



**SENATE SUBSTITUTE AMENDMENT 2,
TO SENATE BILL 1**

February 21, 2013 – Offered by Senator TIFFANY.

1 **AN ACT** *to repeal* 107.001 (2) and 293.01 (8); *to renumber and amend* 30.123
2 (8) (c) and 87.30 (2); *to amend* 20.370 (2) (gh), 20.455 (1) (gh), 20.566 (7) (e),
3 20.566 (7) (v), 25.46 (7), 29.604 (4) (intro.), 29.604 (4) (c) (intro.), 30.025 (1e) (a),
4 30.12 (3m) (c) (intro.), 30.133 (2), 30.19 (4) (c) (intro.), 30.195 (2) (c) (intro.),
5 32.02 (12), 70.375 (1) (as), 70.375 (1) (bm), 70.375 (4) (h), 70.38 (2), 70.395 (1e),
6 70.395 (2) (dc) 1., 70.395 (2) (dc) 2., 70.395 (2) (dc) 3., 70.395 (2) (dc) 4., 70.395
7 (2) (fm), 70.395 (2) (g) (intro.), 70.395 (2) (g) 3., 70.395 (2) (h) 1., 70.395 (2) (hg),
8 70.395 (2) (hr), 70.395 (2) (hw), 107.001 (1), 107.01 (intro.), 107.01 (2), 107.02,
9 107.03, 107.04, 107.11, 107.12, 107.20 (1), 107.20 (2), 107.30 (8), 107.30 (15),
10 107.30 (16), 160.19 (12), 196.491 (3) (a) 3. b., 196.491 (4) (b) 2., 281.36 (3g) (h)
11 2., 281.65 (2) (a), 281.75 (17) (b), 283.84 (3m), 287.13 (5) (e), 289.35, 289.62 (2)
12 (g) 2. and 6., 292.01 (1m), chapter 293 (title), 293.01 (5), 293.01 (7), 293.01 (9),
13 293.01 (12), 293.01 (18), 293.01 (25), 293.21 (1) (a), 293.25 (2) (a), 293.25 (4),

1 293.37 (4) (b), 293.47 (1) (b), 293.50 (1) (b), 293.50 (2) (intro.), 293.50 (2) (a),
2 293.50 (2) (b), 293.51 (1), 293.65 (3) (a), 293.65 (3) (b), 293.86, chapter 295 (title),
3 295.16 (4) (f), 299.85 (7) (a) 2. and 4., 299.95, 323.60 (5) (d) 3., 706.01 (9) and
4 710.02 (2) (d); **to repeal and recreate** 70.375 (1) (ar); and **to create** 20.370 (2)
5 (gi), 23.321 (2g), 29.604 (7m), 30.025 (1e) (c), 31.23 (3) (e), 70.375 (4m), 77.105,
6 77.883, 87.30 (2) (b), 196.491 (3) (a) 3. c., 227.483 (3) (c), 293.01 (12m),
7 subchapter III of chapter 295 [precedes 295.40] and 323.60 (1) (gm) of the
8 statutes; **relating to:** regulation of ferrous metallic mining and related
9 activities, procedures for obtaining approvals from the Department of Natural
10 Resources for the construction of utility facilities, making an appropriation,
11 and providing penalties.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

12 **SECTION 1.** 20.370 (2) (gh) of the statutes is amended to read:

13 20.370 (2) (gh) *Mining— Nonferrous metallic mining regulation and*
14 *administration.* The amounts in the schedule for the administration, regulation and
15 enforcement of nonferrous metallic mining exploration, prospecting, mining and
16 mine reclamation activities under ch. 293. All moneys received under ch. 293 shall
17 be credited to this appropriation.

18 **SECTION 2.** 20.370 (2) (gi) of the statutes is created to read:

19 20.370 (2) (gi) *Ferrous metallic mining operations.* All moneys received under
20 subch. III of ch. 295 for the department of natural resource's operations related to
21 ferrous metallic exploration and mining.

22 **SECTION 3.** 20.455 (1) (gh) of the statutes is amended to read:

1 20.455 (1) (gh) *Investigation and prosecution*. Moneys received under ss. 23.22
2 (9) (c), 49.49 (6), 100.263, 133.16, 281.98 (2), 283.91 (5), 289.96 (3) (b), 291.97 (3),
3 292.99 (2), 293.87 (4) (b), 295.19 (3) (b) 2., 295.79 (4) (b), and 299.97 (2), for the
4 expenses of investigation and prosecution of violations, including attorney fees.

5 **SECTION 4.** 20.566 (7) (e) of the statutes is amended to read:

6 20.566 (7) (e) *Investment and local impact fund supplement*. The amounts in
7 the schedule to supplement par. (v) for the purposes of ss. 70.395, 293.33 (4) ~~and~~,
8 293.65 (5) (a), 295.443, and 295.61 (9) (a) and (c).

9 **SECTION 5.** 20.566 (7) (v) of the statutes is amended to read:

10 20.566 (7) (v) *Investment and local impact fund*. From the investment and local
11 impact fund, all moneys received under s. 70.395 (1e) and (2) (dc) and (dg), less the
12 moneys appropriated under s. 20.370 (2) (gr), to be disbursed under ss. 70.395 (2) (d)
13 to (g), 293.33 (4) ~~and~~, 293.65 (5) (a), 295.443, and 295.61 (9) (a) and (c).

14 **SECTION 6.** 23.321 (2g) of the statutes is created to read:

15 23.321 (2g) SERVICES FOR MINING OPERATIONS. In addition to those persons
16 authorized to request a wetland identification or confirmation under sub. (2) (b) or
17 (c), a holder of an easement may request such an identification or confirmation if the
18 identification or confirmation is associated with an application for a wetland
19 individual permit or other approval for which a wetland impact evaluation is
20 required and that is subject to s. 295.60.

21 **SECTION 7.** 25.46 (7) of the statutes is amended to read:

22 25.46 (7) The fees imposed under s. 289.67 (1) for environmental management,
23 except that ~~for each ton of waste~~, of the fees imposed under s. 289.67 (1) (cp) or (cv),
24 \$3.20 for each ton of waste is for nonpoint source water pollution abatement.

25 **SECTION 9.** 29.604 (4) (intro.) of the statutes is amended to read:

1 29.604 (4) PROHIBITION. (intro.) Except as provided in sub. (6r) and (7m) or as
2 permitted by departmental rule or permit:

3 **SECTION 10.** 29.604 (4) (c) (intro.) of the statutes is amended to read:

4 29.604 (4) (c) (intro.) No person may do any of the following to any wild plant
5 of an endangered or threatened species that is on public property or on property that
6 he or she does not own or lease, except in the course of forestry or agricultural
7 practices ~~or~~, in the construction, operation, or maintenance of a utility facility, or as
8 part of bulk sampling activities under s. 295.45:

9 **SECTION 11.** 29.604 (7m) of the statutes is created to read:

10 29.604 (7m) BULK SAMPLING ACTIVITIES. A person may take, transport, or
11 possess a wild animal on the department's endangered and threatened species list
12 without a permit under this section if the person avoids and minimizes adverse
13 impacts to the wild animal to the extent practicable, if the taking, transporting, or
14 possession does not result in wounding or killing the wild animal, and if the person
15 takes, transports, or possesses the wild animal for the purpose of bulk sampling
16 activities under s. 295.45.

17 **SECTION 12.** 30.025 (1e) (a) of the statutes is amended to read:

18 30.025 (1e) (a) Except as provided in ~~par.~~ pars. (b) and (c), this section applies
19 to a proposal to construct a utility facility if the utility facility is required to obtain,
20 or give notification of the wish to proceed under, one or more permits.

21 **SECTION 13.** 30.025 (1e) (c) of the statutes is created to read:

22 30.025 (1e) (c) This section does not apply to a proposal to construct a utility
23 facility for ferrous mineral mining and processing activities governed by subch. III
24 of ch. 295, unless the person proposing to construct the utility facility elects to
25 proceed in the manner provided under this section.

1 **SECTION 21.** 30.12 (3m) (c) (intro.) of the statutes is amended to read:

2 30.12 **(3m)** (c) (intro.) The department shall issue an individual permit to a
3 riparian owner for a structure or a deposit pursuant to an application under par. (a)
4 if the department finds that all of the following apply requirements are met:

5 **SECTION 22.** 30.123 (8) (c) of the statutes is renumbered 30.123 (8) (c) (intro.)
6 and amended to read:

7 30.123 **(8)** (c) (intro.) The department shall issue an individual permit
8 pursuant to an application under par. (a) if the department finds that ~~the~~ all of the
9 following requirements are met:

10 1. The bridge or culvert will not materially obstruct navigation,

11 2. The bridge or culvert will not materially reduce the effective flood flow
12 capacity of a stream, and,

13 3. The bridge or culvert will not be detrimental to the public interest.

14 **SECTION 23.** 30.133 (2) of the statutes is amended to read:

15 30.133 **(2)** This section does not apply to riparian land located within the
16 boundary of any hydroelectric project licensed or exempted by the federal
17 government, if the conveyance is authorized under any license, rule or order issued
18 by the federal agency having jurisdiction over the project. This section does not apply
19 to riparian land that is associated with an approval required for bulk sampling or
20 mining that is required under subch. III of ch. 295.

21 **SECTION 24.** 30.19 (4) (c) (intro.) of the statutes is amended to read:

22 30.19 **(4)** (c) (intro.) The department shall issue an individual permit pursuant
23 to an application under par. (a) if the department finds that all of the following apply
24 requirements are met:

25 **SECTION 25.** 30.195 (2) (c) (intro.) of the statutes is amended to read:

1 30.195 (2) (c) (intro.) The department shall issue an individual permit applied
2 for under this section to a riparian owner if the department determines that all of the
3 following apply requirements are met:

4 **SECTION 26.** 31.23 (3) (e) of the statutes is created to read:

5 31.23 (3) (e) This subsection does not apply to a bridge that is constructed,
6 maintained, or operated in association with mining or bulk sampling that is subject
7 to subch. III of ch. 295.

