

1           **Insert 2-12-RT**

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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**INSERT 6-11-RK**

2           **SECTION 1.** 30.025 (2) of the statutes is amended to read:

3           30.025 (2) HEARING. Once the applicant meets the requirements of sub. (1s) (a),  
4           the department may schedule the matter for a public hearing. Notice of the hearing  
5           shall be given to the applicant and shall be published as a class 1 notice under ch.  
6           985 and as a notice on the department's Internet Web site. The department may give  
7           such further notice as it deems proper, and shall give notice to interested persons  
8           requesting same. The department's notice to interested persons may be given  
9           through an electronic notification system established by the department. Notice of  
10          a hearing under this subsection published as a class 1 notice, as a notice on the  
11          department's Internet Web site, and through the electronic notification system  
12          established by the department shall include the time, date, and location of the  
13          hearing, the name and address of the applicant, a summary of the subject matter of  
14          the combined application for permits, and information indicating where a copy of the  
15          combined application for permits may be viewed on the department's Internet Web  
16          site. The summary shall contain a brief, precise, easily understandable, plain  
17          language description of the subject matter of the application. One copy of the  
18          combined application for permits shall be available for public inspection at the office  
19          of the department, at least one copy in the regional office of the department, and at

1 least one copy at the main public library, of the area affected. Notwithstanding s.  
2 227.42, the hearing shall be an informational hearing and may not be treated as a  
3 contested case hearing nor converted to a contested case hearing.  
4

5 **Insert 63-22-RT**

6 no ff that is an individual permit for which federal law requires the opportunity for  
7 public comment or the ability to request a public hearing prior to issuance of the  
8 approval

RCT ✓

9 **Insert 107-4-MGG**

10 no ff or a wetland general or individual permit that constitutes a water quality  
11 certification as required by 33 USC 1341 (1) ✓

12 **Insert 122-13-MGG**

13 (b) *Federal certification.* For purposes of this section, a wetland permit issued  
14 under this section constitutes water quality certification as required by 33 USC 1341

15 (a) ✓

16 **Insert 129-25-MGG**

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

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

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

22 (c) Any other rule promulgated by the department that relates to wetlands that  
23 conflicts with this section. ✓

1 (3) APPLICATION; RIPARIAN STATUS. (a) For purposes of ss. 30.12 and 30.195, a  
2 person who is not the owner of a piece of riparian property may exercise a riparian  
3 right held by the owner of the piece of riparian property if any of the following apply: ✓

- 4 1. The person leases the piece of riparian property from the owner.
- 5 2. The person holds an easement on the piece of riparian property and the ✓
- 6 easement authorizes the person to exercise that riparian right.

7 **Insert 179-10-RT**

NO  
A

8 ~~(e)~~ Notwithstanding section 227.135 (2) of the statutes, the department of natural  
9 resources is not required to present the statement of the scope of the rules required  
10 under paragraphs () to () to the governor for approval. ✓

use  
A.R. X      use  
A.R. Y

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0762/P1dn  
MGG/RCT/RNK:.....

gjs

*date*

This is a preliminary version of the iron mining draft, based on the Joint Committee on Finance substitute amendment to the 2011 iron mining bill, Senate Substitute Amendment 2 to 2011 Senate Bill 488 (JCF substitute amendment). There was no analysis written for the JCF substitute amendment. We produced this draft without an analysis in order to provide it quickly. While this draft and the issues raised in this note are being reviewed, we will work on an analysis. ✓

As in the JCF substitute amendment, this draft (in s. 295.78) authorizes DNR to issue an order to an operator of an iron mine if it finds a violation of law or of a mining plan and, in s. 295.78 (1) (d), authorizes DNR to suspend the mining permit if the operator fails to comply with the order, unless the operator seeks review of the order under s. 295.77. Section 295.77 provides for administrative (contested case) hearings in limited situations, but it does not seem to allow an operator to seek review of an order under s. 295.78. Section 295.59 (5) states that an operator may seek a contested case hearing under s. 295.77 on the amount of bonds or other security that DNR requires an operator to provide. Again, s. 295.77 does not seem to cover that situation. There may be other situations in which the opportunity for an operator to have a contested case hearing on a DNR action is desired. For example, the draft makes references to the possibility for modifications (see ss. 295.61 (6) (b), 295.63, 295.64 (2) (a), and 295.645 (2) (b) and (8)), but there is no mention in s. 295.77 of the ability to seek a contested case hearing on DNR's action on modifications. Section 295.77 should be clarified to ensure that the draft is consistent and clearly authorizes contested case hearings in all situations in which the intent is to make contested case hearings available. ✓

Consistent with the JCF substitute amendment, this draft provides that a portion of the net proceeds tax paid by an iron mining company is deposited in the economic development fund (see ss. 70.395 (1e) (b) and 25.49 (2m)). The draft also creates s. 238.14, which states that when this money is appropriated to the Wisconsin Economic Development Corporation (WEDC), WEDC must use the money to make grants and loans to businesses in this state, giving preference to businesses located in an area affected by iron mining. I think, but am not certain, that the intent of the JCF substitute amendment was that this money not be appropriated, in other words, that some further action by the legislature be required before this money could be expended. ✓

The problem is that the money derived from the net proceeds tax is not set aside from the other money in the economic development fund. Section 20.192 (1) (r), the current appropriation to WEDC from the economic development fund, is very broad. There is nothing to keep the moneys derived from the net proceeds tax from being expended from that appropriation. It might be argued that as soon as money derived from the net proceeds tax is deposited into the economic development fund some or all of the money should be considered to be appropriated to WEDC and that it must be used as specified in s. 238.14. It is not clear who would decide whether this money is appropriated under s. 20.192 (1) (r) or how the money would be kept track of. This aspect of the draft must be clarified. Please let us know what is intended with respect to the use of the money deposited in the economic development fund.

In s. 295.57 (9), this draft specifies that the procedural provisions in the iron mining law apply to DNR approvals needed for an iron mining operation under other environmental and natural resources laws, rather than the procedural provisions that would ordinarily apply to those approvals. Our review of the JCF substitute amendment revealed that ch. 31, relating to dams and bridges, should have been listed in ss. 295.57 (9) and 295.58 (5). I have added those references. Might a bridge or dam be needed to conduct bulk sampling? If so, ch. 31 should also be referenced in the bulk sampling provisions in s. 295.45 (4), (7), (9), and (10).

There are some statutes that refer to the current metallic mining laws, but that will not refer to the new iron mining laws unless they are amended. Should s. 32.02 (12), which provides that companies with metallic mining permits do not have condemnation powers, be amended so that the exemption applies to companies with iron mining permits? Should s. 70.375 (4) (h) be amended to refer to the cost of premiums for bonds required in this draft under s. 295.45 (5) or 295.59? Should s. 283.84 (3m) be amended so that it continues to apply to persons engaged in iron mining, as well as in other metallic mining? Should s. 706.01 (9) be amended so that the second sentence of s. 706.01 (5) continues to apply to companies that engage in iron mining?

This draft requires the operator of an iron mine to post a bond or other security, before beginning mining, in an amount equal to the estimated cost of fulfilling the reclamation plan in relation to the portion of the mining site that will be disturbed by the end of the following year. See s. 295.59 (1) (c). This provision is based on current s. 293.51 (1). Should language be added to the draft authorizing DNR to modify the amount of the security as the cost of reclamation changes?

The JCF substitute amendment requires DNR to modify its rules that currently apply to all metallic mining to clarify that those rules no longer apply to iron mining. It requires DNR to submit the proposed rule modifications to the Legislative Council Staff for review within five months after the legislation takes effect. In order to give an agency the control needed to comply with this kind of deadline, it is also necessary to exempt the agency from the requirement (established by 2011 Wisconsin Act 21) to have the governor approve the scope statement for proposed rule modifications. This draft includes that exemption. 2011 Wisconsin Act 21 added other new steps to the rule-making process that may lengthen that process. This draft contains a provision (included in the JCF substitute amendment) that exempts the required rule

modifications from one of these steps, the requirement for an economic impact statement. Please let me know if you want more information about the changes to the rule-making process made by 2011 Wisconsin Act 21 or about other options for shortening that process. ✓

Our review of the JCF substitute amendment revealed a problem with the provisions concerning DNR issued approvals needed to conduct bulk sampling. Proposed s. 295.45 (9), (10) (a), and (10g) (b) provide deadlines for DNR to act on those approvals, but the language in last session's s. 295.45 (10g) (b) is not broad enough to cover all individual permits for which federal law requires the opportunity for public comment or the ability to request a public hearing. I have remedied the problem in this draft. ✓

Section 295.443 in this draft is based on s. 293.33 in current law. As in s. 293.33, s. 295.443 (in this draft) refers to tribal governments in subs. (1) and (2) but does not in sub. (4). The omission appears to be an oversight. Should a reference to tribal governments be added to s. 295.443 (4)? ✓

In addition to changes specifically described in this note, we made several minor corrections and clarifications, such as fixing cross-references and punctuation. ✓

Please contact us with any questions or redraft instructions. ✓

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: becky.tradewell@legis.wisconsin.gov

1. I modified s. 295.60 (2) to take out the reference to water quality certifications. However, I recommend taking out this entire provision because I think it creates an ambiguity. Section 295.60 (2) seems to be saying that a wetland permit under s. 295.60 must be issued whenever impacts to a wetland are being evaluated. This is in conflict with the scope of the permitting requirement under s. 295.60 which is limited to discharges. For example, if building a bridge that may affect a wetland but will not involve a discharge into the wetland is envisioned as part of a mining operation, no wetland permit would be required because a permit is only required for discharges. However, a counter argument could be made that if evaluating a wetland is necessary in issuing the bridge permit, a wetland permit issued under s. 295.60 would be necessary because all of s. 295.60 applies. If s. 295.60 (2) is removed, similar language in s. 295.60 (3) and (4) (b) will also need to be removed. ✓

2. 2011 Wisconsin Act 118 eliminated the distinction between federal and nonfederal wetlands and contains a provision stating that a wetland permit is considered a water quality certification for purposes of federal law. I eliminated federal vs. nonfederal distinction in this draft and created a similar provision for purposes of federal law. OK? ✓

3. As drafted, the wetland general permitting provisions created in 2011 Wisconsin Act 118 will not apply. See s. 281.36 (3g). I did not incorporate these provisions because ✓

s.  
See 295.60  
(4)(b) ✓

the timing provisions in s. 281.36 (3g) (h) and in this bill do not mesh. If you want to incorporate the wetland general permitting provisions, specific language reconciling these provisions will need to be drafted.

