of the groundwater quality both up gradient and  
11 down gradient of the mining waste site.

12           (c) An operator shall construct all monitoring wells in accordance with ch. NR  
13 141, Wis. Adm. Code, and in such a manner as to prevent, to the extent practicable,  
14 the exchange of water between aquifers.

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

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

23           **(5) SAMPLING OTHER WELLS.** The department may require an operator to sample  
24 public or private wells as part of a regular monitoring program or to determine the  
25 extent of groundwater contamination associated with a mining waste site. If the

1 owner of a well does not authorize access for sampling, the operator shall promptly  
2 notify the department.

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

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

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

17 (8) OPERATIONS REPORT. The department may require an operator to submit an  
18 operations report to assess the effectiveness and environmental acceptability of  
19 mining waste site operations. The operator may include in the report a discussion  
20 of confinement of the active fill area and an analysis of leachate and other  
21 monitoring, surface water control and erosion control, revegetation, settlement,  
22 volume of the mining waste site utilized, leachate quantity and quality, slope  
23 stability, equipment performance, volume and type of waste disposed of, and other  
24 relevant parameters.

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

4           **295.645 Groundwater quality, monitoring, and response. (1)**

5           DEFINITIONS. In this section:

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

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

12           **(2) DESIGN MANAGEMENT ZONE.** (a) Notwithstanding the rule-making authority  
13 in s. 160.21 (2) and except as provided under par. (b), for the purposes of ch. 160, the  
14 horizontal distance to the boundary of the design management zone for a mining  
15 operation is 1,200 feet from the limits of the engineered structures of the mining  
16 waste site, including any wastewater and sludge storage or treatment lagoons, the  
17 edge of the mine, and the adjacent mine mill and ferrous mineral processing facilities  
18 or at the boundary of the property owned or leased by the applicant, whichever  
19 distance is less.

20           (b) When issuing or modifying a mining permit or issuing or reissuing any other  
21 approval, the department may expand the design management zone by a horizontal  
22 distance of up to an additional 1,200 feet in any direction as provided in this  
23 paragraph, but not beyond the boundary of the property owned or leased by the  
24 applicant. The department may not expand the design management zone unless the  
25 applicant demonstrates all of the following:

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

4           2. That preventive action limits and enforcement standards or alternative  
5 concentration limits will be met at the boundary of the expanded design  
6 management zone.

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

12           **(3) POINT OF STANDARDS APPLICATION.** (a) Any point at which groundwater is  
13 monitored is a point of standards application to determine whether a preventive  
14 action limit or an alternative concentration limit to a preventive action limit has been  
15 attained or exceeded for an activity regulated under a mining permit or another  
16 approval related to the mining operation. Any of the following is a point of standards  
17 application to determine whether an enforcement standard or an alternative  
18 concentration limit to an enforcement standard has been attained or exceeded for an  
19 activity regulated under a mining permit or another approval related to the mining  
20 operation:

21           1. Any point of present groundwater use.

22           2. Any point beyond the boundary of the property on which the activity is  
23 conducted, subject to par. (b).

24           3. Any point that is within the boundary of the property on which the activity  
25 is conducted but is beyond the design management zone, subject to par. (b).

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

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

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

12 (a) Notify the department within 10 days after the operator receives the results  
13 of the analysis of the samples.

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

16 (c) Determine the extent of groundwater contamination or the potential for  
17 groundwater contamination.

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

19 (5) RESPONSE CONCERNING PREVENTIVE ACTION LIMITS. In accordance with s. NR  
20 140.24 (1) to (5), Wis. Adm. Code, the department shall evaluate the range of  
21 responses proposed by the operator when a preventive action limit or an alternative  
22 concentration limit to a preventive action limit is attained or exceeded and the  
23 analysis of samples indicates that the quality of groundwater is statistically  
24 significantly different from either baseline water quality or background water  
25 quality at a point of standards application. In designating the appropriate response,

1 the department shall evaluate the operator's proposed range of responses, including  
2 any alternate responses to those identified in s. NR 140.24, Wis. Adm. Code. For any  
3 alternate responses, the department shall consider the technical and economic  
4 feasibility of alternate responses, the practicality of stopping the further release of  
5 the substance, and the risks and benefits of continued mining operations. The  
6 department shall designate the appropriate response, except that, notwithstanding  
7 s. 160.21 (3) and the rule-making authority under s. 160.21 (1), the department may  
8 not prohibit a practice or activity or require closure and abandonment of a mining  
9 waste site, including any wastewater and sludge storage or treatment lagoon, unless  
10 it has followed the procedures in s. 295.78 and satisfies the requirements of s. 160.23  
11 (4) and (6). The department may determine that no response is necessary and that  
12 an exemption is not required when the requirements of s. NR 140.24 (5) (a) or (b), Wis.  
13 Adm. Code are met.