8 **SECTION 27.** 32.02 (12) of the statutes is amended to read:

9 32.02 (12) Any person operating a plant which creates waste material which,
10 if released without treatment would cause stream pollution, for the location of
11 treatment facilities. This subsection does not apply to a person licensed with a
12 permit under ch. 293 or subch. III of ch. 295.

13 **SECTION 27g.** 70.375 (1) (ar) of the statutes is repealed and recreated to read:

14 70.375 (1) (ar) “Internal Revenue Code” means the federal Internal Revenue
15 Code, as amended, and applicable federal regulations adopted by the federal
16 department of the treasury.

17 **SECTION 28.** 70.375 (1) (as) of the statutes is amended to read:

18 70.375 (1) (as) “Mine” means an excavation in or at the earth’s surface made
19 to extract metalliferous minerals for which a permit has been issued under s. 293.49
20 or 295.58.

21 **SECTION 29.** 70.375 (1) (bm) of the statutes is amended to read:

22 70.375 (1) (bm) “Mining–related purposes” means activities which are directly
23 in response to the application for a mining permit under s. 293.37 or 295.47; directly
24 in response to construction, operation, curtailment of operation or cessation of
25 operation of a metalliferous mine site; or directly in response to conditions at a

1 metalliferous mine site which is not in operation. “Mining-related purposes” also
2 includes activities which anticipate the economic and social consequences of the
3 cessation of mining. “Mining-related purposes” also includes the purposes under s.
4 70.395 (2) (g).

5 **SECTION 30.** 70.375 (4) (h) of the statutes is amended to read:

6 70.375 (4) (h) The cost of premiums for bonds required under s. 293.51, 295.45
7 (5), or 295.59.

8 **SECTION 30d.** 70.375 (4m) of the statutes is created to read:

9 70.375 (4m) GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. Except as otherwise
10 provided under this section, a person subject to the tax imposed under sub. (2), shall
11 use generally accepted accounting principles to determine the person’s net proceeds
12 occupation tax liability under this section.

13 **SECTION 31.** 70.38 (2) of the statutes is amended to read:

14 70.38 (2) COMBINED REPORTING. If the same person extracts metalliferous
15 minerals from different sites in this state, the net proceeds for each site for which a
16 permit has been issued under s. 293.49 or 295.58 shall be reported separately for the
17 purposes of computing the amount of the tax under s. 70.375 (5).

18 **SECTION 32.** 70.395 (1e) of the statutes is amended to read:

19 70.395 (1e) DISTRIBUTION. Fifteen days after the collection of the tax under ss.
20 70.38 to 70.39, the department of administration, upon certification of the
21 department of revenue, shall transfer the amount collected in respect to mines not
22 in operation on November 28, 1981, to the investment and local impact fund, except
23 that, after the payments are made under sub. (2) (d) 1., 2., and 2m., the department
24 of administration shall transfer 60 percent of the amount collected from each person

1 extracting ferrous metallic minerals to the investment and local impact fund and 40
2 percent of the amount collected from any such person to the general fund.

3 **SECTION 33.** 70.395 (2) (dc) 1. of the statutes is amended to read:

4 70.395 (2) (dc) 1. Each person intending to submit an application for a mining
5 permit under s. 293.37 or 295.47 shall pay ~~\$50,000~~ \$75,000 to the department of
6 revenue for deposit in the investment and local impact fund at the time that the
7 person notifies the department of natural resources under s. 293.31 (1) or 295.465
8 of that intent.

9 **SECTION 34.** 70.395 (2) (dc) 2. of the statutes is amended to read:

10 70.395 (2) (dc) 2. A person making a payment under subd. 1. shall pay an
11 additional ~~\$50,000~~ \$75,000 upon notification by the board that the board has
12 distributed 50% of the payment under subd. 1.

13 **SECTION 35.** 70.395 (2) (dc) 3. of the statutes is amended to read:

14 70.395 (2) (dc) 3. A person making a payment under subd. 2. shall pay an
15 additional ~~\$50,000~~ \$75,000 upon notification by the board that the board has
16 distributed all of the payment under subd. 1. and 50% of the payment under subd.
17 2.

18 **SECTION 36.** 70.395 (2) (dc) 4. of the statutes is amended to read:

19 70.395 (2) (dc) 4. Six months after the signing of a local agreement under s.
20 293.41 or 295.443 for the proposed mine for which the payment is made, the board
21 shall refund any funds paid under this paragraph but not distributed under par. (fm)
22 from the investment and local impact fund to the person making the payment under
23 this paragraph.

24 **SECTION 37.** 70.395 (2) (fm) of the statutes is amended to read:

1 70.395 (2) (fm) The board may distribute a payment received under par. (dc)
2 to a county, town, village, city, tribal government or local impact committee
3 authorized under s. 293.41 (3) or 295.443 only for legal counsel, qualified technical
4 experts in the areas of transportation, utilities, economic and social impacts,
5 environmental impacts and municipal services and other reasonable and necessary
6 expenses incurred by the recipient that directly relate to the good faith negotiation
7 of a local agreement under s. 293.41 or 295.443 for the proposed mine for which the
8 payment is made.

9 **SECTION 37d.** 70.395 (2) (g) (intro.) of the statutes is amended to read:

10 70.395 (2) (g) (intro.) The board may distribute the revenues received under
11 sub. (1e) or proceeds thereof in accordance with par. (h) for the following purposes,
12 with a preference to private sector economic development projects under subd. 3., as
13 the board determines necessary:

14 **SECTION 37e.** 70.395 (2) (g) 3. of the statutes is amended to read:

15 70.395 (2) (g) 3. Studies and projects for local private sector economic
16 development.

17 **SECTION 38.** 70.395 (2) (h) 1. of the statutes is amended to read:

18 70.395 (2) (h) 1. Distribution shall first be made to those municipalities in
19 which metalliferous minerals are extracted or were extracted within 3 years
20 previous to December 31 of the current year, or in which a permit has been issued
21 under s. 293.49 or 295.58 to commence mining;

22 **SECTION 39.** 70.395 (2) (hg) of the statutes is amended to read:

23 70.395 (2) (hg) The board shall, by rule, establish fiscal guidelines and
24 accounting procedures for the use of payments under pars. (d), (f), (fm) and (g), sub.
25 (3) and s. ss. 293.65 (5) and 295.61 (9).

1 **SECTION 40.** 70.395 (2) (hr) of the statutes is amended to read:

2 70.395 (2) (hr) The board shall, by rule, establish procedures to recoup
3 payments made, and to withhold payments to be made, under pars. (d), (f), (fm) and
4 (g), sub. (3) and ~~s. ss.~~ ss. 293.65 (5) and 295.61 (9) for noncompliance with this section
5 or rules adopted under this section.

6 **SECTION 41.** 70.395 (2) (hw) of the statutes is amended to read:

7 70.395 (2) (hw) A recipient of a discretionary payment under par. (f) or (g), sub.
8 (3) or ~~s. ss.~~ ss. 293.65 (5) and 295.61 (9) or any payment under par. (d) that is restricted
9 to mining–related purposes who uses the payment for attorney fees may do so only
10 for the purposes under par. (g) 6. and for processing mining–related permits or other
11 approvals required by the municipality. The board shall recoup or withhold
12 payments that are used or proposed to be used by the recipient for attorney fees
13 except as authorized under this paragraph. The board may not limit the hourly rate
14 of attorney fees for which the recipient uses the payment to a level below the hourly
15 rate that is commonly charged for similar services.

16 **SECTION 41m.** 77.105 of the statutes is created to read:

17 **77.105 Ferrous mining.** (1) The department may not issue an order of
18 withdrawal under s. 77.10 (1) based on the cutting of timber or other forest crops or
19 other activities on forest cropland if all of the following requirements are met:

20 (a) The cutting or activity is necessary to engage in bulk sampling, as defined
21 in s. 295.41 (7).

22 (b) The area that will be affected by the cutting or the activity does not exceed
23 5 acres.

1 (c) A bulk sampling plan has been filed with the department under s. 295.45
2 and all approvals that are required for bulk sampling have been issued by the
3 department.

4 (d) The revegetation plan that is part of the bulk sampling plan described under
5 par. (c) includes forestry practices that will ensure that the timber, forest crops, and
6 other vegetation that will be cut or otherwise affected will be restored to the greatest
7 extent possible.

8 (2) The requirement under sub. (1) (d) does not apply to forest cropland that
9 is within a mining site described in a preapplication notification under s. 295.465 or
10 in an application for a ferrous mining permit under s. 295.58.

11 **SECTION 41q.** 77.883 of the statutes is created to read:

12 **77.883 Ferrous mining.** (1) The department may not issue an order of
13 withdrawal under s. 77.88 (1) based on the cutting of timber or other activities on
14 managed forest land if all of the following requirements are met:

15 (a) The cutting or activity is necessary to engage in bulk sampling, as defined
16 in s. 295.41 (7).

17 (b) The area that will be affected by the cutting or the activity does not exceed
18 5 acres.

19 (c) A bulk sampling plan has been filed with the department under s. 295.45
20 and all approvals that are required for bulk sampling have been issued by the
21 department.

22 (d) The revegetation plan that is part of the bulk sampling plan described under
23 par. (c) includes forestry practices that will ensure that the merchantable timber and
24 other vegetation that will be cut or otherwise affected will be restored to the greatest
25 extent possible.

1 **(2)** The requirement under sub. (1) (d) does not apply to managed forest land
2 that is within a mining site described in a preapplication notification under s.
3 295.465 or in an application for a mining permit under s. 295.58.