4. I rewrote s. 295.60 (13), which provides that s. 281.36 does not apply to wetlands subject to s. 295.60, because the in lieu fee program is incorporated by reference into s. 295.60 and the language in the substitute amendment no longer worked.

5. The following items in this drafter's note point out differences between s. 295.60 and provisions that were enacted as part of 2011 Wisconsin Act 118.

a. Regarding s. 295.60 (1) (c), please note that when the term "functional values" is used in s. 281.36, it is not followed by the phrase "and water quality ." Do you want any changes?

b. Regarding s. 295.60 (1) (d), "impact" is not a defined word in s. 281.36, but there are references in s. 281.36 to "direct impacts," "cumulative impacts," and "potential secondary impacts." See s. 281.36 (3n) (b). In this definition of "impact", the terms "direct and indirect" and "temporary and permanent" are not necessary since, when paired, they cover all impacts regardless of their duration or effect. I recommend removing these modifiers.

c. Regarding s. 295.60 (1) (e), the definition of "mitigation" under s. 281.36 (1) (bj) includes the concept of "preservation." Do you want to incorporate that concept into this definition?

d. Regarding s. 295.60 (1) (f), this definition of "mitigation bank" varies slightly from the definition of "mitigation bank" found in s. 281.36 (1) (bL). I do not think that there is a substantive difference except for the reference to "preservation."

e. Regarding s. 295.60 (1) (h), please note <sup>his</sup> ~~his~~ definition of "practicable" varies from the definition of practicable found in s. 281.36 (1) (cp). Do you want any changes?

f. Regarding s. 295.60 (1) (k), "watershed" is a very difficult term to define, and is not defined for purposes of s. 281.36. Do you want to continue to include the definition in this draft?

g. Regarding s. 295.60 (3), please compare this provision with the one found in s. 281.36 (2m). As drafted, s. 281.36 (2m) will not apply to the wetland provisions contained in s. 295.60. See 295.60 (13) (a) in this draft. Let me know if you want any changes.

h. Regarding the use of the term "fill material" in s. 295.60, this term is defined in s. 281.36 (1) (bd). Do you want to incorporate that definition into this draft?

i. I modified the last sentence in s. 295.60 (4) (d) 3. to make the language consistent with the previous sentence.

j. The mitigation provisions in s. 295.60 (9) vary from those found under s. 281.36 (3r) and (3t). As drafted, the provisions under s. 281.36 (3r) and (3t) will not apply except for the in lieu fee program. See s. 295.60 (9) (d) 4. and (13). Let me know if you want any changes.

INS -0762/P1dn  
MGG

k. The provisions relating to conservation easements under s. 295.60 (11) are different from those found in s. 281.36 (8m). 2011 Wisconsin Act 118 expanded the language of sub. (8m) to include "comparable legal instruments." Let me know if you want any changes. ✓

L. Regarding s. 295.60 (12) (b), these exemptions are similar to those found in s. 281.36 (4), but s. 281.36 (4) contains additional language for the provisions that apply to farm, forest, and temporary mining roads. Also, this draft does not include any provisions that are comparable to s. 281.36 (5) and (6). Let me know if you want any changes. ✓

6. In s. 295.60 (12) (a) I changed "statute or rule" to "law" to make it consistent with the language found in s. 295.60 (12) (b). ✓

7. Regarding the definition of "off-site location", the site can be either inside or outside the boundary of the mining site. OK? ✓

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215

295

Please note that I made changes to the part of the JCF substitute amendment that specifies circumstances under which a person who intends to engage in a navigable water activity associated with bulk sampling or mining need not be a riparian owner in order to obtain certain permits. See s. 295.605 (3), as created in this draft. I made these changes because I understand that the provision created in the JCF substitute amendment was not consistent with the intent of the original request for that amendment. Please review the provision as revised in this draft to ensure that it now meets that intent. Please also review s. 295.61 (3), as created in this draft, to ensure that the language that specifies that a person applying for a water withdrawal permit need not be a riparian owner is consistent with your intent given the changes made in this draft in s. 295.605 (3). ✓

Please note that the JCF substitute amendment made ss. 30.208, 30.209, and 30.2095 inapplicable to navigable water activities associated with bulk sampling and mining. See s. 295.605 (6) (b), as created in this draft. Please review this part of the draft in view of the changes made in the law under 2011 Act 167 with regard to the procedures that apply to the issuance of ch. 30 individual permits and general permits. You may wish to change the language under s. 295.605 (6) (b) given the changes in the law under Act 167. ✓

2011 Act 167 also requires that, in certain cases, when the Department of Natural Resources is required to give a class 1 notice under ch. 985, stats., it must also give notice by publication on its Web site. Act 167 also allows DNR to give notices through an electronic notification system. Do you want these additional publication methods established in Act 167 also to apply wherever this draft requires a Class 1 notice? See the following provisions in this draft: ss. 295.45 (10) (b), 295.46 (2) (a), 295.61 (6) (a) 3. b. and (b) 2., and 295.69 (2) (b). ✓



Please review s. 289.35 as amended in the draft. The amended language requires a permit that authorizes a solid waste facility to be located in an area under the jurisdiction of shoreland and floodplain zoning regulations to specify "the location, height, or size of the solid waste facility". Should "or size" be "and size" instead? /

Robin N. Kite  
Senior Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.wisconsin.gov

INS - 0762 / P1 dn MGG

295.60(4)(d) <sup>30</sup> does not  
 (9) i The last sentence in S. 295.60(4)(d) <sup>4</sup> states  
 that the ~~impacted~~ <sup>be</sup> fewest acres are to <sup>be</sup> impacted <sup>minimizing</sup> <sup>0</sup>  
 Instead it limits the scope of the <sup>minimizing</sup> <sup>1</sup>  
~~majority~~ <sup>to</sup> the fewest acres. Is that your  
 intent? <sup>if not,</sup> I think maybe the sentence should  
 be ~~rewritten~~ <sup>rewritten</sup> to make it consistent with  
<sup>previous</sup> the previous sentence. Thus, you may wish  
~~that~~ <sup>to</sup> the sentence read <sup>department</sup> "The ~~department~~ department  
 shall determine which configuration will result  
 in ~~the fewest~~ <sup>s</sup> impacted <sup>to</sup> the fewest acres."

**DRAFTER'S NOTE**  
**FROM THE**  
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LRB-0762/P1dn  
RCT/MGG/RNK:cjs:jf

December 12, 2012

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Please contact us with any questions or redraft instructions.

Rebecca C. Tradewell  
Managing Attorney  
Phone: (608) 266-7290  
E-mail: [becky.tradewell@legis.wisconsin.gov](mailto:becky.tradewell@legis.wisconsin.gov)

1. I modified s. 295.60 (2) to take out the reference to water quality certifications. However, I recommend taking out this entire provision because I think it creates an ambiguity. Section 295.60 (2) seems to be saying that a wetland permit under s. 295.60 must be issued whenever impacts to a wetland are being evaluated. This is in conflict with the scope of the permitting requirement under s. 295.60 which is limited to discharges. For example, if building a bridge that may affect a wetland but will not involve a discharge into the wetland is envisioned as part of a mining operation, no wetland permit would be required because a permit is only required for discharges. However, a counter argument could be made that if evaluating a wetland is necessary in issuing the bridge permit, a wetland permit issued under s. 295.60 would be necessary because all of s. 295.60 applies. If s. 295.60 (2) is removed, similar language in s. 295.60 (3) and (4) (b) will also need to be removed.

2. 2011 Wisconsin Act 118 eliminated the distinction between federal and nonfederal wetlands and contains a provision stating that a wetland permit is considered a water quality certification for purposes of federal law. I eliminated federal vs. nonfederal distinction in this draft and created a similar provision for purposes of federal law. See s. 295.60 (4) (b). OK?

3. As drafted, the wetland general permitting provisions created in 2011 Wisconsin Act 118 will not apply. See s. 281.36 (3g). I did not incorporate these provisions because the timing provisions in s. 281.36 (3g) (h) and in this bill do not mesh. If you want to

incorporate the wetland general permitting provisions, specific language reconciling these provisions will need to be drafted.