14 **(6) RESPONSE CONCERNING ENFORCEMENT STANDARDS.** (a) In accordance with s.  
15 NR 140.26 (1) and (2), Wis. Adm. Code, the department shall evaluate the range of  
16 responses proposed by the operator based on the responses listed in Table 6 of s. NR  
17 140.26, Wis. Adm. Code, when an enforcement standard or an alternative  
18 concentration limit to an enforcement standard is attained or exceeded and the  
19 analysis of samples indicates that the quality of groundwater is statistically  
20 significantly different from either baseline water quality or background water  
21 quality at a point of standards application. In designating the appropriate response,  
22 the department shall evaluate the operator's proposed range of responses against  
23 those identified in Table 6 of s. NR 140.26, Wis. Adm. Code. The department shall  
24 designate the appropriate response, except that, notwithstanding ss. 160.21 (3) and  
25 160.25 (1) (a) and the rule-making authority under s. 160.21 (1), the department may

1 not prohibit a practice or activity or require closure and abandonment of a mining  
2 waste site, including any wastewater and sludge storage or treatment lagoon, unless  
3 it has followed the procedures in s. 295.78 and all of the following apply:

4 1. The department bases its decision upon reliable test data.

5 2. The department determines, to a reasonable certainty, by the greater weight  
6 of the credible evidence, that no other remedial action would prevent the violation  
7 of the enforcement standard at the point of standards application.

8 3. The department establishes the basis for the boundary and duration of the  
9 prohibition.

10 4. The department ensures that any prohibition imposed is reasonably related  
11 in time and scope to maintaining compliance with the enforcement standard at the  
12 point of standards application.

13 5. If the substance involved is naturally occurring, unless the substance  
14 involved is carcinogenic, teratogenic, or mutagenic in humans, the department  
15 considers the existence of the background concentration of the substance in  
16 evaluating response options to the noncompliance with the enforcement standard or  
17 alternative concentration limit for that substance and determines that the proposed  
18 prohibition will result in the protection of or substantial improvement in  
19 groundwater quality notwithstanding the background concentrations of the  
20 substance.

21 (b) The department may only require a remedial action to be taken if the  
22 remedial action is reasonably related in time and scope to the substance, activity, or  
23 practice that caused the enforcement standard or alternative concentration limit to  
24 an enforcement standard to be attained or exceeded and the quality of groundwater



1 to be statistically significantly different from either baseline water quality or  
2 background water quality at the point of standards application.

3 (c) If nitrates or any substance of welfare concern attains or exceeds an  
4 enforcement standard and if the analysis of samples indicates that the quality of  
5 groundwater is statistically significantly different from either baseline or  
6 background water quality, then the department shall evaluate whether the  
7 enforcement standard was attained or exceeded in whole or in part due to high  
8 background water quality concentrations of the substance and whether the  
9 additional concentrations represent a public welfare concern before it designates the  
10 appropriate response and, notwithstanding ss. 160.21 (3) and 160.25 (1) (a) and the  
11 rule-making authority under s. 160.21 (1), the department may not prohibit a  
12 practice or activity or require closure and abandonment of a mining waste site,  
13 including any wastewater and sludge storage or treatment lagoon, unless it has  
14 followed the procedures in s. 295.78 and par. (a) 1. to 4. apply.

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

17 **(6m)** MANDATORY INTERVENTION BOUNDARY FOR MINING WASTE SITE AND MINE. (a)  
18 Except as provided under par. (am), the horizontal distance to the mandatory  
19 intervention boundary for a mining waste site is 300 feet from the outer waste  
20 boundary or the outer edge of the excavation, unless the boundary of the design  
21 management zone is within 600 feet of the outer waste boundary or the outer edge  
22 of the excavation, in which case the mandatory intervention boundary is one-half  
23 the distance from the outer waste boundary or the outer edge of the excavation to the  
24 boundary of the design management zone.