4 **(3)** Section 77.86 (1) (c) and (d) do not apply to cutting of timber or another
5 activity on managed forest land if all of the requirements in sub. (1) (a) to (d) are met.

6 **SECTION 42.** 87.30 (2) of the statutes is renumbered 87.30 (2) (a) and amended
7 to read:

8 87.30 **(2)** (a) ~~Every~~ Except as provided in par. (b), every structure, building, fill,
9 or development placed or maintained within any floodplain in violation of a zoning
10 ordinance adopted under this section, or s. 59.69, 61.35 or 62.23 is a public nuisance
11 and the creation thereof may be enjoined and maintenance thereof may be abated by
12 action at suit of any municipality, the state or any citizen thereof. Any person who
13 places or maintains any structure, building, fill or development within any
14 floodplain in violation of a zoning ordinance adopted under this section, or s. 59.69,
15 61.35 or 62.23 may be fined not more than \$50 for each offense. Each day during
16 which such violation exists is a separate offense.

17 **SECTION 43.** 87.30 (2) (b) of the statutes is created to read:

18 87.30 **(2)** (b) Paragraph (a) does not apply to a structure, building, fill, or
19 development placed or maintained as part of a mining operation covered by a mining
20 permit under s. 295.58 except to the extent that regulation of the placement or
21 maintenance of the structure, building, fill, or development is required for
22 compliance with a floodplain zoning ordinance as provided under s. 295.607 (3).

23 **SECTION 44.** 107.001 (1) of the statutes is amended to read:

24 107.001 **(1)** “Exploration mining lease” means any lease, option to lease, option
25 to purchase or similar conveyance entered into for the purpose of determining the

1 presence, location, quality or quantity of ~~metalliferous~~ nonferrous metallic minerals
2 or for the purpose of mining, developing or extracting ~~metalliferous~~ nonferrous
3 metallic minerals, or both under ch. 293. Any lease, option to lease, option to
4 purchase or similar conveyance entered into by a mining company is rebuttably
5 presumed to be an exploration mining lease.

6 **SECTION 45.** 107.001 (2) of the statutes is repealed.

7 **SECTION 46.** 107.01 (intro.) of the statutes is amended to read:

8 **107.01 Rules governing mining rights.** (intro.) Where there is no contract
9 between the parties or terms established by the landlord to the contrary the following
10 rules and regulations shall be applied to mining contracts and leases for the digging
11 of ~~ores and~~ nonferrous metallic minerals:

12 **SECTION 47.** 107.01 (2) of the statutes is amended to read:

13 107.01 (2) The discovery of a crevice or range containing ~~ores or minerals~~
14 nonferrous metallic minerals shall entitle the discoverer to the ~~ores or minerals~~
15 nonferrous metallic minerals pertaining thereto, subject to the rent due the
16 discoverer's landlord, before as well as after the ~~ores or minerals~~ nonferrous metallic
17 minerals are separated from the freehold; but such miner shall not be entitled to
18 recover any ~~ores or minerals~~ nonferrous metallic minerals or the value thereof from
19 the person digging on the miner's range in good faith and known to be mining thereon
20 until the miner shall have given notice of the miner's claim; and the miner shall be
21 entitled to the ~~ores or minerals~~ nonferrous metallic minerals dug after such notice.

22 **SECTION 48.** 107.02 of the statutes is amended to read:

23 **107.02 Mining statement; penalty.** When there is no agreement between the
24 parties to any mining lease, license or permit, to mine or remove ~~ore~~ nonferrous
25 metallic minerals from any lands in this state, regulating the method of reporting

1 the amount of ~~ore~~ nonferrous metallic minerals taken, the person mining and
2 removing the ~~ore or ores~~ nonferrous metallic minerals shall keep proper and correct
3 books, and therefrom to make and deliver by or before the fifteenth day of each month
4 to the lessor, owner or person entitled thereto, a detailed statement covering the
5 operations of the preceding month. The statement shall show the total amount of
6 tons or pounds of each kind of ~~ore~~ nonferrous metallic minerals produced; if sold, then
7 to whom sold, giving the date of sale, date of delivery to any railroad company,
8 naming the company, and the station where delivered or billed for shipment; the
9 name and address of the purchaser; the price per ton at which sold and the total value
10 of each kind of ~~ore~~ nonferrous metallic minerals so sold. The books shall be always
11 open to any owner, lessor, licensor or stockholder, if the owner, lessor or licensor is
12 a corporation, and to any person or stockholder interested in any such mining
13 operations, for the purpose of inspection and taking copies thereof or abstracts
14 therefrom. Any person and every officer, agent or employee of any thereof, who
15 violates this section, or who makes any false or incomplete entries on any such books
16 or statements, shall be fined not less than \$100 or imprisoned in the county jail for
17 not more than 3 months or both.

18 **SECTION 49.** 107.03 of the statutes is amended to read:

19 **107.03 Conflicting claims.** In case of conflicting claims to a crevice or range
20 bearing ~~ores or~~ nonferrous metallic minerals the court may continue any action to
21 enforce a claim or grant any necessary time for the purpose of allowing parties to
22 prove up their mines or diggings if it satisfactorily appears necessary to the ends of
23 justice. In such case the court or judge may appoint a receiver and provide that the
24 mines or diggings be worked under the receiver's direction, subject to the order of the
25 court, in such manner as best ascertains the respective rights of the parties. The ~~ores~~

1 ~~or~~ nonferrous metallic minerals raised by either party pending the dispute shall be
2 delivered to the receiver, who may, by order of the court or judge, pay any rent or other
3 necessary expenses therefrom.

4 **SECTION 50.** 107.04 of the statutes is amended to read:

5 **107.04 Lessee's fraud; failure to work mine.** Any miner who conceals or
6 disposes of any ~~ores~~ ~~or~~ nonferrous metallic minerals or mines or diggings for the
7 purpose of defrauding the lessor of rent or who neglects to pay any rent on ~~ores~~ ~~or~~
8 nonferrous metallic minerals raised by the miner for 3 days after the notice thereof
9 and claim of the rent, shall forfeit all right to his or her mines, diggings or range; and
10 the landlord after the concealment or after 3 days have expired from the time of
11 demanding rent, may proceed against the miner to recover possession of the mines
12 or diggings in circuit court as in the case of a tenant holding over after the
13 termination of the lease. If a miner neglects to work his or her mines or diggings
14 according to the usages of miners, without reasonable excuse, he or she shall likewise
15 forfeit the mines or diggings and the landlord may proceed against the miner in like
16 manner to recover possession of the mines or diggings.

17 **SECTION 51.** 107.11 of the statutes is amended to read:

18 **107.11 Account of ore nonferrous metallic minerals received.** Every
19 person operating a metal recovery system and every purchaser of ~~ores~~ ~~and~~
20 nonferrous metallic minerals shall keep a substantially bound book, ruled into
21 suitable columns, in which shall be entered from day to day, as ~~ores~~ ~~or~~ nonferrous
22 metallic minerals are received, the following items: the day, month and year when
23 received; the name of the person from whom purchased; the name of the person by
24 whom hauled and delivered; name of the owner of the land from which the ~~ores~~ ~~or~~
25 nonferrous metallic minerals were obtained, or if not known, the name of the

1 diggings or some distinct description of the land. The bound book shall be kept at the
2 furnace or at the usual place of business of such person or purchaser or his or her
3 agent in this state, and shall be open to authorized representatives of the department
4 of revenue at reasonable times for inspection and taking extracts.

5 **SECTION 52.** 107.12 of the statutes is amended to read:

6 **107.12 Penalty.** If any person operating a metal recovery system or purchaser
7 of ~~ores and~~ nonferrous metallic minerals or the agent of any such person or purchaser
8 doing business fails to keep such a book or to make such entries as required under
9 s. 107.11 or unreasonably refuses to show the book for inspection or taking extracts
10 or makes false entries in the book he or she shall forfeit \$10 for each offense, one-half
11 to the use of the prosecutor; and each day such failure or refusal continues shall be
12 deemed a distinct and separate offense.

13 **SECTION 53.** 107.20 (1) of the statutes is amended to read:

14 107.20 (1) Any provision of an exploration mining lease entered into after April
15 25, 1978, granting an option or right to determine the presence, location, quality or
16 quantity of ~~metalliferous~~ nonferrous metallic minerals shall be limited to a term not
17 exceeding 10 years from the date on which the exploration mining lease is recorded
18 in the office of the register of deeds of the county where the property is located, except
19 that any provision of an exploration mining lease entered into after April 25, 1978,
20 granting an option or right to determine the quality and quantity of ~~metalliferous~~
21 nonferrous metallic minerals under a prospecting permit shall be limited to a term
22 not exceeding 10 years from the date that the lessee applies for a prospecting permit
23 under s. 293.35, if the lessee applies for the prospecting permit within 10 years from
24 the date on which the exploration mining lease is recorded in the office of the register
25 of deeds of the county where the property is located.

1 **SECTION 54.** 107.20 (2) of the statutes is amended to read:

2 107.20 (2) Any provision of an exploration mining lease entered into after April
3 25, 1978, granting an option or right to develop or extract ~~metalliferous~~ nonferrous
4 metallic minerals shall be limited to a term not exceeding 50 years from the date on
5 which the exploration mining lease is recorded in the office of the register of deeds
6 of the county where the property is located.

7 **SECTION 55.** 107.30 (8) of the statutes is amended to read:

8 107.30 (8) “Mining” or “mining operation” ~~has the meaning set forth in s. 293.01~~
9 (9) means all or part of the process involved in the mining of metallic minerals, other
10 than for exploration or prospecting, including commercial extraction,
11 agglomeration, beneficiation, construction of roads, removal of overburden, and the
12 production of refuse.