4. I rewrote s. 295.60 (13), which provides that s. 281.36 does not apply to wetlands subject to s. 295.60, because the in lieu fee program is incorporated by reference into s. 295.60 and the language in the substitute amendment no longer worked.
5. The following items in this drafter's note point out differences between s. 295.60 and provisions that were enacted as part of 2011 Wisconsin Act 118.
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  - b. Regarding s. 295.60 (1) (d), "impact" is not a defined word in s. 281.36, but there are references in s. 281.36 to "direct impacts," "cumulative impacts," and "potential secondary impacts." See s. 281.36 (3n) (b). In this definition of "impact", the terms "direct and indirect" and "temporary and permanent" are not necessary since, when paired, they cover all impacts regardless of their duration or effect. I recommend removing these modifiers.
  - c. Regarding s. 295.60 (1) (e), the definition of "mitigation" under s. 281.36 (1) (bj) includes the concept of "preservation." Do you want to incorporate that concept into this definition?
  - d. Regarding s. 295.60 (1) (f), this definition of "mitigation bank" varies slightly from the definition of "mitigation bank" found in s. 281.36 (1) (bL). I do not think that there is a substantive difference except for the reference to "preservation."
  - e. Regarding s. 295.60 (1) (h), please note this definition of "practicable" varies from the definition of practicable found in s. 281.36 (1) (cp). Do you want any changes?
  - f. Regarding s. 295.60 (1) (k), "watershed" is a very difficult term to define, and is not defined for purposes of s. 281.36. Do you want to continue to include the definition in this draft?
  - g. Regarding s. 295.60 (3), please compare this provision with the one found in s. 281.36 (2m). As drafted, s. 281.36 (2m) will not apply to the wetland provisions contained in s. 295.60. See 295.60 (13) (a) in this draft. Let me know if you want any changes.
  - h. Regarding the use of the term "fill material" in s. 295.60, this term is defined in s. 281.36 (1) (bd). Do you want to incorporate that definition into this draft?
  - i. The last sentence in s. 295.60 (4) (d) 3. does not state that the fewest acres are to be impacted. Instead it limits the scope of the "minimizing" to the fewest acres. Is that your intent? If not, I think maybe the sentence should be rewritten to make it consistent with the previous sentence. Thus, you may wish the sentence to read "The department shall determine which configuration will result in impacts to the fewest acres."
  - j. The mitigation provisions in s. 295.60 (9) vary from those found under s. 281.36 (3r) and (3t). As drafted, the provisions under s. 281.36 (3r) and (3t) will not apply except

for the in lieu fee program. See s. 295.60 (9) (d) 4. and (13). Let me know if you want any changes.

k. The provisions relating to conservation easements under s. 295.60 (11) are different from those found in s. 281.36 (8m). 2011 Wisconsin Act 118 expanded the language of sub. (8m) to include "comparable legal instruments." Let me know if you want any changes.

L. Regarding s. 295.60 (12) (b), these exemptions are similar to those found in s. 281.36 (4), but s. 281.36 (4) contains additional language for the provisions that apply to farm, forest, and temporary mining roads. Also, this draft does not include any provisions that are comparable to s. 281.36 (5) and (6). Let me know if you want any changes.

6. In s. 295.60 (12) (a) I changed "statute or rule" to "law" to make it consistent with the language found in s. 295.60 (12) (b).

7. Regarding the definition of "off-site location", the site can be either inside or outside the boundary of the mining site. OK?

Mary Gibson-Glass  
Senior Legislative Attorney  
Phone: (608) 267-3215

Please note that I made changes to the part of the JCF substitute amendment that specifies circumstances under which a person who intends to engage in a navigable water activity associated with bulk sampling or mining need not be a riparian owner in order to obtain certain permits. See s. 295.605 (3), as created in this draft. I made these changes because I understand that the provision created in the JCF substitute amendment was not consistent with the intent of the original request for that amendment. Please review the provision as revised in this draft to ensure that it now meets that intent. Please also review s. 295.61 (3), as created in this draft, to ensure that the language that specifies that a person applying for a water withdrawal permit need not be a riparian owner is consistent with your intent given the changes made in this draft in s. 295.605 (3).

Please note that the JCF substitute amendment made ss. 30.208, 30.209, and 30.2095 inapplicable to navigable water activities associated with bulk sampling and mining. See s. 295.605 (6) (b), as created in this draft. Please review this part of the draft in view of the changes made in the law under 2011 Act 167 with regard to the procedures that apply to the issuance of ch. 30 individual permits and general permits. You may wish to change the language under s. 295.605 (6) (b) given the changes in the law under Act 167.

2011 Act 167 also requires that, in certain cases, when the Department of Natural Resources is required to give a class 1 notice under ch. 985, stats., it must also give notice by publication on its Web site. Act 167 also allows DNR to give notices through an electronic notification system. Do you want these additional publication methods

established in Act 167 also to apply wherever this draft requires a Class 1 notice? See the following provisions in this draft: ss. 295.45 (10) (b), 295.46 (2) (a), 295.61 (6) (a) 3. b. and (b) 2., and 295.69 (2) (b).

Please review s. 289.35 as amended in the draft. The amended language requires a permit that authorizes a solid waste facility to be located in an area under the jurisdiction of shoreland and floodplain zoning regulations to specify "the location, height, or size of the solid waste facility". Should "or size" be "and size" instead?

Robin N. Kite  
Senior Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.wisconsin.gov



## Gibson-Glass, Mary

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**From:** Henning, Anna  
**Sent:** Wednesday, December 19, 2012 9:29 AM  
**To:** Tradewell, Becky; Kite, Robin; Gibson-Glass, Mary  
**Cc:** Konopacki, Larry; Bott, Eric; Esser, Jennifer  
**Subject:** LRB-0762/P1

Hi Becky, Robin, and Mary:

Please make the below changes to LRB-0762/P1. All of the changes were prompted or suggested in the drafter's note for the bill. For each item, I have given parenthetical references to the relevant discussions within the drafter's note. For issues raised within the drafter's note that are not addressed below, the requesters either would like no change to the bill or are reviewing the questions in more detail.

- Modify s. 295.45 to add references to ch. 31 in s. 295.45 (4), (7), (9), and (10). (First full paragraph on Page 2 of the drafter's note.)
- Modify s. 32.02 (12) to apply the exception from waste material treatment plant operators' condemnation powers to ferrous mining permits. (Second full paragraph on Page 2 of the drafter's note.)
- Modify s. 70.375 (4) (h) to include the cost of premiums for bonds required under ss. 295.45 (5) or 295.59. (Second full paragraph on Page 2 of the drafter's note.)
- Remove the exemptions from Act 21 from the bill. Instead, require the DNR to present a statement of scope to the Governor no later than 30 days after the effective date of the bill, and also require the department to submit proposed rules to the LC Clearinghouse within 4 months after the Governor approves the statement of scope. (Last paragraph on Page 2 of the drafter's note.)
- ✓ MGB- Modify s. 295.60 (1) (d) to remove unnecessary modifiers. (Paragraph 5. b. on Page 4 of the drafter's note.)
- ✓ MGB- Modify s. 295.60 (4) (d) 3. to read "The department shall determine which configuration will result in impacts to the fewest acres." (Paragraph 5. i. on Page 4 of the drafter's note.)
- MGB- Modify s. 295.60 (11) to add a reference to "comparable legal instruments." (Paragraph 5. k. on Page 5 of the drafter's note.)
- Modify ss. 295.45 (10) (b), 295.46 (2) (a), 295.61 (6) (a) 3. b. and (b) 2., and 295.69 (2) (b) to add a requirement for online posting and authorization for the use of an electronic notification system for Class 1 notices, as is provided under Act 167. (Last paragraph on Page 5 of the drafter's note.)
- Modify s. 289.35 to replace the phrase "location, height or size" with the phrase "location, height, and size." (First full paragraph on Page 6 of the drafter's note.)

Let me know if you have any questions.

Thanks,  
Anna

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Anna Henning  
Staff Attorney  
Wisconsin Legislative Council  
(608) 266-0292  
[anna.henning@legis.wisconsin.gov](mailto:anna.henning@legis.wisconsin.gov)

## Gibson-Glass, Mary

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**From:** Gibson-Glass, Mary  
**Sent:** Tuesday, December 18, 2012 3:37 PM  
**To:** Henning, Anna  
**Subject:** RE: Dn for LRB-0762/P1

Anna,

I am sorry if you wanted an answer to the second question before you got back to us. In any event s. 281.36 (3n) (b) 1., 2., and 3. talks of direct, secondary and cumulative impacts. So if we must define impact at all, I think those are the modifiers that could be used. Larry would have a better idea than I as to what this jargon means in the real world; you may want to discuss it with him.

Mary

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**From:** Henning, Anna  
**Sent:** Tuesday, December 18, 2012 12:29 PM  
**To:** Tradewell, Becky; Kite, Robin; Gibson-Glass, Mary  
**Cc:** Konopacki, Larry  
**Subject:** Dn for LRB-0762/P1

Hi Becky, Mary, and Robin,

I've finally worked my way through the drafters' note for LRB-0762/P1. I think we should be ready to get some answers for you this afternoon. I had just a few questions (Probably the first is for Becky and the second for Mary.):

- Re s. 295.59 (1) (c), I'm unclear why we would need a change here, since, as I read it, the section tracks the current statutory language relatively closely, and requires that the amount of the bond will be re-determined each year. What am I missing? Or – is there a problem with the current provision, too?
- Re s. 295.60 (1) (d), if we removed the suggested terms, would we also remove “cumulative” and “secondary”? Or do you suggest those should stay?