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

5 (b) An operator shall monitor groundwater quality at locations approved by the  
6 department along the mandatory intervention boundary, except for any portion of  
7 the mandatory intervention boundary that is within another mandatory  
8 intervention boundary, and within the mandatory intervention boundary. When  
9 approving locations for monitoring, the department shall ensure that duplicative  
10 monitoring is not required within overlapping mandatory intervention boundaries.

11 (c) 1. Notwithstanding sub. (5), if a preventive action limit or an enforcement  
12 standard has been exceeded beyond the mandatory intervention boundary, the  
13 department shall require a response in accordance with s. NR 140.24, Wis. Adm.  
14 Code, except that s. NR 140.24 (5), Wis. Adm. Code, does not apply.

15 2. If sampling results indicate that an enforcement standard or a preventive  
16 action limit has been exceeded within, but not beyond, the mandatory intervention  
17 boundary and a comparison of sampling results to the results of modeling indicates  
18 that the sampling results are consistent with the design and expected performance  
19 of the mining waste site, the operator may recommend a no response action, and the  
20 department may approve a no response action if that is authorized under s. NR  
21 140.24 (5), Wis. Adm. Code.

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

24 (8) EXEMPTIONS TO GROUNDWATER QUALITY STANDARDS. When issuing or  
25 modifying a mining permit or issuing or reissuing any other approval, the

1 department may grant an exemption from a groundwater quality standard and  
2 establish an alternative concentration limit to a groundwater quality standard.

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

6 **295.65 Successors.** (1) When one operator succeeds to the interest of another  
7 in an uncompleted mining operation by sale, assignment, lease, or otherwise, the  
8 department shall release the first operator from the duties imposed upon the first  
9 operator by this subchapter as to the mining operation and transfer the mining  
10 permit and any approvals under ss. 295.60, 295.605, and 295.61 to the successor  
11 operator if all of the following apply:

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

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

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

20 **295.66 Cessation of mining or reclamation.** If there is a cessation of  
21 mining or reclamation for 30 days or more that is not set forth in either the mining  
22 plan or the reclamation plan, the operator shall notify the department of the  
23 cessation within 48 hours of the cessation of mining and shall begin stabilization of  
24 the mining site. The department may require the operator to provide technical,  
25 engineering, and any other information that the operator believes shows that its

1 actions to stabilize the mining site are adequate. If the department determines, after  
2 reviewing the information provided by the operator, that the proposed stabilization  
3 of the mining site will result in a substantial adverse impact to the environment, the  
4 department shall order the operator to begin additional measures to protect the  
5 environment, including, if the cessation is reasonably anticipated to extend for a  
6 protracted period of time, reclamation according to the reclamation plan or part of  
7 the reclamation plan. Usual and regular shutdown of operations on weekends, for  
8 maintenance or repair of equipment or facilities, or for other customary reasons do  
9 not constitute a cessation of mining.

10 **295.67 Determination of abandonment of mining.** (1) Except as provided  
11 in sub. (2), abandonment of mining occurs if there is a cessation of mining, not set  
12 forth in an operator's mining plan or reclamation plan or by any other sufficient  
13 written or constructive notice, extending for more than 6 consecutive months.

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

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

17 (b) The cessation of mining does not continue beyond the time, not to exceed  
18 5 years, specified by the department.

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

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

23 **295.68 Certificates of completion and release of security.** (1) Upon the  
24 petition of the operator, but not less than 4 years after notification to the department  
25 by the operator of the completion of the reclamation plan or not less than one year

1 after notification to the department by the operator of the completion of the  
2 reclamation plan as to a portion of the mining site, if the department finds that the  
3 operator has completed reclamation of any portion of the mining site in accordance  
4 with the reclamation plan and this subchapter, the department shall issue a  
5 certificate of completion setting forth a description of the area reclaimed and a  
6 statement that the operator has fulfilled its duties under the reclamation plan as to  
7 that area.

8 (2) Upon the issuance of any certificate of completion under sub. (1) for any  
9 portion of the mining site, but not for the entire mining site, the department shall  
10 allow the operator to reduce the amount of the bond or other security provided under  
11 s. 295.59 (1) to an amount equal to the estimated cost of reclamation of the portion  
12 of the mining site that is disturbed or for which reclamation has been completed but  
13 no certificate of completion has been issued.