13 **SECTION 56.** 107.30 (15) of the statutes is amended to read:

14 107.30 (15) “Prospecting” ~~has the meaning set forth in s. 293.01 (18)~~ means
15 engaging in the examination of an area for the purpose of determining the quality
16 and quantity of minerals, other than for exploration but including the obtaining of
17 an ore sample, by such physical means as excavating, trenching, construction of
18 shafts, ramps, and tunnels and other means, other than for exploration, which the
19 department of natural resources, by rule, identifies, and the production of
20 prospecting refuse and other associated activities. “Prospecting” does not include
21 such activities when the activities are, by themselves, intended for and capable of
22 commercial exploitation of the underlying ore body. The fact that prospecting
23 activities and construction may have use ultimately in mining, if approved, does not
24 mean that prospecting activities and construction constitute mining within the

1 meaning of sub. (8), provided such activities and construction are reasonably related
2 to prospecting requirements.

3 **SECTION 57.** 107.30 (16) of the statutes is amended to read:

4 107.30 (16) “Prospecting site” has the meaning set forth in s. 293.01 (21) means
5 the lands on which prospecting is actually conducted as well as those lands on which
6 physical disturbance will occur as a result of such activity.

7 **SECTION 58.** 160.19 (12) of the statutes is amended to read:

8 160.19 (12) The requirements in this section shall not apply to rules governing
9 an activity regulated under ch. 293 or subch. III of ch. 295, or to a solid waste facility
10 regulated under subch. III of ch. 289 which is part of an activity regulated under ch.
11 293 or subch. III of ch. 295, except that the department may promulgate new rules
12 or amend rules governing this type of activity, practice or facility if the department
13 determines that the amendment or promulgation of rules is necessary to protect
14 public health, safety or welfare.

15 **SECTION 59.** 196.491 (3) (a) 3. b. of the statutes is amended to read:

16 196.491 (3) (a) 3. b. ~~Within~~ Except as provided under subd. 3. c., within 20
17 days after the department provides a listing specified in subd. 3. a. to a person, the
18 person shall apply for the permits and approvals identified in the listing. The
19 department shall determine whether an application under this subd. 3. b. is complete
20 and, no later than 30 days after the application is filed, notify the applicant about
21 the determination. If the department determines that the application is incomplete,
22 the notice shall state the reason for the determination. An applicant may
23 supplement and refile an application that the department has determined to be
24 incomplete. There is no limit on the number of times that an applicant may refile
25 an application under this subd. 3. b. If the department fails to determine whether

1 an application is complete within 30 days after the application is filed, the
2 application shall be considered to be complete. The department shall complete action
3 on an application under this subd. 3. b. for any permit or approval that is required
4 prior to construction of a facility within 120 days after the date on which the
5 application is determined or considered to be complete.

6 **SECTION 60.** 196.491 (3) (a) 3. c. of the statutes is created to read:

7 196.491 (3) (a) 3. c. The 20–day deadline specified in subd. 3. b. for applying
8 for the applicable permits and approvals specified in the listing provided by the
9 department does not apply to a person proposing to construct a utility facility for
10 ferrous mineral mining and processing activities governed by subch. III of ch. 295.

11 **SECTION 61.** 196.491 (4) (b) 2. of the statutes is amended to read:

12 196.491 (4) (b) 2. The person shows to the satisfaction of the commission that
13 the person reasonably anticipates, at the time that construction of the equipment or
14 facilities commences, that on each day that the equipment and facilities are in
15 operation the person will consume no less than 70% of the aggregate kilowatt hours
16 output from the equipment and facilities in manufacturing processes at the site
17 where the equipment and facilities are located or in ferrous mineral mining and
18 processing activities governed by subch. III of ch. 295 at the site where the equipment
19 and facilities are located.

20 **SECTION 62.** 227.483 (3) (c) of the statutes is created to read:

21 227.483 (3) (c) If the proceeding relates to mining for ferrous minerals, as
22 defined in s. 295.41 (18), that the petition, claim, or defense was commenced, used,
23 or continued primarily for the purpose of causing delay to an activity authorized
24 under a license that is the subject of the hearing.

25 **SECTION 64.** 281.36 (3g) (h) 2. of the statutes is amended to read:

1 281.36 (3g) (h) 2. If, within 30 days after an application under subd. 1. is
2 received by the department, the department does not either request additional
3 information or inform the applicant that a wetland individual permit will be required
4 as provided in par. (i), the discharge shall be considered to be authorized under the
5 wetland general permit and the applicant may proceed without further notice,
6 hearing, permit, or approval if the discharge is carried out in compliance with all of
7 the conditions of the general permit, except as provided in s. 295.60 (3) (b).

8 **SECTION 65.** 281.65 (2) (a) of the statutes is amended to read:

9 281.65 (2) (a) “Best management practices” means practices, techniques or
10 measures, except for dredging, identified in areawide water quality management
11 plans, which are determined to be effective means of preventing or reducing
12 pollutants generated from nonpoint sources, or from the sediments of inland lakes
13 polluted by nonpoint sources, to a level compatible with water quality objectives
14 established under this section and which do not have an adverse impact on fish and
15 wildlife habitat. The practices, techniques or measures include land acquisition,
16 storm sewer rerouting and the removal of structures necessary to install structural
17 urban best management practices, facilities for the handling and treatment of
18 milkhouse wastewater, repair of fences built using grants under this section and
19 measures to prevent or reduce pollutants generated from mine tailings disposal sites
20 for which the department has not approved a plan of operation under s. 289.30 or s.
21 295.51.

22 **SECTION 66.** 281.75 (17) (b) of the statutes is amended to read:

23 281.75 (17) (b) This section does not apply to contamination which is
24 compensable under subch. II of ch. 107 or s. 293.65 (4) or 295.61 (8).

25 **SECTION 67.** 283.84 (3m) of the statutes is amended to read:

1 283.84 **(3m)** A person engaged in mining, as defined in s. 293.01 (9) or 295.41
2 (26), prospecting, as defined in s. 293.01 (18), bulk sampling, as defined in s. 295.41
3 (7), or nonmetallic mining, as defined in s. 295.11 (3), may not enter into an
4 agreement under sub. (1).

5 **SECTION 68.** 287.13 (5) (e) of the statutes is amended to read:

6 287.13 **(5)** (e) Solid waste produced by a commercial business or industry which
7 is disposed of or held for disposal in an approved facility, as defined under s. 289.01
8 (3), or a mining waste site, as defined in s. 295.41 (31), covered by a mining permit
9 under s. 295.58, owned or leased by the generator or on which the generator holds
10 an easement and designed and constructed for the purpose of accepting that type of
11 solid waste.

12 **SECTION 69.** 289.35 of the statutes is amended to read:

13 **289.35 Shoreland and floodplain zoning.** Solid waste facilities are
14 prohibited within areas under the jurisdiction of shoreland and floodplain zoning
15 regulations adopted under ss. 59.692, 61.351, 62.231 and, 87.30, and 281.31, except
16 that the department may issue permits authorizing facilities in such areas. If the
17 department issues a permit under this section, the permit shall specify the location,
18 height, and size of the solid waste facility authorized under the permit.

19 **SECTION 70.** 289.62 (2) (g) 2. and 6. of the statutes are amended to read:

20 289.62 **(2)** (g) 2. For nonhazardous tailing solids ~~or for nonacid producing~~
21 ~~taconite tailing solids~~, 0.2 cent per ton.

22 6. For nonhazardous waste rock ~~or for nonacid producing taconite waste rock~~,
23 0.1 cent per ton.

24 **SECTION 71.** 292.01 (1m) of the statutes is amended to read:

1 **SECTION 76.** 293.01 (9) of the statutes is amended to read:

2 293.01 (9) “Mining” or “mining operation” means all or part of the process
3 involved in the mining of nonferrous metallic minerals, other than for exploration or
4 prospecting, including commercial extraction, agglomeration, beneficiation,
5 construction of roads, removal of overburden and the production of refuse.

6 **SECTION 77.** 293.01 (12) of the statutes is amended to read:

7 293.01 (12) “Mining site” means the surface area disturbed by a mining
8 operation, including the surface area from which the nonferrous metallic minerals
9 or refuse or both have been removed, the surface area covered by refuse, all lands
10 disturbed by the construction or improvement of haulageways, and any surface areas
11 in which structures, equipment, materials and any other things used in the mining
12 operation are situated.

13 **SECTION 78.** 293.01 (12m) of the statutes is created to read:

14 293.01 (12m) “Nonferrous metallic mineral” means an ore or other earthen
15 material to be excavated from the natural deposits on or in the earth for its metallic
16 content but not primarily for its iron oxide content.

17 **SECTION 79.** 293.01 (18) of the statutes is amended to read:

18 293.01 (18) “Prospecting” means engaging in the examination of an area for the
19 purpose of determining the quality and quantity of nonferrous metallic minerals,
20 other than for exploration but including the obtaining of ~~an ore~~ a nonferrous metallic
21 mineral sample, by such physical means as excavating, trenching, construction of
22 shafts, ramps and tunnels and other means, other than for exploration, which the
23 department, by rule, identifies, and the production of prospecting refuse and other
24 associated activities. “Prospecting” shall not include such activities when the
25 activities are, by themselves, intended for and capable of commercial exploitation of

1 the underlying nonferrous ore body. However, the fact that prospecting activities and
2 construction may have use ultimately in mining, if approved, shall not mean that
3 prospecting activities and construction constitute mining within the meaning of sub.
4 (9), provided such activities and construction are reasonably related to prospecting
5 requirements.

6 **SECTION 80.** 293.01 (25) of the statutes is amended to read:

7 293.01 (25) “Refuse” means all waste soil, rock, mineral, liquid, vegetation and
8 other material, except merchantable by-products, directly resulting from or
9 displaced by the prospecting or mining and from the cleaning or preparation of
10 nonferrous metallic minerals during prospecting or mining operations, and shall
11 include all waste materials deposited on or in the prospecting or mining site from
12 other sources.