Thanks!  
Anna

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Anna Henning  
Staff Attorney  
Wisconsin Legislative Council  
(608) 266-0292  
[anna.henning@legis.wisconsin.gov](mailto:anna.henning@legis.wisconsin.gov)

## Tradewell, Becky

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**From:** Henning, Anna  
**Sent:** Wednesday, December 19, 2012 3:39 PM  
**To:** Tradewell, Becky; Gibson-Glass, Mary; Kite, Robin  
**Cc:** Konopacki, Larry; Bott, Eric; Esser, Jennifer  
**Subject:** Additional changes to LRB-0762/P1

Becky, Mary, and Robin,

In addition to the changes I sent this morning, please make the following changes to LRB-0762/P1. I've included references to the corresponding paragraph in the drafter's note.

- With regard to references in ss. 295.59 (5) and 295.78 (1) (d) to the opportunity for review of DNR decisions, modify the references as needed to allow an operator to seek judicial review, but not contested case review, of those decisions. Do not modify the scope or availability of the contested case proceeding provided under s. 295.77. (First full paragraph on Page 1 of the drafter's note.)
- Amend s. 283.84 (3m) to clarify that the exclusion for mining operations applies to ferrous mines permitted under ch. 295. (Second full paragraph on Page 2 of the drafter's note.)
- Add a provision in the bill to require the DNR to annually review the bonds required under s. 295.59 (1) (c). The provision would be analogous to s. 293.53 (2) (b) under current law. (Third full paragraph on Page 2 of the drafter's note.)
- Revise the bill to make the general permitting provisions created under Act 118 applicable to wetland impacts reviewed by the DNR under the bill. (Item number 3 on the bottom of Page 3 of the drafter's note.)

Thanks, and let me know if you have questions.

Anna

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Anna Henning  
Staff Attorney  
Wisconsin Legislative Council  
(608) 266-0292  
[anna.henning@legis.wisconsin.gov](mailto:anna.henning@legis.wisconsin.gov)

## Tradewell, Becky

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**From:** Henning, Anna  
**Sent:** Friday, December 21, 2012 12:03 PM  
**To:** Tradewell, Becky; Kreye, Joseph  
**Cc:** Bott, Eric; Konopacki, Larry  
**Subject:** Drafting request for LRB-0762/P1

Hi Becky and Joe,

There is a request for an additional change to LRB-0762/P1. Specifically, please remove all changes made to give effect to Item #22 on the JFC motion for AB 426/SB 488. In place of those changes, the net proceeds tax should be allocated as it is under the version of AB 26 that passed in the Assembly.

I've pasted the text of Item #22 below for your reference.

Thanks, and let me know if you have questions.

Anna

22. *Distribution of net proceeds tax revenue.* Require that, for the first two years after which the mining permit was issued, the first \$83,333 per month, not to exceed a total of \$2 million, must be appropriated in the following manner: (a) \$500,000, annually, to establish, fund, and facilitate cross-training partnership programs between the Cooperative Education Services Agency (CESA) #1 and an established recipient organization with an economic and workforce development center in Southeastern Wisconsin for the purpose of establishing classroom curriculum and hands on job training programs to provide an opportunity to receive instruction related to performing manufacturing jobs in Southeastern Wisconsin facilities involved in producing equipment and products related to the mining industry; and (b) \$500,000, annually, to establish, fund, and facilitate cross-training partnership programs between CESA #12 and an organization operating a skills improvement and apprenticeship fund authorized to administer the operating engineers certification program and provide heavy equipment training for jobs related to mining or the construction of a mine. Specify that the revenues would be appropriated to the Department of Workforce Development (DWD) and these grants must be jointly distributed by DWD and the Wisconsin Economic Development Corporation.

For any net proceeds tax revenues that may accrue in excess of the required expenditures for job training programs described above, or for revenues that accrue after the first 24 months following issuance of the mining permit, distribute revenues in the following manner: (a) 60% to the ILIF; and (b) 40% to the economic development fund for purposes of providing grants and loans to businesses located in this state, with preference for grants and loans to businesses located in an area affected by ferrous metallic mining.

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Anna Henning  
Staff Attorney  
Wisconsin Legislative Council  
(608) 266-0292  
[anna.henning@legis.wisconsin.gov](mailto:anna.henning@legis.wisconsin.gov)

**Tradewell, Becky**

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**From:** Konopacki, Larry  
**Sent:** Sunday, December 23, 2012 12:42 PM  
**To:** Bott, Eric; Esser, Jennifer  
**Cc:** Henning, Anna; Tradewell, Becky  
**Subject:** GTAC requests (2) (general instructions)



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Larry A. Konopacki  
Wisconsin Legislative Council  
(608) 267-0683  
[larry.konopacki@legis.wisconsin.gov](mailto:larry.konopacki@legis.wisconsin.gov)

12/27/12  
Handwritten note from  
Larry Konepudi

### DRAFTING INSTRUCTIONS FOR LRB - 0762/P1

1.  Section 3, p. 3, Ins. 1-5 - Please delete entirely.
2.  Please delete sections 29, 30, 31 and 32 on pages 9-11.
3.  Section 34, p. 11, ln. 23 - Please delete "(intro.)".
4.  Page 12, Ins. 1-2 - Please delete ", except as follows:".
5.  Please delete sections 35 and 36 on page 12.
6.  Please delete section 41 on page 13, Ins. 12-25 and p. 14, Ins. 1-2.
7.  Please delete sections 49 and 50 on p. 16, Ins. 3-24.
8.  Section 74, p. 25, ln. 13 - Change "height, or size of the solid waste facility ..." to read "height, and size of the solid waste facility...."
9.  The Drafter raised the question whether tribal governments should be added to s. 295.443(4) on page 56, Ins. 21-25 and page 53, Ins. 1-8. Please do not add tribal governments. Under the similar provision in current law, s. 293.33(4), tribal governments are not included.  
*leave as is under current law.*
10.  Page 67, ln. 10 - Revise "person proposing to engage in a mining project shall notify the department in writing" to read "person proposing to engage in a mining project shall notify the department and the U.S. Army Corps of Engineers in writing."
11.  Page 68, after ln. 17 - Insert the following after ln. 23 and before s. 295.47:  
(4) After providing the notice to the U.S. Army Corps of Engineers under subd. 1., the person proposing to engage in a mining project shall meet with the U.S. Army Corps of Engineers to discuss the environmental impact report and any of the information the person will be discussing with the department as set forth in subd. 1.-2.
12.  Insert the following on p. 69 after ln. 7 and before "(b)":  
"(am) For the purposes of s. 295.57(7)(a), as part of the application for a mining permit, an applicant may specify a deadline for the department to act on the mining permit that is more than 420 days after the day on which the application is administratively complete under s. 295.57(2)."
13.  ~~Page 79, ln. 18 - Please insert "295.607" after "295.605."~~
14.  Page 79, ln. 24 - Revise "in an area within the property owned by the mining operator" to read "in an area within the property owned, leased or under easement by the mining operator."

Yes

15. Page 81 – Please delete lines 16-22 and replace with the following:

(d) Chemical and physical characteristics testing, including testing to determine the leaching potential of the mining wastes and the composition of the resulting leachate, which may include using:

1. Static Testing, such as EPA method 600/2-78-054 or EPA method 1312 or modifications thereof;
2. Kinetic Testing, such as ASTM designation D5744-07, or modifications thereof;
3. Microscopic Testing for mineralization characterization.

One or more of Static, Kinetic and Microscopic Testing shall not be required if the applicant demonstrates to the department, based on the analyses in pars. (b) and (c) or on past experience, that there is not a probability for significant adverse environmental impact or probability of an adverse impact on public health, safety or welfare.

No

16. Page 104, ln. 22 – Change “The department shall protect as confidential” to read (b) “The department and the state geologist shall protect as confidential....”

No

17. Page 110, ln. 5-16 – Please delete and replace with the following:

“(7) DEADLINE FOR ACTING ON MINING PERMIT APPLICATION. (a) The Department shall approve an application for a mining permit, and issue a mining permit, or deny the application, in accordance with s. 295.58, no later than the deadline specified by the applicant under s. 295.47(1)(am) or, if the applicant does not specify a deadline under s. 295.47(1)(am), no more than 420 days after the day on which the application for a mining permit is administratively complete under sub. (2).”

No

18. Page 110, ln. 18 – Please delete “including any extension agreed to by the applicant.”

No

19. Page 110, ln. 21 – Please delete “including any extension agreed to by the applicant.”

Yes

20. Page 110, ln. 22 – Insert the following after “for mandamus”:

“in the circuit court for the county in which the majority of the proposed mining site is located.”

No

21. Page 111, ln. 6 – Delete “including any extension agreed to by the applicant”.

No

22. Page 111, ln. 11 – Delete “including any extension agreed to by the applicant”.

Yes

23. Page 112, ln. 2 – Revise “concerning public notice, comment,” to “concerning administrative completeness, public notice, comment,”.

which is listed  
249 sections that could apply

24. Page 112, ln. 6 – Change “285, 289 or 291” to read “285, 289, 291, or 299”,

25. In general, wherever the bill lists chapters preceded by “notwithstanding [the chapters]”, add “299” to the list.

Yes

26. Page 155, ln. 18 – Change “or at the boundary of the property owned or leased by the applicant” to read “or at the boundary of the property owned, leased or under easement by the applicant”.

Yes

27. Page 155, ln. 23 – Change “paragraph, but not beyond the boundary of the property owned or leased by the” to read “paragraph, but not beyond the boundary of the property owned, leased or under easement by the”.

No

28. Page 161, ln. 10 – At the end of the sentence following “mandatory intervention boundaries”, insert the following:

“and that locations at which monitoring is required along the mandatory intervention boundary are not closer together than 1,200 feet.”