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

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

24 **295.69 Termination of proof of financial responsibility for long-term**  
25 **care of mining waste site.** (1) One year after closure, and annually thereafter

1 until the department terminates the obligation to maintain proof of financial  
2 responsibility for long-term care of a mining waste site under sub. (2) (c), an operator  
3 who has carried out all necessary long-term care during the preceding year, may  
4 apply to the department for a reduction in the amount of the proof of financial  
5 responsibility provided under s. 295.59 (2m) equal to the costs of long-term care for  
6 that year. The operator shall provide an itemized list of costs incurred. If the  
7 department determines that the costs incurred are in accordance with the long-term  
8 care requirements in the approved waste site feasibility study and plan of operation  
9 and that adequate funds exist to complete required long-term care for the remainder  
10 of the 40-year period on which the amount of the proof of financial responsibility was  
11 originally determined, the department shall authorize in writing a reduction in the  
12 amount of proof of financial responsibility provided. The department shall make its  
13 determinations within 90 days of an application.

14 (2) (a) An operator may apply to the department for termination of its  
15 obligation to maintain proof of financial responsibility for long-term care of the  
16 mining waste site under s. 295.59 (2m) at any time after the mining waste site has  
17 been closed for 20 years by submitting an application that demonstrates that  
18 continuation of the obligation to maintain proof of financial responsibility for  
19 long-term care is not necessary for adequate protection of public health or the  
20 environment. The burden is on the operator to prove by a preponderance of the  
21 evidence that continuation of the obligation to maintain proof of financial  
22 responsibility for long-term care is not necessary for adequate protection of public  
23 health or the environment.

24 (b) Within 30 days of receiving an application under par. (a), the department  
25 shall provide notice to the public of the application for termination of the obligation

1 to maintain proof of financial responsibility for long-term care. In the notice, the  
2 department shall invite the submission of written comments by any person on the  
3 application within 30 days of the day on which the notice is published. The  
4 department shall provide the notice by publishing a class 1 notice under ch. 985 in  
5 the official newspaper designated under s. 985.04 or 985.05 or, if none exists, in a  
6 newspaper likely to give notice in the area of the mining waste site. The department  
7 shall also send the notice to the operator.

8 (c) Within 120 days of the day on which the department publishes the notice  
9 under par. (b), the department shall determine either that proof of financial  
10 responsibility for long-term care of the mining waste site is no longer required, in  
11 which case the applicant is relieved of the responsibility of providing proof of  
12 financial responsibility for long-term care, or that proof of financial responsibility  
13 for long-term care of the mining waste site is still required, in which case the  
14 applicant may not submit another application under par. (a) until at least 5 years  
15 have elapsed since the previous application.

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

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

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

6           **295.73 Fees.** (1) (a) Except as provided in par. (b), an applicant for a mining  
7 permit is not required to pay any application or filing fee for any approval other than  
8 a mining permit, notwithstanding any fee required under ch. 23, 29, 30, 169, 281,  
9 283, 285, 289, or 291, or rules promulgated under those chapters.

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

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

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

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

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



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

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

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

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

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

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

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

22           (c) After the department approves or denies the application for a mining permit  
23 or, if the applicant withdraws the application for a mining permit, after the applicant  
24 withdraws the application, the department shall refund to the applicant any amount

1 paid by the applicant under par. (a) but not fully allocated against the department's  
2 actual costs.

3 (d) In addition to the fees under par. (a), if the department contracts under s.  
4 295.53 (1) with a consultant to assist in preparation of an environmental impact  
5 statement and awards the contract on the basis of competitive bids, the applicant  
6 shall pay the full costs as provided in the contract.

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

10 **295.75 Effect of other laws.** (1) Except as provided in sub. (2), if there is a  
11 conflict between a provision in this subchapter and a provision in ch. 23, 29, 30, 160,  
12 169, 281, 283, 285, 289, or 291 or in a rule promulgated under one of those chapters,  
13 the provision in this subchapter controls.