13 **SECTION 81.** 293.21 (1) (a) of the statutes is amended to read:

14 293.21 (1) (a) “Driller” means a person who performs core, rotary, percussion
15 or other drilling involved in exploration for nonferrous metallic minerals.

16 **SECTION 82.** 293.25 (2) (a) of the statutes is amended to read:

17 293.25 (2) (a) *Applicability.* Except as provided under par. (b), ss. 293.21 and
18 293.81 and rules promulgated under those sections apply to radioactive waste site
19 exploration, to activities related to radioactive waste site exploration and to persons
20 engaging in or intending to engage in radioactive waste site exploration or related
21 activities in the same manner as those sections and rules are applicable to
22 nonferrous metallic mineral exploration, to activities related to nonferrous metallic
23 mineral exploration and to persons engaging in or intending to engage in nonferrous
24 metallic mineral exploration or related activities.

25 **SECTION 83.** 293.25 (4) of the statutes is amended to read:

1 293.25 (4) REGULATION OF EXPLORATION AND RELATED PROVISIONS. Sections
2 293.13, 293.15 (1) to (12), 293.85, 293.87 and 293.89 and rules promulgated under
3 those sections apply to radioactive waste site exploration, to activities related to
4 radioactive waste site exploration and to persons engaging in or intending to engage
5 in radioactive waste site exploration or related activities in the same manner as
6 those sections and rules are applicable to nonferrous metallic mineral exploration,
7 to activities related to nonferrous metallic mineral exploration and to persons
8 engaging in or intending to engage in nonferrous metallic mineral exploration or
9 related activities.

10 **SECTION 84.** 293.37 (4) (b) of the statutes is amended to read:

11 293.37 (4) (b) If the department finds that the anticipated life and total area
12 of a nonferrous metallic mineral deposit are of sufficient magnitude that reclamation
13 of the mining site consistent with this chapter requires a comprehensive plan for the
14 entire affected area, it shall require an operator to submit with the application for
15 a mining permit, amended mining site or change in mining or reclamation plan, a
16 comprehensive long-term plan showing, in detail satisfactory to the department, the
17 manner, location and time for reclamation of the entire area of contiguous land which
18 will be affected by mining and which is owned, leased or under option for purchase
19 or lease by the operator at the time of application. Where a nonferrous metallic
20 mineral deposit lies on or under the lands of more than one operator, the department
21 shall require the operators to submit mutually consistent comprehensive plans.

22 **SECTION 85.** 293.47 (1) (b) of the statutes is amended to read:

23 293.47 (1) (b) “Geologic information” means information concerning
24 descriptions of an a nonferrous ore body, descriptions of reserves, tonnages and
25 grades of nonferrous ore, descriptions of a drill core or bulk sample including

1 analysis, descriptions of drill hole depths, distances and similar information related
2 to the nonferrous ore body.

3 **SECTION 86.** 293.50 (1) (b) of the statutes is amended to read:

4 293.50 (1) (b) “Sulfide ore body” means a mineral deposit in which nonferrous
5 metals are mixed with sulfide minerals.

6 **SECTION 87.** 293.50 (2) (intro.) of the statutes is amended to read:

7 293.50 (2) (intro.) Beginning on May 7, 1998, the department may not issue a
8 permit under s. 293.49 for the purpose of the mining of a sulfide ore body until all of
9 the following conditions are satisfied:

10 **SECTION 88.** 293.50 (2) (a) of the statutes is amended to read:

11 293.50 (2) (a) The department determines, based on information provided by
12 an applicant for a permit under s. 293.49 and verified by the department, that a
13 mining operation has operated in a sulfide ore body which, together with the host
14 nonferrous rock, has a net acid generating potential in the United States or Canada
15 for at least 10 years without the pollution of groundwater or surface water from acid
16 drainage at the tailings site or at the mine site or from the release of heavy metals.

17 **SECTION 89.** 293.50 (2) (b) of the statutes is amended to read:

18 293.50 (2) (b) The department determines, based on information provided by
19 an applicant for a permit under s. 293.49 and verified by the department, that a
20 mining operation that operated in a sulfide ore body which, together with the host
21 nonferrous rock, has a net acid generating potential in the United States or Canada
22 has been closed for at least 10 years without the pollution of groundwater or surface
23 water from acid drainage at the tailings site or at the mine site or from the release
24 of heavy metals.

25 **SECTION 90.** 293.51 (1) of the statutes is amended to read:

1 293.51 (1) Upon notification that an application for a prospecting or mining
2 permit has been approved by the department but prior to commencing prospecting
3 or mining, the operator shall file with the department a bond conditioned on faithful
4 performance of all of the requirements of this chapter and all rules adopted by the
5 department under this chapter. The bond shall be furnished by a surety company
6 licensed to do business in this state. In lieu of a bond, the operator may deposit cash,
7 certificates of deposit or government securities with the department. Interest
8 received on certificates of deposit and government securities shall be paid to the
9 operator. The amount of the bond or other security required shall be equal to the
10 estimated cost to the state of fulfilling the reclamation plan, in relation to that
11 portion of the site that will be disturbed by the end of the following year. The
12 estimated cost of reclamation of each prospecting or mining site shall be determined
13 by the department on the basis of relevant factors including, but not limited to,
14 expected changes in the price index, topography of the site, methods being employed,
15 depth and composition of overburden and depth of nonferrous metallic mineral
16 deposit being mined.

17 **SECTION 91.** 293.65 (3) (a) of the statutes is amended to read:

18 293.65 (3) (a) An approval under s. 281.34 is required to withdraw groundwater
19 for prospecting or mining or to dewater mines if the capacity and rate of withdrawal
20 of all wells involved in the withdrawal of groundwater or the dewatering of mines
21 exceeds 100,000 gallons each day. A permit under s. 283.31 is required to discharge
22 pollutants resulting from the dewatering of mines.

23 **SECTION 92.** 293.65 (3) (b) of the statutes is amended to read:

24 293.65 (3) (b) The department may not issue an approval under s. 281.34 if the
25 withdrawal of groundwater for prospecting or mining purposes or the dewatering of

1 mines will result in the unreasonable detriment of public or private water supplies
2 or the unreasonable detriment of public rights in the waters of the state. No
3 withdrawal of groundwater for prospecting or mining purposes or the dewatering of
4 mines may be made to the unreasonable detriment of public or private water supplies
5 or the unreasonable detriment of public rights in the waters of the state.

6 **SECTION 93.** 293.86 of the statutes is amended to read:

7 **293.86 Visitorial powers of department.** Any duly authorized officer,
8 employee or representative of the department may enter and inspect any property,
9 premises or place on or at which any prospecting or ~~metallie~~ mining operation or
10 facility is located or is being constructed or installed at any reasonable time for the
11 purpose of ascertaining the state of compliance with this chapter and chs. 281, 285,
12 289 to 292, ~~295~~ and 299, subchs. I and II of ch. 295, and rules adopted pursuant
13 thereto. No person may refuse entry or access to any such authorized representative
14 of the department who requests entry for purposes of inspection, and who presents
15 appropriate credentials, nor may any person obstruct, hamper or interfere with any
16 such inspection. The department shall furnish to the prospector or operator, as
17 indicated in the prospecting or mining permit, a written report setting forth all
18 observations, relevant information and data which relate to compliance status.

19 **SECTION 94.** Chapter 295 (title) of the statutes is amended to read:

20 **CHAPTER 295**

21 **NONMETALLIC MINING RECLAMATION;**

22 **OIL AND GAS;**

23 **FERROUS METALLIC MINING**

24 **SECTION 95.** 295.16 (4) (f) of the statutes is amended to read:

1 Michigan have done, will encourage ferrous mineral mining in Wisconsin and create
2 jobs and generate resources for the state.

3 (7) That because of the fixed location of ferrous mineral deposits in the state,
4 it is probable that mining those deposits will result in adverse impacts to wetlands
5 and that, therefore, the use of wetlands for bulk sampling and mining activities,
6 including the disposal or storage of mining wastes or materials, or the use of other
7 lands for mining activities that would have a significant adverse impact on wetlands,
8 is presumed to be necessary.

9 **295.41 Definitions.** In this subchapter:

10 (1) “Air pollution” means the presence in the atmosphere of one or more air
11 contaminants in such quantities and of such duration as is injurious to human health
12 or welfare, animal or plant life, or property.

13 (2) “Applicant” means a person who applies for, or is preparing to apply for, an
14 exploration license or a mining permit or who files a bulk sampling plan.

15 (3) (a) “Approval” means, except as provided in par. (b), any permit, license,
16 certification, contract, or other authorization that the department issues, or any
17 other action by the department, that is required for exploration, to engage in bulk
18 sampling at a bulk sampling site, or to construct or operate a mining site, including
19 any action required for any of the following:

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

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

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

4 (b) “Approval” does not include a permit, license, certification, contract, or
5 other authorization related to the construction of any new plant, equipment,
6 property, or facility for the production, transmission, delivery, or furnishing of power.

7 (4) “Background water quality” means the concentration of a substance in
8 groundwater as determined by monitoring at locations that will not be affected by
9 a mining site.

10 (5) “Baseline water quality” means the concentration of a substance in
11 groundwater or surface water as determined by monitoring before mining operations
12 begin.

13 (6) “Borrow materials” means soil or rock used in construction or reclamation
14 activities.

15 (7) “Bulk sampling” means excavating in a potential mining site by removing
16 less than 10,000 tons of material for the purposes of obtaining site-specific data to
17 assess the quality and quantity of the ferrous mineral deposits and of collecting data
18 from and analyzing the excavated materials in order to prepare the application for
19 a mining permit or for any other approval.