See # 24, 25

29. Page 169, ln. 12 – Revise “285, 289, or 291” to read “285, 289, 291 or 299”.

30. Page 178, lns. 8-11– Delete:

Notwithstanding section 227.135(2) of the statutes, the department of natural resources is not required to present the statement of the scope of the rules required under paragraphs (a) to (c) to the governor for approval.

Stick with instructions for rule's provisions sent last week

In the Drafter's Note, the Drafter indicated that the language deleted above was included to ensure sufficient time for rulemaking to occur within the five month period and still comply with 2011 Wis. Act 21. Rather than include the exemption language deleted above, please modify the five month time period to allow sufficient time to complete the process under 2011 Wis. Act 21. However, please continue to exempt the required rule modifications from the requirement for an economic impact statement.

Yes (leave as is)

31. The Drafter notes that the requirement that a mandamus action under s. 295.57(7) be brought in the circuit court for the county in which the majority of the proposed mining site is located superseded the general authority in s. 801.50(3)(a) that would allow the mandamus action to be brought in any county. That is the intent. Please leave as drafted.

Yes

32. The Drafter notes that current law authorizes DNR to annually modify the amount of the security posted by an operator for the amount of the bond to be adjusted as the size of the



disturbed but unreclaimed portion of the mining site changes over time. Please add language to make s. 295.59(1)(c) consistent with current law.

33. The Drafter poses questions about changes to s. 32.02(12), s. 70.375(4)(h), s. 283.84(3m) and s. 706.01(9). Please make the suggested changes (in other words, the answer to each question beginning with "Should" is yes).

34. The Drafter indicates potential inconsistency regarding the right to and timing of contested case hearings under s. 295.77. The intent is that any decision made during the course of the permitting process prior to issuance or denial of a mining permit must be raised in a single contested case hearing after the grant or denial of the mining permit. However, decisions made by the department after issuance or denial of the mining permit (e.g., modification requests, orders under s. 295.78, etc.), should be subject to the general contested case hearing requirements and procedures in ch. 227. The following changes are intended to accomplish that intent.

(a) Page 169, ln. 19 – The statement "decision by the department under this subchapter or a decision by the department" should be changed to read "decision by the department under this subchapter issued prior to a decision under s. 295.58 or a decision by the department."

(b) Page 170, lns. 7-8 – The statement "over a contested case hearing under this section shall issue a final decision" should be changed to read "over a contested case hearing under subs (1) and (2) shall issue a final decision."

(c) Page 170, lns. 20-24 – Should be deleted and the following inserted:

(4) A person seeking judicial review of the decision in a contested case hearing under subs. (1)-(3) shall comply with the requirements for service and filing in s. 227.53(1)(a) and shall commence the action no more than 30 days after the decision is filed.

(5) A person is entitled to a contested case hearing on a decision by the department under this subchapter issued after a decision under s. 295.58 and other than a decision in a contested case hearing under subs. (1)-(3) only if the person is entitled to a contested case hearing under s.

227.42. The procedure for contested case hearings in ch. 227 shall apply to a contested case hearing under this subsection, including procedures for judicial review of a decision in such a contested case hearing.

yes

35. The Drafter requests confirmation that the amendment to s. 289.35 should remain in the draft. It should remain.

36. ~~Please see proposed revisions to: (a) bulk sampling, s. 295.45; (b) impacts to wetlands, s. 295.60; (c) impacts to navigable waters, s. 295.605; and (d) withdrawals of surface waters and groundwater, s. 295.61.~~

12/28/12 Larry and I discussed some of the items in the document "Drafting instructions for LRB-0762/P1."

Item 11 - First there is the problem of requiring a person to meet with ACE when neither the applicant nor the state legislature has the power to make ACE meet with the person.

So Larry said to require the person to make a good faith effort to meet with ACE.

Second - the language is not intended to require the meeting to happen before the meeting with DNR.

Third - the cross-references to subch. (1) and (2) don't quite make sense because they refer to state approvals, state requirements for an EIRg. Information DNR will require to process the state application, and information that DNR has that may be helpful to the person who may apply for the permit.

Larry suggested that instead the language should refer to information relevant to Federal regulatory that may be applicable to the proposed mining (or something along those lines).

Item 23 I explained that the provision to which this item refers only relates to s. 295.57 ("this section") and ss. 295.58(5) and 295.77. The instruction is to add "administrative completeness" to this provision. However, ss. 295.58(5) and 295.77 do not have anything to do with

(s. 295.57(2)) completeness of applications. The only provision in s. 295.57 that relates to administrative completeness applies to the mining permit only. There is nothing outside of this new subchapter that relates to completeness of iron mining permits. Therefore, it is not necessary and, in fact, does not make sense to add a reference to "completeness" as requested. Larry agreed this should not be done.

## Tradewell, Becky

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**From:** Konopacki, Larry  
**Sent:** Wednesday, January 02, 2013 2:41 PM  
**To:** Tradewell, Becky  
**Cc:** Henning, Anna  
**Subject:** RE: References to ch. 299

Becky, I think that it would be counterproductive to add references to ch. 299 as discussed below. It would appear to me that to do so may imply (or more than imply) that these types of credentialing processes should be wrapped into the master hearing / mining permit approval process, which I don't believe is the case now and I do not believe is consistent with anyone's intent. Please leave these references out for now and we will discuss this with the authors and let you know if there is any further instruction.

Thanks!

Larry

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Larry A. Konopacki  
Wisconsin Legislative Council  
(608) 267-0683  
[larry.konopacki@legis.wisconsin.gov](mailto:larry.konopacki@legis.wisconsin.gov)

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**From:** Tradewell, Becky  
**Sent:** Wednesday, January 02, 2013 1:40 PM  
**To:** Konopacki, Larry  
**Cc:** Henning, Anna  
**Subject:** References to ch. 299

Larry,

I am thinking about the request to add ch. 299 to the lists of statutes that LRB-0762 "notwithstands." As I understand it, the only statute in that chapter that has been identified as a concern is s. 299.05. It mainly covers individual, professional credentials. That statute sets a 30-day deadline for DNR to act on a solid waste facility operator certification (subject to a potential extension under sub. (4)). It requires DNR to set a deadline (which it may do without making rules) to act on a water system operator certification and on a well driller or pump installer registration. Nothing else it covers seems likely to be relevant.

It's hard to see how the (current) statute could be an issue for a mining company. The mining company might need to hire someone with one of those credentials, but it doesn't seem to me that they are the kinds of things that would or should be part of the permitting process for a mine. (It's like if they needed to hire a plumber or a surveyor, the statutes relating to those credentials would apply and that does not seem like it would be a concern.) It seems unlikely that these credentials would be needed for a bulk sampling operation. It actually seems that in the event that a company wanted one of its employees to get one of these credentials, it would be better not to have it tangled up in the bulk sampling or mining approval process. For example, if an employee applied for a solid waste facility operator certification for a mine and DNR denied it, the employee would not have a right to a contested case hearing until the deadline for acting under the draft (either when the mining permit is issued or later, if the employee applies more than 60 days after the mining permit application is administratively complete).

In any event, the only thing that s. 299.05 relates to is the deadline for issuing a credential, so if we have to add references to lists in the draft, a reference should only be added where deadlines are relevant. As to the authority to set a deadline without making rules, "or as otherwise established by the department" is much too broad. Any language added to accommodate this concern would have to be more like "or established under s. 299.05 (2) (a)."

This is where there are lists that were identified in the drafting instructions plus one that I found by searching the draft:

#### Bulk sampling

Page 59, in s. 295.45 (4) (a): applications are considered to be complete unless DNR informs the applicant otherwise within 30 days. Note that under s. 299.05 (4) (b), DNR must inform the applicant within **14** days that an application is not complete in order to extend the time limit under the section and satisfy other conditions in s. 299.05 (4).

Pages 61-62, in s. 295.45 (7) [note that they have requested that par. (a) be deleted]: when issuing an approval DNR shall require the activity to be conducted at a location with the fewest environmental impacts. This is not relevant to deadlines for DNR action.

Page 62, in s. 295.45 (9) (intro.): 30 day limit for acting on waivers, etc., general permits and registration permits. It doesn't seem as though any of this would be applicable to the credentials covered by s. 299.05.

Page 92, in s. 299.05 (10) (a): 60 day deadline for acting on most approvals. Note that this deadline is longer than that for solid waste facility operators in s. 299.05.

#### Application procedure

Page 112, in s. 295.57 (9): the provisions in s. 295.57, 295.58 (5) and (6) and 295.77 prevail. This would be one to change if they really want to have the iron mining procedures apply to the credentials covered by s. 299.05.

#### Fees

Page 167, in 295.73: explains which fees apply. Section 299.05 does not require payment of fees, so no reference should be added.

#### Effect of other laws

Page 169, in s. 295.75 (1): effect of other laws. If a reference is added in s. 295.57 (9), one should also be added here.

Let me know what you think (by email or we can discuss).

Becky

## Tradewell, Becky

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**From:** Konopacki, Larry  
**Sent:** Thursday, January 03, 2013 4:34 PM  
**To:** Tradewell, Becky; Gibson-Glass, Mary; Kite, Robin  
**Cc:** Henning, Anna  
**Subject:** GOP draft -1/3/12

Hi all, we heard back from Jen Esser. They asked for the following with respect to the mining draft:

- Please make no changes to the waste characterization methodology at this time, ie: leave as in LRB 00762 (#15 of the "drafting Instructions" document). Continue to work on this part for a possible future amendment after introduction of the bill.
- Please continue to leave out any minimum well separation along the MIB (#28 of the "drafting Instructions" document).
- Please do not include changes to the permit timeline and substantive permitting procedure for approvals applied for after the mining permit decision is issued. Continue to work on this part for a possible future amendment after introduction of the bill.
- Please specify that the venue for any judicial review proceeding under the bill is the same as is provided for the mandamus action.