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

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

18 **295.77 Review.** (1) A person is entitled to a contested case hearing on a  
19 decision by the department under this subchapter or on a decision by the department  
20 relating to the issuance of an approval only if the person is entitled to a contested case  
21 hearing under s. 227.42 and the person is aggrieved by one of the following:

22 (a) A decision under s. 295.58 to grant or deny a mining permit or a decision  
23 to grant or deny a related approval.

24 (b) A final decision on the environmental impact statement for a proposed  
25 mine.

1           **(2)** A person is only entitled to a contested case hearing under sub. (1) if the  
2 person requests the hearing within 30 days after the department issues the decision  
3 to grant or deny the mining permit, except that if the request concerns an approval  
4 on which the department issues a decision, as authorized under s. 295.57 (8) (b) or  
5 (c), after the deadline under s. 295.57 (8) (a), a person may request a contested case  
6 hearing on that decision within 30 days after the department issues that decision.

7           **(3)** (a) The hearing examiner presiding over a contested case hearing under this  
8 section shall issue a final decision on the case no more than 150 days after the  
9 department issues the decision to grant or deny the mining permit, except that if the  
10 contested case concerns an approval on which the department issues a decision, as  
11 authorized under s. 295.57 (8) (b) or (c), after the deadline under s. 295.57 (8) (a), the  
12 hearing examiner shall issue a final decision on the case no more than 150 days after  
13 the department issues the decision on that approval.

14           (b) If the hearing examiner does not issue a final decision by the deadline under  
15 par. (a), the decision of the department being reviewed by the hearing examiner is  
16 affirmed.

17           (c) The hearing examiner may not issue an order prohibiting activity  
18 authorized under a decision of the department being reviewed in the contested case  
19 hearing.

20           **(4)** (a) A person seeking judicial review of the decision in a contested case  
21 hearing under this section shall comply with the requirements for service and filing  
22 in s. 227.53 (1) (a).

23           (b) A person seeking judicial review of a decision under this subchapter shall  
24 commence the action no more than 30 days after the decision is filed.

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

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

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

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

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

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

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

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

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

14          (3) The department shall cancel all other mining permits held by an operator  
15          who refuses to reclaim a mining site in compliance with the reclamation plan after  
16          the completion of mining or after the cancellation of a mining permit. The  
17          department may not issue any mining permit for that mining site or any other  
18          mining site in this state to an operator who refused to reclaim the mining site in  
19          compliance with the reclamation plan.

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

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

3           **295.79 Enforcement; penalties.** (1) The department of justice shall enforce  
4 this subchapter and any order issued under this subchapter. The circuit court of the  
5 county where the violation occurred has jurisdiction to enforce this subchapter or any  
6 orders issued under this subchapter, by injunction or other appropriate relief.

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

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

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

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

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

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

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

15 **SECTION 102.** 299.85 (7) (a) 2. and 4. of the statutes are amended to read:

16 299.85 (7) (a) 2. Notwithstanding minimum or maximum forfeitures specified  
17 in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969,  
18 29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and  
19 (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2),  
20 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97,  
21 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a),  
22 295.19 (3) (a) and (b) 1., 295.37 (2), 295.79 (2), (3), and (4), 299.15 (4), 299.51 (5),  
23 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if a regulated entity that  
24 qualifies under sub. (2) for participation in the Environmental Compliance Audit  
25 Program corrects violations that it discloses in a report that meets the requirements

1 of sub. (3) within 90 days after the department receives the report that meets the  
2 requirements of sub. (3), the regulated entity may not be required to forfeit more than  
3 \$500 for each violation, regardless of the number of days during which the violation  
4 continues.

5 4. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314  
6 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m)  
7 (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and  
8 (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57  
9 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a),  
10 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b)  
11 1., 295.37 (2), 295.79 (2), (3), and (4), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62  
12 (3) (a) and (c), and 299.97 (1), if the department approves a compliance schedule  
13 under sub. (6) and the regulated entity corrects the violations according to the  
14 compliance schedule, the regulated entity may not be required to forfeit more than  
15 \$500 for each violation, regardless of the number of days during which the violation  
16 continues.