20 (8) “Closing” means the time at which a mining waste site ceases to accept
21 mining wastes.

22 (9) “Closure” means the actions taken by an operator to prepare a mining waste
23 site for long-term care and to make it suitable for other uses.

24 (10) “Construct” means to engage in a program of on-site construction,
25 including site clearing, grading, dredging, or filling of land.

1 **(11)** “Department” means the department of natural resources.

2 **(12)** “Disposal” means the discharge, deposit, injection, dumping, or placing of
3 a substance into or on any land or water.

4 **(14)** “Environmental impact report” means a document submitted by a person
5 seeking a mining permit that discloses environmental impacts of the proposed
6 mining.

7 **(15)** “Environmental impact statement” means a detailed statement under s.
8 1.11 (2) (c).

9 **(16)** “Environmental pollution” means contaminating or rendering unclean or
10 impure the air, land, or waters of the state, or making the air, land, or waters of the
11 state injurious to public health or animal or plant life.

12 **(17)** “Exploration license” means a license under s. 295.44.

13 **(18)** “Ferrous mineral” means an ore or earthen material in natural deposits
14 in or on the earth that primarily exists in the form of an iron oxide, including taconite
15 and hematite.

16 **(19)** “Fill area” means an area proposed to receive or that is receiving direct
17 application of mining waste.

18 **(20)** “Freeboard” means the height of the top of a dam above the adjacent liquid
19 surface within the impoundment.

20 **(21)** “Groundwater” means any of the waters of the state occurring in a
21 saturated subsurface geological formation of rock or soil.

22 **(22)** “Groundwater quality” means the chemical, physical, biological, thermal,
23 or radiological quality of groundwater at a site or within an underground aquifer.

24 **(23)** “Groundwater quality standards” means numerical values consisting of
25 enforcement standards and preventive action limits contained in Table 1 of s. NR

1 140.10, and Table 2 of s. NR 140.12, Wis. Adm. Code, and any preventive action limits
2 for indicator parameters identified under s. NR 140.20 (2), Wis. Adm. Code.

3 (24) “Leachate” means water or other liquid that has been contaminated by
4 dissolved or suspended materials due to contact with refuse disposed of on the
5 mining site.

6 (25) “Merchantable by-product” means all waste soil, rock, mineral, liquid,
7 vegetation, and other material directly resulting from or displaced by the mining,
8 cleaning, or preparation of minerals, during mining operations, that are determined
9 by the department to be marketable upon a showing of marketability made by the
10 operator, accompanied by a verified statement by the operator of his or her intent to
11 sell the material within 3 years from the time it results from or is displaced by
12 mining.

13 (26) “Mining” means all or part of the process involved in the mining of a
14 ferrous mineral, other than for exploration, including commercial extraction,
15 agglomeration, beneficiation, construction of roads, removal of overburden, and the
16 production of refuse, involving the removal of more than 15,000 tons of earth
17 material a year in the regular operation of a business for the purpose of extracting
18 a ferrous mineral.

19 (27) “Mining permit” means the permit under s. 295.58.

20 (28) “Mining plan” means a proposal for mining on a mining site, including a
21 description of the systematic activities to be used for the purpose of extracting
22 ferrous minerals.

23 (29) “Mining site” means the surface area disturbed by mining, including the
24 surface area from which the ferrous minerals or refuse or both have been removed,
25 the surface area covered by refuse, all lands disturbed by the construction or

1 improvement of haulageways, and any surface areas in which structures,
2 equipment, materials, and any other things used in the mining are situated.

3 **(30)** “Mining waste” means tailings, waste rock, mine overburden, waste
4 treatment sludges, or other discarded material, including solid, liquid, semi–solid,
5 or contained gaseous material, resulting from mining or from the cleaning or
6 preparation of ferrous minerals during mining operations, except that “mining
7 waste” does not include topsoil and mine overburden intended to be returned to the
8 mining site or used in the reclamation process and that is placed on the mining site
9 for those purposes, as provided for in the approved mining plan, and does not include
10 merchantable by–products.

11 **(31)** “Mining waste site” means any land or appurtenances thereto used for the
12 storage or disposal of mining waste or for the storage of merchantable by–products,
13 but does not include land or appurtenances used in the production or transportation
14 of mining waste, such as the concentrator, haul roads, or tailings pipelines, that are
15 part of the mining site.

16 **(32)** “Nonferrous metallic mineral” means an ore or other earthen material to
17 be excavated from natural deposits on or in the earth for its metallic content but not
18 primarily for its iron oxide content.

19 **(33)** “Operator” means any person who is engaged in mining, or who holds a
20 mining permit, whether individually, jointly, or through subsidiaries, agents,
21 employees, or contractors.

22 **(34)** “Overburden” means any unconsolidated material that overlies bedrock.

23 **(35)** “Person” means an individual, corporation, limited liability company,
24 partnership, association, local governmental agency, interstate agency, state agency,
25 or federal agency.

1 **(36)** “Piping” means the progressive erosion of materials from an embankment
2 or foundation caused by the seepage of water.

3 **(37)** “Principal shareholder” means any person who owns at least 10 percent
4 of the beneficial ownership of an applicant or operator.

5 **(38)** “Reagent” means a substance or compound that is added to a system in
6 order to bring about a chemical reaction or is added to see if a reaction occurs to
7 confirm the presence of another substance.

8 **(39)** “Reclamation” means the process by which an area physically or
9 environmentally affected by exploration or mining is rehabilitated to either its
10 original state or to a state that provides long-term environmental stability.

11 **(40)** “Reclamation plan” means the proposal for the reclamation of an
12 exploration site under s. 295.44 (2) (b) or a mining site under s. 295.49.

13 **(41)** “Refuse” means all mining waste and all waste materials deposited on or
14 in the mining site from other sources, except merchantable by-products.

15 **(42)** “Related person” means any person that owns or operates a mining site
16 in the United States and that is one of the following when an application for a mining
17 permit is submitted to the department:

18 (a) The parent corporation of the applicant.

19 (b) A person that holds more than a 30 percent ownership interest in the
20 applicant.

21 (c) A subsidiary or affiliate of the applicant in which the applicant holds more
22 than a 30 percent ownership interest.

23 **(44)** “Subsidence” means lateral or vertical ground movement caused by a
24 failure, initiated at the mine, of a man-made underground mine, that directly
25 damages residences or commercial buildings, except that “subsidence” does not

1 include lateral or vertical ground movement caused by earthquake, landslide, soil
2 conditions, soil erosion, soil freezing and thawing, or roots of trees and shrubs.

3 (45) “Tailings” means waste material resulting from beneficiation of crushed
4 ferrous minerals at a concentrator or from washing, concentration, or treatment of
5 crushed ferrous minerals.

6 (46) “Unsuitable” means that the land proposed for mining is not suitable for
7 mining because the mining activity will more probably than not destroy or
8 irreparably damage any of the following:

9 (a) Habitat required for survival of species of vegetation or wildlife designated
10 as endangered through prior inclusion in rules adopted by the department, if the
11 endangered species cannot be reestablished elsewhere.

12 (b) Unique features of the land, as determined by state or federal designation
13 and incorporated in rules adopted by the department, as any of the following, which
14 cannot have their unique characteristic preserved by relocation or replacement
15 elsewhere:

- 16 1. Wilderness areas.
- 17 2. Wild and scenic rivers.
- 18 3. National or state parks.
- 19 4. Wildlife refuges and areas.
- 20 5. Listed properties, as defined in s. 44.31 (4).

21 (46m) “Wastewater and sludge storage or treatment lagoon” means a
22 man-made containment structure that is constructed primarily of earthen
23 materials, that is for the treatment or storage of wastewater, storm water, or sludge,
24 and that is not a land disposal system, as defined in s. NR 140.05 (11), Wis. Adm.
25 Code.

1 (47) “Waters of the state” has the meaning given in s. 281.01 (18).

2 (48) “Water supply” means the sources and their surroundings from which
3 water is supplied for drinking or domestic purposes.

4 (49) “Wetland” has the meaning given in s. 23.32 (1).

5 **295.43 Responsibilities related to mining.** The department shall serve as
6 the central unit of state government to ensure that the impact from mining and
7 reclamation on the air, lands, waters, plants, fish, and wildlife in this state will be
8 minimized and offset to the extent practicable. The administration of occupational
9 health and safety laws and rules that apply to mining remain exclusively the
10 responsibility of the department of safety and professional services. The powers and
11 duties of the geological and natural history survey under s. 36.25 (6) remain
12 exclusively the responsibility of the geological and natural history survey. Nothing
13 in this section prevents the department of safety and professional services and the
14 geological and natural history survey from cooperating with the department in the
15 exercise of their respective powers and duties.

16 **295.44 Exploration. (1) DEFINITIONS.** In this section:

17 (a) “Abandonment” means the filling or sealing of a drillhole.

18 (b) “Clay slurry” means a fluid mixture of native clay formation or commercial
19 clay or clay mineral products and water prepared with only the amount of water
20 necessary to produce fluidity.

21 (c) “Concrete grout” means a mixture consisting of type A portland cement and
22 an equal or lesser volume of dry sand combined with water.

23 (d) “Driller” means a person who performs core, rotary, percussion, or other
24 drilling involved in exploration for ferrous minerals.

1 (e) “Drilling site” means the area disturbed by exploration, including the
2 drillhole.

3 (f) “Dump bailer” means a cylindrical container with a valve that empties the
4 contents of the container at the bottom of a drillhole.

5 (g) “Explorer” means any person who engages in exploration or who contracts
6 for the services of drillers for the purpose of exploration.