That's all. Thanks.

Larry

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Larry A. Konopacki  
Wisconsin Legislative Council  
(608) 267-0683  
[larry.konopacki@legis.wisconsin.gov](mailto:larry.konopacki@legis.wisconsin.gov)

## Tradewell, Becky

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**From:** Konopacki, Larry  
**Sent:** Sunday, December 23, 2012 12:42 PM  
**To:** Bott, Eric; Esser, Jennifer  
**Cc:** Henning, Anna; Tradewell, Becky  
**Subject:** GTAC requests (3) (bulk sampling)



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Larry A. Konopacki  
Wisconsin Legislative Council  
(608) 267-0683  
[larry.konopacki@legis.wisconsin.gov](mailto:larry.konopacki@legis.wisconsin.gov)

For LRB

From Larry Kongspeck  
12/27/12 p.m.

**295.45 Bulk sampling plan.** (1) A person who intends to engage in bulk sampling may file a bulk sampling plan with the department. The collection of data under a bulk sampling plan may include sampling and analysis related to geophysical, geochemical, groundwater, and surface water conditions, as well as any other data or studies necessary to prepare an application for a mining permit, including the mining plan, reclamation plan, mining waste site feasibility study and plan of operation, or any other approval required for the proposed mining.

(2) A person shall include all of the following in a bulk sampling plan:

(a) A description and map of the bulk sampling site, including the number of acres in the site, the number of acres of land that will be disturbed, if any, associated with each bulk sampling location, and the locations and types of sampling or studies to be conducted at each bulk sampling location.

(b) A description of the methods to be used for the bulk sampling.

(c) A site-specific plan for controlling surface erosion that identifies how impacts to plant and wildlife habitats will be avoided or minimized to the extent practicable.

(d) A revegetation plan for each area where bulk sampling will be performed that describes how adverse impacts to the environment will be avoided or minimized to the extent practicable and how the site will be revegetated and stabilized and that identifies how adverse impacts to plant and wildlife habitats will be avoided or minimized to the extent practicable.

(e) The estimated time for completing the bulk sampling and revegetation of the bulk sampling locations.

(f) A description of any known adverse environmental impacts that are likely to be caused by the bulk sampling and how those impacts will be avoided or minimized to the extent practicable.

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change

~~Deleted: that conforms to requirements under ss. 281.33 (3) and 283.32 and~~



(g) A description of any adverse effects, as defined in s. 44.31 (1), that the bulk sampling might have on any historic property, as defined in s. 44.31 (3), that is a listed property, as defined in s. 44.31 (4), that is on the Wisconsin inventory of historic places, as defined in s. 44.31 (12), or that is on the list of locally designated historic places under s. 44.45; or any scenic or recreational areas; and plans to avoid or minimize those adverse effects to the extent practicable.

(2m) The department shall protect as confidential any information, other than effluent data, contained in a bulk sampling plan and in any application for an approval that is required before the bulk sampling may be implemented, upon a showing that the information is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), and any information relating to the location, quality, or quantity of a ferrous mineral deposit, to production or sales figures, or to processes or production unique to the applicant or that would tend to adversely affect the competitive position of the applicant if made public.

(3) Within 14 days of receipt of a bulk sampling plan, the department shall identify for the applicant, in writing, all approvals that are required before the bulk sampling may be implemented, any waivers, exemptions, or exceptions to those approvals that are potentially available, and any information that the department needs to issue the approvals or to issue a decision on any waiver, exemption, or exception. If no approvals are required, the department shall notify the applicant that no approvals are required and that the applicant may proceed with the bulk sampling.

(3e) If a storm water discharge permit under s. 283.33 (1) (a) or a water quality certification under rules promulgated under subch. II of ch. 281 to implement 33 USC 1341 (a) is

*(Include if a provision of ch. 299 could arguably apply to a ferron mining operation)*

required before bulk sampling may be implemented, the person filing the bulk sampling plan may apply for and be issued the permit or certification.

(3m) The department shall act on any required construction site erosion control and storm water management approval, notwithstanding any authorization by the department of a local program to administer construction site erosion control and storm water management requirements.

(3s) An applicant shall submit all of the following at the same time:

- (a) Applications for individual approvals identified under sub. (3).
- (b) Applications for coverage under general permits or registration permits identified under sub. (3).
- (c) Applications for waivers, exemptions, or exceptions identified under sub. (3).
- (d) A bond, as provided in sub. (5).

(4) (a) Notwithstanding any provision in ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, 291, or 299, or in a rule promulgated under those chapters, or as otherwise established by the department, that is applicable to an approval identified under sub. (3), the application for any approval, for a waiver, exemption, or exception to an approval, or for a determination that the proposed bulk sampling activity is below the threshold that requires an approval, is considered to be complete on the 30th day after the department receives the application, unless, before that day, the department provides the applicant with written notification that the application is not complete, stating the reason for the determination and describing the specific information necessary to make the application complete.

**Comment [JDB1]:** On page 2, first full paragraph, the drafter asks whether ch. 31 should be referenced within (4), (7), (9) and (10). We agree and have incorporated that edit.  
**Deleted:** or

(b) If the department provides a notice under par. (a), the applicant shall supplement the application by providing the specified information. The application is complete when the applicant provides the information.

(c) If the department determines that the issuance of an approval is contingent upon the issuance of a permit under s. 29.604 (6m), and if the application for the permit under s. 29.604 (6m) is filed with the approval application, the department may not determine that the approval application is incomplete on the basis that the department has not yet issued the permit under s. 29.604 (6m).

(5) (a) A person who intends to engage in bulk sampling shall submit with the bulk sampling plan a bond in the amount of \$5,000 that is conditioned on faithful performance of the requirements of this section, that is issued by a surety company licensed to do business in this state, and that provides that the bond may not be canceled by the surety, except after not less than 90 days' notice to the department in writing by registered or certified mail.

**Comment [JDB2]:** On page 2, 2<sup>nd</sup> full paragraph, the drafter asks whether s. 70.375(4)(h) should be amended to refer to the cost of premiums for bonds required in this draft? Yes, please amend s. 70.375(4)(h) accordingly.

(b) If the surety for a bond submitted under par. (a) issues a cancellation notice, the person who filed the bulk sampling plan shall deliver a replacement bond at least 30 days before the expiration of the 90-day notice period. If the person fails to submit a replacement bond, the person may not engage in bulk sampling until the person submits a replacement bond.

(c) If the license of the surety company for a bond submitted under par. (a) is revoked or suspended, the person who filed the bulk sampling plan, within 30 days after receiving written notice from the department, shall deliver a replacement bond. If the person fails to submit a replacement bond, the person may not engage in bulk sampling until the person submits a replacement bond.

(see p. 3)

(d) The department may require that the amount of the bond submitted under this subsection be increased at any time, if the department determines that it is unlikely that the bond would be adequate to fund the cost to this state of completing the revegetation plan.

(e) The department shall release a bond submitted under this subsection one year after the time for completing the bulk sampling and the revegetation set forth in the bulk sampling plan if the department determines that the person who engaged in bulk sampling has complied with this section.

(7) Notwithstanding any provision in ch. 23, 29, 30, ~~31~~, 169, 281, 283, 285, 289, 291, 299, or a rule promulgated under those chapters or as otherwise established by the department as being applicable to an approval identified under sub. (3), the department shall require the bulk sampling activity for which the approval is issued to be conducted at locations that result in the fewest overall adverse environmental impacts,

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Deleted: (a) When considering an application for an approval identified under sub. (3), the department shall recognize the fixed location of the ferrous mineral deposits, the water needs inherent in mining, and the need for mining waste sites and processing facilities, including wastewater and sludge storage or treatment lagoons, to be contiguous to the location of the ferrous mineral deposits.¶

Deleted: (b) When issuing an approval,

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(8) In determining whether to approve or deny an application for an approval identified under sub. (3), the department shall consider the site-specific erosion control plan, the revegetation plan, and any Mitigation Program under s. 295.60(9), any measures under s. 295.605, or any conservation measures under s. 295.61 that the applicant proposes to take.

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(9) Notwithstanding any inconsistent period in ch. 23, 29, 30, ~~31~~, 169, 281, 283, 285, 289, 291, or 299, or in a rule promulgated under those chapters, or as otherwise established by the department, that is applicable to an approval identified under sub. (3), the department shall approve or deny an application within 30 days after the day on which the application is considered to be complete under sub. (4) if any of the following apply:

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see p. 3

(a) The application is for a waiver, exemption, or exception to an approval for a bulk sampling activity or for a determination that the proposed bulk sampling activity is below the threshold that requires an approval.

(b) The application is for a determination of eligibility or authorization for coverage under a general permit or a registration permit.

(10) (a) Notwithstanding any inconsistent period in ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, 291, or 299, or in a rule promulgated under those chapters, or as otherwise established by the department, that is applicable to an approval identified under sub. (3), the department shall approve or deny any application for an approval identified under sub. (3) to which sub. (9) does not apply within 60 days after the date on which the application is considered to be complete under sub. (4), unless the application is for an individual permit for which federal law requires the opportunity for public comment or the ability to request a public hearing prior to issuance of the approval. The department may modify the application for an approval in order to meet the requirements of this section, and, as modified, approve the application.