17 **SECTION 103.** 299.95 of the statutes is amended to read:

18 **299.95 Enforcement; duty of department of justice; expenses.** The  
19 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except  
20 ss. 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan approvals,  
21 permits, and water quality certifications of the department, except those  
22 promulgated or issued under ss. 285.57, 285.59, and 299.64 and except as provided  
23 in ss. 285.86 and 299.85 (7) (am). The Except as provided in s. 295.79 (1), the circuit  
24 court for Dane county or for any other county where a violation occurred in whole or  
25 in part has jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this chapter or



1 the rule, special order, license, plan approval, permit, or certification by injunctive  
2 and other relief appropriate for enforcement. For purposes of this proceeding where  
3 chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan  
4 approval, permit or certification prohibits in whole or in part any pollution, a  
5 violation is considered a public nuisance. The department of natural resources may  
6 enter into agreements with the department of justice to assist with the  
7 administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid  
8 to the department of justice under these agreements shall be credited to the  
9 appropriation account under s. 20.455 (1) (k).

10 **SECTION 104.** 323.60 (1) (gm) of the statutes is created to read:

11 323.60 (1) (gm) “Minerals” mean unbeneficiated metallic ore but does not  
12 include mineral aggregates such as stone, sand, and gravel.

13 **SECTION 105.** 323.60 (5) (d) 3. of the statutes is amended to read:

14 323.60 (5) (d) 3. All facilities with 10 or more employees in major group  
15 classifications 10 to 13 in the standard industrial classification manual, 1987  
16 edition, published by the U.S. office of management and budget, at which a toxic  
17 chemical is used at or above an applicable threshold quantity, except that compliance  
18 with the toxic chemical release form requirements under this subdivision is not  
19 required for the placement of a toxic chemical in a storage or disposal site or facility  
20 that is located at a facility with a permit under ch. 293 or a mining permit under  
21 subch. III of ch. 295 if the toxic chemical consists of or is contained in merchantable  
22 by-products, as defined in s. 293.01 (7) or 295.41 (25), minerals as defined in s. 293.01  
23 ~~(8)~~, or refuse, as defined in s. 293.01 (25) or 295.41 (41).

24 **SECTION 106.** 710.02 (2) (d) of the statutes is amended to read:

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

3           **SECTION 107. Nonstatutory provisions.**

4           (1) RULES. *A.R. X*

5           (a) The department of natural resources shall submit in proposed form rules  
6 revising chapters NR 130, 131, 132, and 182, Wisconsin Administrative Code, that  
7 are in effect on the effective date of this paragraph and revising any other rules  
8 promulgated under section 293.13 (1) (a) of the statutes that are in effect on the  
9 effective date of this paragraph to the legislative council staff under section 227.15  
10 (1) of the statutes no later than the first day of the 5th month beginning after the  
11 effective date of this paragraph. The proposed revised rules shall clarify that  
12 chapters NR 130, 131, 132, and 182, Wisconsin Administrative Code, and any other  
13 rules promulgated under section 293.13 (1) (a) of the statutes do not apply to ferrous  
14 metallic mining.

15           (b) The department of natural resources shall submit in proposed form rules  
16 revising chapters NR 500 to 555 and ~~600~~<sup>660</sup> to 679, Wisconsin Administrative Code, that ✓  
17 are in effect on the effective date of this paragraph and revising any other rules  
18 promulgated under sections 289.05 and 289.06 (1) of the statutes that are in effect  
19 on the effective date of this paragraph to the legislative council staff under section  
20 227.15 (1) of the statutes no later than the first day of the 5th month beginning after  
21 the effective date of this paragraph. The department shall revise the rules in  
22 chapters NR 500 to 555 and ~~600~~<sup>660</sup> to 679, Wisconsin Administrative Code, and any ✓  
23 other rules promulgated under sections 289.05 and 289.06 (1) of the statutes so that  
24 they are consistent with subchapter III of chapter 295, of the statutes, as created by  
25 this act.

A.R. Y

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(c) The department of natural resources shall submit, to the legislative council staff under section 227.15 (1) of the statutes, no later than the first day of the 5th month beginning after the effective date of this paragraph, in proposed form rules revising any rules of the department that are in effect on the effective date of this paragraph, in addition to the rules under paragraphs (a) and (b), that provide exemptions for nonferrous mining or associated activities to provide the same exemptions for ferrous mining and associated activities.

(d) Notwithstanding section 227.137 (2) of the statutes, the department of natural resources is not required to prepare an economic impact report for the revised rules required under paragraphs (a) to (c).

(END)

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Insert 179-10

Note

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