7 (h) “Exploration” means the on-site geologic examination from the surface of
8 an area by core, rotary, percussion, or other drilling, where the diameter of the hole
9 does not exceed 18 inches, for the purpose of searching for ferrous minerals or
10 establishing the nature of a known ferrous mineral deposit, including associated
11 activities such as clearing and preparing sites or constructing roads for drilling.
12 “Exploration” does not include drilling for the purpose of collecting soil samples or
13 for determining radioactivity by means of placement of devices that are sensitive to
14 radiation.

15 (i) “License year” means the period beginning on July 1 of any year and ending
16 on the following June 30.

17 (j) “Neat cement grout” means a mixture consisting of type A portland cement
18 and water.

19 (k) “Termination” means the filling of drillholes and the reclamation of a
20 drilling site.

21 (2) LICENSE. No person may engage in exploration, or contract for the services
22 of drillers for purposes of exploration, without an annual license from the
23 department. The department shall provide copies of the application for an
24 exploration license to the state geologist upon issuance of the exploration license. A

1 person seeking an exploration license shall file an application that includes all of the
2 following:

3 (a) An exploration plan that includes all of the following:

4 1. A description of the site where the exploration will take place and a map of
5 that area showing the locations of the exploration.

6 2. A description of the means and method that will be used for the exploration.

7 3. A description of the grading and stabilization of the excavation, sides, and
8 benches that will be conducted.

9 4. A description of how the grading and stabilization of any deposits of refuse
10 will be conducted.

11 5. A description of how any diversion and drainage of water from the
12 exploration site will be conducted.

13 6. A description of how any backfilling will be conducted.

14 7. A description of how any pollutant-bearing minerals or materials will be
15 covered.

16 8. A description of how the topsoils will be removed and stockpiled or how other
17 measures will be taken to protect topsoils before exploration.

18 9. A description of how vegetative cover will be provided.

19 10. A description of how any water impoundment will be accomplished.

20 11. Identification of the means and method that will be used to prevent
21 significant environmental pollution to the extent practicable.

22 (b) A reclamation plan, designed to minimize adverse effects to the
23 environment to the extent practicable, that includes all of the following:

1 1. A description of how all toxic and hazardous wastes and other solid waste
2 will be disposed of in solid or hazardous waste disposal facilities licensed under ch.
3 289 or 291 or otherwise in an environmentally sound manner.

4 2. A description of how topsoil will be preserved for purposes of future use in
5 reclamation.

6 3. A description of how revegetation will be conducted to stabilize disturbed
7 soils and prevent air and water pollution to the extent practicable.

8 4. A description of how disturbance to wetlands will be minimized to the extent
9 practicable.

10 5. A statement that all drillholes will be abandoned in compliance with sub. (5).

11 (c) An exploration license fee of \$300.

12 (d) A bond, as provided in sub. (3) (a).

13 (e) A certificate of insurance showing that the applicant has in force a liability
14 insurance policy issued by an insurance company licensed to do business in this state
15 covering all exploration conducted or contracted for by the explorer in this state and
16 affording personal injury and property damage protection in a total amount
17 determined to be adequate by the department, but not more than \$1,000,000 and not
18 less than \$50,000.

19 (f) A copy of the applicant's most recent annual report to the federal securities
20 and exchange commission on form 10-K, or, if this is not available, a report of the
21 applicant's current assets and liabilities or other data necessary to establish that the
22 applicant is competent to conduct exploration in this state.

23 **(2m) CONFIDENTIALITY.** The department and the state geologist shall protect as
24 confidential any information, other than effluent data, contained in an application
25 for an exploration license, upon a showing that the information is entitled to

1 protection as a trade secret, as defined in s. 134.90 (1) (c), and any information
2 relating to the location, quality, or quantity of a ferrous mineral deposit, to
3 production or sales figures, or to processes or production unique to the applicant or
4 that would tend to adversely affect the competitive position of the applicant if made
5 public.

6 **(3) BOND.** (a) An applicant shall submit, as part of the application for an
7 exploration license, a bond in the amount of \$5,000 that is conditioned on faithful
8 performance of the requirements of this section, that is issued by a surety company
9 licensed to do business in this state, and that provides that the bond may not be
10 canceled by the surety, except after not less than 90 days' notice to the department
11 in writing by registered or certified mail.

12 (b) If the surety for a bond submitted under par. (a) issues a cancellation notice,
13 the explorer shall deliver a replacement bond at least 30 days before the expiration
14 of the 90 day notice period. If the explorer fails to submit a replacement bond, the
15 explorer may not engage in exploration until the explorer submits a replacement
16 bond.

17 (c) If the license of the surety company for a bond submitted under par. (a) is
18 revoked or suspended, the explorer, within 30 days after receiving written notice
19 from the department, shall deliver a replacement bond. If the explorer fails to submit
20 a replacement bond, the explorer may not engage in exploration until the explorer
21 submits a replacement bond.

22 (d) The department may require that the amount of the bond submitted under
23 this subsection be increased at any time, if the department determines that the level
24 of activity by the explorer makes it likely that the bond would be inadequate to fund
25 the termination of all drillholes for which the explorer is responsible.

1 (e) The department shall release a bond submitted under this subsection one
2 year after the issuance of the last certificate of completion of exploration under sub.
3 (9) (c) 3. if the explorer no longer holds an exploration license and the department
4 determines that the explorer has complied with this section.

5 **(4) ISSUANCE OR DENIAL OF EXPLORATION LICENSE.** (a) Except as provided in par.
6 (c), within 10 business days of receiving an administratively complete application for
7 an exploration license, the department shall issue the exploration license or provide
8 the notice required under par. (f) of intent not to issue the exploration license, unless
9 the application is for an upcoming license year. If an application is for an upcoming
10 license year, the department shall issue the exploration license or provide the notice
11 required under par. (f) of intent not to issue the exploration license within 10
12 business days of receiving an administratively complete application or on the next
13 July 1, whichever is later.

14 (b) An application for an exploration license is considered to be
15 administratively complete on the day that it is submitted, unless, before the 10th
16 business day after receiving the application, the department provides the applicant
17 with written notification that the application is not administratively complete. The
18 department may determine that an application is not administratively complete only
19 if the application does not include an exploration plan; a reclamation plan; an
20 exploration license fee; a bond; a certificate of insurance; or a copy of the applicant's
21 most recent annual report to the federal securities and exchange commission on form
22 10-K, or, if this is not available, a report of the applicant's current assets and
23 liabilities or other data necessary to establish that the applicant is competent to
24 conduct exploration in this state. The department may not consider the quality of

1 the information provided. In a notice provided under this paragraph, the
2 department shall identify what is missing from the application.

3 (c) If the department provides notification, in compliance with par. (b), that an
4 application is not administratively complete, the department shall issue the
5 exploration license or provide the notice required under par. (f) of intent not to issue
6 the license within 7 business days of receipt of the missing item, unless the
7 application is for an upcoming license year. If the application is for an upcoming
8 license year, the department shall issue the exploration license or provide the notice
9 required under par. (f) of intent not to issue the exploration license within 7 business
10 days of receipt of the missing item or on the next July 1, whichever is later.

11 (d) If the department does not comply with par. (a) or (c), the application is
12 automatically approved and the department shall issue an exploration license that
13 includes the requirements in sub. (5). The explorer may engage in exploration based
14 on the automatic approval, notwithstanding any delay by the department in issuing
15 the license.

16 (e) Subject to par. (f), the department shall deny an application for an
17 exploration license if the department finds that, after the activities in the exploration
18 plan and the reclamation plan have been completed, the exploration will have a
19 substantial and irreparable adverse impact on the environment or present a
20 substantial risk of injury to public health and welfare.

21 (f) Before denying an application, the department shall provide the applicant
22 with written notification of its intent not to issue the exploration license, setting
23 forth all of the reasons for its intent not to issue the exploration license, including
24 reference to competent evidence supporting its position. The department shall
25 provide the person with an opportunity to correct any deficiencies in the exploration

1 plan or reclamation plan within 10 business days. If the person amends the
2 exploration plan or reclamation plan and corrects the deficiencies, the department
3 shall issue the exploration license within 10 business days of receipt of the amended
4 exploration plan or reclamation plan, unless the application is for an upcoming
5 license year. If an application is for an upcoming license year, the department shall
6 issue the exploration license within 10 business days of receipt of the amended
7 exploration plan or reclamation plan or on the next July 1, whichever is later. If the
8 department determines that the deficiencies have not been corrected, it shall deny
9 the application, in writing, setting forth all of the reasons for its determination,
10 including reference to competent evidence supporting the determination.

11 (5) REQUIREMENTS IN EXPLORATION LICENSE. The department shall include all of
12 the following in an exploration license:

13 (a) A requirement that if the explorer wishes to temporarily abandon a drillhole
14 so that the explorer may use the drillhole for future exploration, the explorer leave
15 the well casing in place and seal the upper end of the casing with a watertight
16 threaded or welded cap.

17 (b) A requirement to permanently abandon a drillhole 4 inches in diameter or
18 smaller by filling the drillhole from the bottom upward to the surface of the ground
19 with concrete grout or neat cement grout.

20 (c) A requirement to permanently abandon a drillhole larger than 4 inches in
21 diameter by filling the drillhole from the bottom upward to the surface of the ground
22 with concrete grout or neat cement grout or in one of the following ways:

23 1. If the drillhole is constructed in limestone, dolomite, shale, or Precambrian
24 formations, such as granite, gabbro, gneiss, schist, slate, greenstone, or quartzite, by
25 filling the drillhole with gravel or crushed rock or, if it is physically impracticable to

1 use gravel or crushed rock and if the department approves, with clay slurry, from the
2 bottom upward to a point 20 feet below the top of the first rock formation encountered
3 below the surface of the ground or to at least 40 feet below the surface of the ground,
4 whichever is the greater depth, and filling the remainder of the drillhole with
5 concrete grout or neat cement grout.