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(b) The department shall publish a class I notice, under ch. 985, and as a notice on the department's Internet Web site, that describes the availability of information concerning the activity for which an approval described in par. (a) is required, and information indicating where the full text of the materials may be viewed on the department's Internet Web site, its proposed decision, its draft approval, information or summaries related to the approval, the department's analyses and preliminary determinations relating to the approval, the preapplication description under s. 295.46, any additional information that a law concerning the approval requires to be made available, and the opportunity to submit written comments within 30 days after the notice is published.

**Comment [JDB3]:** On pages 5-6, the drafter notes that 2011 Act 167 requires DNR to give notice by publication on its Web site and allows DNR to provide for notices through an electronic notification system. The drafter asks whether these additional publication methods should apply where ever the draft requires a Class I notice? Yes, notice by publication on the department's Internet Web site and, if available, through an electronic notification system. We agree that ss. 295.45(10)(b), 295.46(2)(a), 295.61(6)(a)3.b. and (b)2. And **295.69(2)(b)** and any other sections that provide for Class I notice should include these provisions. We have provided edits to reflect these provisions within this section.

When such provisions are included, however, a statement should be added indicating that the date on which public notice is provided is the date on which the department first publishes notice on its Internet Web site.

(c) In the notice under par. (b), the department shall also specify the date, time, and location of the public informational hearing under par. (e). The department shall send the notice to any person to whom the department is required to give notice of any proposed determination, application, or hearing concerning an approval described in par. (a) under the laws relating to the issuance of the approval or any person upon request. The department's notice to any person that requests such notice may be given through an electronic notification system established by the department. For purposes of determining the date on which public notice is provided under par. (b), the date on which the department first publishes notice on its Internet Web site shall be considered the date of public notice.

(d) If there is more than one approval described in par. (a), the department shall issue one notice and coordinate the public comment period for all of the approvals. If possible, the department shall coordinate the notice and the public comment period for an approval that is an individual permit for which federal law requires the opportunity for public comment or the ability to request a public hearing prior to issuance of the approval with notice and the public comment period for the approvals described in par. (a).

(e) The department shall hold a public informational hearing within 30 days after publishing the notice under par. (b). The department shall hold the public informational hearing in the county where the majority of the proposed bulk sampling site is located. If there is more than one approval described in par. (a), the department shall hold a single public informational hearing covering all of the approvals and the preapplication description under s. 295.46. If possible, the department shall include consideration of an approval that is an individual permit for which federal law requires the opportunity for public comment or the ability to request a public hearing prior to issuance of the approval in the public informational hearing under this

paragraph. The public informational hearing under this paragraph is not a contested case hearing under ch. 227.

**(10g)** (a) If it is not possible to coordinate the public comment period and public informational hearing for an approval that is an individual permit for which federal law requires the opportunity for public comment or the ability to request a public hearing prior to issuance of the approval with the public comment period and public informational hearing under sub. (10), the department shall issue a separate public notice and hold a separate public informational hearing for the approval in accordance with the law governing the approval.

(b) The department shall approve or deny the application for an approval that is an individual permit for which federal law requires the opportunity for public comment or the ability to request a public hearing prior to issuance of the approval within 180 days after the date on which the application is considered to be complete under sub. (4).

**(10r)** An approval identified under sub. (3) is issued upon mailing and is final and effective upon issuance.

**(11)** The department is not required to prepare an environmental impact statement or an environmental assessment for an approval required for bulk sampling.

**Comment [JDB4]:** On page 3, first full paragraph, the drafter notes that the language in this s. 295.45(10g)(b) has been corrected to cover all individual permits for which federal law requires the opportunity for public comment or the ability to request a public hearing. We agree with this correction.

For LRB

From Larry Konopack  
12/27/12 p.m.

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

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

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

(c) "Federal wetlands" means a wetland that is subject to federal jurisdiction under 33 USC 1344.

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

(e) "Mitigation" means the restoration, enhancement, preservation, or creation of wetlands to offset adverse impacts to other wetlands.

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

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

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

yes, this is necessary

**Comment [JDB1]:** s. 281.36 definition of fill material should be incorporated per drafter's note on page 4, 5.h.

**Comment [JDB2]:** On page 4, 5.a., the drafter notes that "functional values" is not followed by "and water quality" in s. 281.36. Revisions have been made to address.

**Comment [JDB3]:** On page 4, 5.h. the drafter notes that "impact" is not defined in s. 281.36. Edits have been made throughout for consistency with s. 281.36 and the use of "impacts."

**Deleted:** (c) "Functional values and water quality" means the water quality related wetland functional values and uses specified in sub. (6) (a) 1. to 7.

**Deleted:** (d) "Impact" means a permanent, temporary, cumulative, secondary, direct or indirect result that is attributable to a discharge to which the wetland water quality standards apply

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**Comment [JDB4]:** Mitigation should include "preservation" as in s. 281.36 per the drafter's note on page 4, 5.c.

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**Comment [JDB5]:** Edits made to definition to address drafter note on page 4, 5.d.

**Comment [JDB6]:** Off-site location can be either inside or outside the boundary of a mining site per drafter's note on page 5, 7.

**Comment [JDB7]:** Edits made to definition to address drafter note on page 4, 5. E.

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**Deleted:** purposes and the needs of bulk sampling or a mining operation

- with respect to definitions in this section, if the definition proposed in this document is substantially similar to the definition under s. 281.36(1), use the current-law definition.



*hold off on this addition and additions of this term in this section, for now.*

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

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

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

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(L) "Water quality standards" means the wetland water quality standards specified under sub. (5) and other water quality standards set under rules promulgated by the department under s. 281.15 applicable to a mining operation or bulk sampling.

**Comment [JDB8]:** Definition of "watershed" has been removed for consistency with s. 281.36 per drafter note on page 4, 5.f.

**Deleted:** (k) "Watershed" means an area of land where all of the water drains into a common waterway

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**Deleted:** a water quality standard specified under sub. (6)

(m) "Wetland functional values" means the water quality related functional values and uses specified in sub. (6)(a)1.-7.

(2) **SCOPE.** This section applies to any approval that involves an evaluation of impact to wetlands, that is associated with mining or bulk sampling, including approvals pursuant to sub. (4)(b).

**Comment [JDB9]:** On page 3, 1., the drafter recommended removing the reference to water quality certifications. The scope of approvals subject to this section should include: wetland individual permits, WQC for Corps permits issued with respect to federal wetlands, and other DNR approvals that require an evaluation of impacts to wetlands. The intent is that this section be used to permit discharges and fills to wetlands (e.g., as 281.36 for non mining projects) and for reviews of impacts to wetlands that occur pursuant to other DNR approvals. See Wis. Admin. Code § NR 103.06 for a partial list of DNR approvals that would be subject to reviews for impacts upon wetlands. To the extent that the waterway at issue is subject to federal jurisdiction, then the DNR's review must also satisfy its water quality certification requirements under Wis. Admin. Code ch. NR 299.

(3) **WETLAND DETERMINATIONS AND DELINEATIONS.** For purposes of this section, wetland determinations and wetland boundary delineations shall be consistent with the U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual and any final regional supplement to the manual. The department may rely on wetland determinations and wetland boundary delineations made by other agencies and consultants. If the applicant for a wetland permit or for any other approval for an activity involving impacts to wetlands has provided information to the department that is identified in the manual or any final regional supplement as being sufficient to make a wetland determination or a delineation of boundaries, the department

On page 3, 3, the drafter noted that the wetland general permitting provisions would not apply. It would be appropriate to provide for the ability to obtain a wetland general permit and appropriate provisions should be incorporated into this section. The scope should also include wetland general permits under s. 281.36(3g); however, the provisions under this section of sub. (3) should apply, and potentially subs. (5) and (7) to the extent that sub. (5) and (7) do not conflict with the terms of the General Permit itself.

may visit the mining site to conduct surveys or gather additional site-specific quantitative data provided that the department does not discontinue the processing of the application to do so. An applicant for an approval under this section may be an owner, lessee or a holder of an easement of land in order to request that the department provide a wetland identification or delineation. Notwithstanding s. 23.321(2)(c), the department may provide a wetland confirmation of the boundaries of a wetland as delineated by a 3<sup>rd</sup> person before the date on which the department enters into a memorandum of agreement under s. 23.321(2m).

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Comment [JDB10]: Edits made to section to address drafter note on page 4, 5.g. Intent is to be consistent with Corps delineations.

(4) WETLAND PERMIT. (a) *Permit required.* No person may discharge dredged material or fill material associated with a mining operation or bulk sampling into a wetland unless the discharge is authorized under a wetland permit issued under this section or a wetland general permit issued under s. 281.36(3g). The department may not issue any approval under this section unless it determines that the discharge authorized pursuant to the approval will comply with all applicable water quality standards.

(b) *Federal certification.* For purposes of this section, a wetland permit issued under this section constitutes water quality certification as required by 33 USC 1341 (a). This section shall also apply to any action which may result in a discharge to waters of the state that involves in evaluation of impacts to wetlands as required by rules promulgated under subch. II of ch. 281 to implement 33 USC 1341(a).

(c) *Avoidance or minimization of impacts.* For purposes of issuing a wetland permit for a discharge subject to par. (a) or evaluating impacts to wetlands for any approval requiring an evaluation of impacts to wetlands associated with bulk sampling or a mining operation, an applicant shall include an analysis of the practicable alternatives that will avoid and minimize the adverse impacts of the discharge on wetland functional values and that will not result in any

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other significant adverse environmental consequences. If the impacts have been avoided or minimized to the extent practicable, any remaining impacts to wetlands may not be a basis for the department's denial of a wetland permit, or any other approval requiring an evaluation of impacts to wetlands, provided that any remaining significant adverse impacts to wetlands are offset under a mitigation program under sub. (9).

**Deleted:** the department shall first determine whether any impact to the wetland caused by the mining operation or bulk sampling can be avoided or minimized to the extent practicable.

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(d) *Review by the department.* 1. The department shall review the analysis of the practicable alternatives presented in the application under par. (c). The department shall limit its review to those practicable alternatives that are located at the site of the discharge and that are located contiguous to the mining site if the applicant has demonstrated that the proposed project causing the discharge will result in a demonstrable economic public benefit.

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2. In its review under (d)1., the department shall consider all of the following factors when it assesses the impacts to wetland functional values: the direct impacts of the proposed project to wetland functional values; the cumulative impacts attributable to the proposed project that may occur to wetland functional values based on past impacts or reasonably anticipated impacts caused by similar projects in the area affected by the project; potential secondary impacts of the proposed project to wetland functional values; the impact on wetland functional values resulting from the mitigation program required under sub. (9); and the net positive or negative environmental impact of the proposed project.

**Deleted:** An applicant for a wetland permit 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 wetlands will be impacted.

3.

(5) EVALUATION OF IMPACTS. In issuing approvals under this section, the department shall determine the impact of a proposed activity upon the wetland functional values by using wetland ecological evaluation methods that are jointly accepted by the U.S. Army Corps of Engineers and the department and that are appropriate to the affected wetland.

**Deleted:** 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.

**Comment [JDB11]:** Edits made to address drafter note on page 4, 5.i. The permit standard has been revised for more consistency with s. 281.36.

**Deleted:** If it is impracticable to avoid an impact to, or the use of, a wetland, the applicant shall

**Deleted:** identify in the siting analysis, and the department shall review, those configurations that would result in impacts to the fewest acres of 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 wetland.

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**Deleted:** and water quality of a wetland

(6) WETLAND WATER QUALITY STANDARDS. The following wetland water quality standards apply to any wetland permit issued under this section or for evaluating impacts to wetlands for any approval requiring an evaluation of impacts to wetlands associated with a mining operation or bulk sampling:

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

1. Storm and flood water storage and retention and the moderation of water level fluctuation extremes.
2. Hydrologic functions including the maintenance of dry season streamflow, the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, and the flow of groundwater through a wetland.
3. Filtration or storage of sediments, nutrients, or toxic substances that would otherwise adversely impact the quality of waters of the state.
4. Shoreline protection against erosion through the dissipation of wave energy and water velocity and anchoring of sediments.
5. Habitat for aquatic organisms in the food web including fish, crustaceans, mollusks, insects, annelids, and planktonic organisms and the plants and animals upon which these aquatic organisms feed and depend upon for their needs in all life stages.
6. Habitat for resident and transient wildlife species, including mammals, birds, reptiles, and amphibians, for breeding, resting, nesting, escape cover, travel corridors, and food.

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

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

~~Deleted:~~ and water quality

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

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

- a. Water currents and erosion and sedimentation patterns.
- b. Water temperature variations.
- c. The chemical, nutrient, and dissolved oxygen regime of the wetland.
- d. The movement of aquatic fauna.
- e. The pH of the wetland.
- f. Water levels or elevations.
6. Adverse effects on existing habitat and populations of animals and vegetation

found in wetlands.

(7) SCOPE OF EVALUATION. For purposes of issuing a wetland permit under this section or for evaluating impacts to wetlands for any approval requiring an evaluation of impacts to wetlands associated with bulk sampling or a mining operation, the department shall evaluate whether an activity will result in a significant adverse impact to wetland functional values by doing all of the following:

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**Deleted:** and water quality associated with a wetland

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

**Deleted:** and water quality

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

(8) APPROVAL BY DEPARTMENT. (a) The department shall make a finding and issue a wetland permit under this section for a wetland, and any approval that involves an evaluation of impact to wetlands, if the department determines that all of the following will apply:

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*and the applicant's mitigation program submitted under sub. (a) !!*

(1) The proposed project represents the least environmentally damaging practicable alternative taking into consideration practicable alternatives that avoid wetland impacts.

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**Deleted:** All practicable measures will be taken to minimize any adverse impact to wetlands.

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

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(3) The proposed project will not result in significant adverse impact to wetland functional values, in significant adverse impact to water quality, or in other significant adverse environmental consequences.

**Deleted:** Any significant adverse impact to functional values and water quality that remains is offset through a mitigation program under sub. (9)

(b) For purposes of issuing an approval under this section, the department shall review the federal compensatory mitigation requirements proposed as part of the federal permit

**Comment [JDB12]:** On page 3, 2, the drafted notes that the distinction between federal and nonfederal wetlands has been eliminated. This is acceptable generally; however, incorporation of the compensatory mitigation that will be part of the Corps permitting process must be considered with respect to federal wetlands.

application and shall determine whether it has reasonable assurance that the federal compensatory mitigation requirements will offset any significant impacts to wetlands to satisfy the standards in (8)(a)(3) for impacts to federal wetlands. The department shall recognize all federal compensatory mitigation requirements as eligible for satisfying this requirement. If the department determines that reasonable assurance exists, the department may not impose any additional conditions within an approval. If the department determines that reasonable assurance does not exist, then it may impose conditions in the portion of the approval beyond those imposed as part of the federal compensatory mitigation requirements only as necessary to comply with the standards in sub. (8)(a)(3) for impacts to federal wetlands. Any conditions imposed by the department may be satisfied through a mitigation program as provided in sub. (9). In imposing any conditions, the department may not increase the number of acres to be mitigated under the federal compensatory mitigation requirements applicable to the federal wetland.

(9) **MITIGATION PROGRAM.** (a) *Contents.* A mitigation program to offset impacts to wetlands shall contain proposed projects under par. (d), a schedule for implementing the projects and if the program is applicable to a federal wetland, all federal compensatory mitigation requirements associated with the federal wetland. These projects may be performed by a person other than the applicant, subject to the department's approval of the projects and schedule. These projects may include riparian restoration projects.

(b) *Option of applicant.* An applicant submitting a mitigation program under par. (a) may submit options to offset impacts to wetlands. These options may include any combination of the types of projects specified in par. (d). In preparing the mitigation program, the applicant

**Comment [JDB13]:** The drafter's note on page 4, 5.j. indicates that the mitigation program differs from s. 281.36(3r). The intent is to allow all types of projects that can offset impacts to wetlands, not just projects involving the creation, preservation, restoration or enhancement of wetlands.

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shall identify and consider projects that could be conducted within the same watershed in which the  
mining site is located.

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

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

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1. Implementation of a project to offset impacts to wetlands,
2. Purchase of mitigation credits from a mitigation bank for a site in a mitigation

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bank, including a mitigation bank established under s. 281.36, that is located anywhere in the  
state, subject to par. (e).

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

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

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



(10) MINING PERMIT. Any wetland permit issued under this section, including all of the conditions imposed as part of the wetland permit, and any other approval that involves an evaluation of impacts to wetlands associated with bulk sampling or a mining operation shall be included in the mining permit.

**Comment [JDB14]:** This should also include any s. 281.36(3g) general permit

(11) CONSERVATION EASEMENTS. (a) A person who is the holder of a wetland permit or any other approval that involves an evaluation of impacts to wetlands that authorizes mitigation to be implemented by the holder of the wetland permit issued under this section, or the holder of any other approval that involves an evaluation of impacts to wetlands, at an on-site location shall grant a conservation easement under s. 700.40 to the department, or shall execute a comparable legal instrument, 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 approval 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.

**Comment [JDB15]:** On page 5, 5.k, the drafter's note asks whether "comparable legal instruments" should be included. Edits have been made to include.

**Deleted:** mining permit fails

(b) Notwithstanding par. (a), the department shall modify or release a conservation easement granted under par. (a), or shall void a comparable legal instrument 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 or execute the legal instrument 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) **EXEMPTIONS.** (a) *Artificial wetlands.* Except as prohibited under federal law as applicable to federal wetlands, all of the following artificial wetlands that are associated with a mining operation or bulk sampling are exempt from the wetland permitting provisions and mitigation provisions under this section, from any other approval requiring an evaluation of impacts to wetlands and under any other law relating to impacts on wetlands:

**Comment [JDB16]:** Edits made to address drafter's note on page 5, 5.L.

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**Comment [JDB17]:** The change from "statute or rule" to "law" is acceptable; however, this might need to be state law per the drafter's note on page 5, 6.

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

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

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

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

(b) *Other exempted activities.* Except as prohibited under federal law as applicable to federal wetlands, all of the following activities that are associated with a mining operation or bulk sampling are exempt from the wetland permitting provisions and mitigation provisions under this section, from any other approval requiring an evaluation of impacts to wetlands and any other law relating to impacts on wetlands if the applicant minimizes any adverse effect on the environment as a result of any of these activities:

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

2. Construction or maintenance of irrigation ~~ditches~~.

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3. Construction or maintenance of farm roads, forest roads, or temporary mining

roads that is performed in accordance with best management practices, as determined by the department.

4. Maintenance of drainage ditches.

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

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

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

(c) Any other rule promulgated by the department that relates to wetlands or that requires an evaluation of impacts to wetlands that conflicts with this section.

(d) Rules promulgated under subch. II to ch. 281 to implement 33 USC 1341(a) shall apply to the extent they do not conflict with this section.

(e) Section 23.321(2m) applies to the extent it does not conflict with this section.

**Comment [JDB18]:** On page 4, 4., the drafter notes that this section was rewritten. The revised language is acceptable; however, additional provisions have been added for clarity.