6 2. If the drillhole is constructed in sandstone formation, by filling the drillhole
7 with disinfected sand or pea gravel or, if it is physically impracticable to use sand or
8 pea gravel and if the department approves, with clay slurry, from the bottom upward
9 to a point 20 feet below the top of the first rock formation encountered below the
10 surface of the ground or to at least 40 feet below the surface of the ground, whichever
11 is the greater depth, and filling the remainder of the drillhole with concrete grout or
12 neat cement grout.

13 3. If the drillhole is constructed in glacial drift or other unconsolidated
14 formation, by filling the hole with clean clay slurry to a point 20 feet below the surface
15 of the ground and filling the remainder of the drillhole with concrete grout or neat
16 cement grout.

17 4. If the drillhole is constructed in mixed rock types, by filling the drillhole as
18 provided in subds. 1., 2., and 3., and providing a concrete grout or neat cement grout
19 plug that extends at least 20 feet above and below the point of surface contact
20 between each recognized geologic rock type.

21 (d) 1. A requirement to use a conductor pipe or, when practical, a dump bailer
22 when filling a drillhole.

23 2. A requirement to keep the bottom end of the conductor pipe submerged in
24 concrete grout or neat cement grout at all times when concrete grout or neat cement
25 grout is placed under water using a conductor pipe.

1 3. A requirement to fill the drillhole at the same time that all or part of the
2 drillhole casing is removed from an unconsolidated formation, such as sand or gravel,
3 that will not remain open upon abandonment of a drillhole and to keep the end of the
4 casing below the surface of the fill material throughout the operation.

5 (e) A requirement to obtain approval from the department of the method of
6 containing the flow from, and the method of eventual abandonment of, a drillhole
7 that penetrates an aquifer under artesian pressure so that the groundwater flows at
8 the surface of the ground.

9 **(6) RENEWALS.** (a) An explorer wishing to renew an exploration license shall
10 file with the department a renewal application that includes all of the following:

11 1. A renewal fee of \$150.

12 2. A bond that satisfies sub. (3) (a).

13 3. A certificate of insurance that satisfies sub. (2) (e).

14 4. A copy of the applicant's most recent annual report to the federal securities
15 and exchange commission on form 10-K, or, if this is not available, a report of the
16 applicant's current assets and liabilities or other data necessary to establish that the
17 applicant is competent to conduct exploration in this state.

18 5. Either a statement that no changes are being proposed to the exploration
19 plan and reclamation plan previously approved by the department or a new
20 exploration plan or reclamation plan if the applicant proposes to make changes.

21 (b) Except as provided in par. (d), within 10 business days of receiving an
22 administratively complete application for renewal of an exploration license, the
23 department shall renew the exploration license or provide the notice, required under
24 par. (g), of intent not to renew the exploration license.

1 (c) An application for renewal of an exploration license is considered to be
2 administratively complete on the day that it is submitted, unless, before the 10th
3 business day after receiving the application, the department provides the explorer
4 with written notification that the application is not administratively complete. The
5 department may determine that an application is not administratively complete only
6 if the application does not include a renewal fee; a bond; a certificate of insurance;
7 a copy of the applicant's most recent annual report to the federal securities and
8 exchange commission on form 10-K, or, if this is not available, a report of the
9 applicant's current assets and liabilities or other data necessary to establish that the
10 applicant is competent to conduct exploration in this state; or either a statement that
11 no changes are being proposed to the exploration plan and reclamation plan
12 previously approved by the department or a new exploration plan or reclamation
13 plan if the applicant proposes to make changes. The department may not consider
14 the quality of any information provided. In a notice provided under this paragraph,
15 the department shall identify what is missing from the application.

16 (d) If the department provides notification, in compliance with par. (c), that an
17 application is not administratively complete, the department shall renew the
18 exploration license or provide the notice, required under par. (g), of intent not to
19 renew the exploration license within 7 business days of receipt of the missing item.

20 (e) If the department does not comply with par. (b) or (d), the application for
21 renewal is automatically approved.

22 (f) Subject to par. (g), the department shall deny an application for renewal of
23 an exploration license only if the applicant has filed a new exploration plan or
24 reclamation plan and the department finds that the exploration, after the activities
25 in the new exploration plan and the new reclamation plan have been completed, will

1 have a substantial and irreparable adverse impact on the environment or present a
2 substantial risk of injury to public health and welfare.

3 (g) Before denying an application, the department shall provide the person who
4 submitted the application with written notification of its intent not to renew the
5 exploration license, setting forth all of the reasons for its intent not to renew the
6 exploration license, including reference to competent evidence supporting its
7 position. The department shall provide the person with an opportunity to correct any
8 deficiencies in the exploration plan or restoration plan within 10 business days. If
9 the person amends the exploration plan or reclamation plan and corrects the
10 deficiencies, the department shall renew the exploration license within 10 business
11 days of receipt of the amended exploration plan or reclamation plan. If the
12 department determines that the deficiencies have not been corrected, it shall deny
13 the application, in writing, setting forth all of the reasons for its determination,
14 including reference to competent evidence supporting the determination.

15 (h) The renewal of an exploration license takes effect on the date of issuance
16 and expires on the following June 30.

17 (7) REVOCATION OR SUSPENSION OF EXPLORATION LICENSE. After a hearing, the
18 department may revoke or suspend an exploration license if it determines that any
19 of the following apply:

20 (a) The explorer has not complied with a statute, a rule promulgated by the
21 department, or a condition in the exploration license.

22 (b) The explorer has failed to increase bond amounts to adequate levels as
23 provided under sub (3) (d).

24 (8) NOTICE PROCEDURE. (a) An explorer shall notify the department of the
25 explorer's intent to drill on a parcel by registered mail at least 5 days prior to the

1 beginning of drilling. Notice is considered to be given on the date that the
2 department receives the notice. In the notice, the explorer shall specify which
3 drillholes identified in the exploration plan the explorer intends to drill. The
4 explorer shall send the notice to the subunit of the department with authority over
5 mine reclamation.

6 (b) A notice of intent to drill provided under par. (a) remains in effect for one
7 year beginning on the date that the department receives the notice. If the explorer
8 wishes to continue drilling on the parcel after the notice is no longer in effect, the
9 explorer shall resubmit a notice of intent to drill on the parcel.

10 **(9) REPORTS.** (a) Within 10 days after completing the temporary or permanent
11 abandonment of a drillhole, an explorer shall file with the department an
12 abandonment report that describes the means and method used in the abandonment
13 and is signed by an authorized representative of the explorer attesting to the
14 accuracy of the information contained in the report. The explorer shall submit the
15 abandonment report to the department's district office for the district in which the
16 drilling site is located.

17 (b) After permanent abandonment of a drillhole and regrading and
18 revegetation of the drilling site, an explorer shall notify the department of
19 completion of termination of the drilling site. The explorer shall submit the notice,
20 in writing, to the department's district office for the district in which the drilling site
21 is located.

22 (c) 1. After receipt of a notice under par. (b), the department shall notify the
23 explorer in writing whether the termination is satisfactory or unsatisfactory. If the
24 termination is unsatisfactory, the department shall inform the explorer of the
25 necessary corrective measures. Following the completion of corrective measures, the

1 explorer shall file written notice with the department's district office for the district
2 in which the drilling site is located specifying the means and method used and
3 stating that termination is complete.

4 2. If an explorer fails to comply with corrective measures identified under subd.
5 1., the department may suspend the explorer's exploration license in accordance with
6 sub. (7).

7 3. Upon satisfactory completion of termination of a drilling site, the
8 department shall issue a certificate of completion. The department may not issue a
9 certificate of completion for a drilling site that has only been temporarily abandoned.

10 **(10) DRILLING FEES.** Upon the submission of a report under sub. (9) (a) of
11 temporary abandonment of a drillhole, if the drillhole is temporarily abandoned, or
12 upon submission of a report under sub. (9) (a) of permanent abandonment of a
13 drillhole, if the drillhole is not temporarily abandoned, the explorer shall pay a fee
14 to the department. The fee is \$100 per drillhole for the first 20 drillholes for which
15 a report is filed in a license year and \$50 for each subsequent drillhole for which a
16 report is filed in that license year.

17 **(11) INSPECTIONS.** (a) Any duly authorized officer, employee, or representative
18 of the department may enter and inspect any property, premises, or place on or at
19 which exploration is being performed at any reasonable time for the purpose of
20 ascertaining the state of compliance with this section. No explorer may refuse entry
21 or access to any authorized representative of the department who requests entry for
22 the purposes of inspection and who presents appropriate credentials.

23 (b) No person may obstruct, hamper, or interfere with any inspection
24 authorized in par. (a).

25 (c) No inspector may obstruct, hamper, or interfere with exploration activities.

1 **(12) EXEMPTION.** This section does not apply to an operator with a mining
2 permit who is engaged in exploration activities on lands included in a mining plan
3 and reclamation plan, if the mining plan or reclamation plan contains provisions
4 relating to termination of the exploration activities.

5 **(13) ENVIRONMENTAL ANALYSIS NOT REQUIRED.** The department is not required
6 to prepare an environmental impact statement or an environmental assessment for
7 an application for an exploration license.

8 **295.443 Local impact committee; local agreement.** (1) A county, town,
9 village, city, or tribal government likely to be substantially affected by potential or
10 proposed mining may designate an existing committee, or establish a committee, for
11 purposes of:

12 (a) Facilitating communications between operators and itself.

13 (b) Analyzing implications of mining.

14 (c) Reviewing and commenting on reclamation plans.

15 (d) Developing solutions to mining–induced growth problems.

16 (e) Recommending priorities for local action.

17 (f) Formulating recommendations to the investment and local impact fund
18 board regarding distribution of funds under s. 70.395 (2) (g) related to mining for
19 ferrous minerals.

20 (g) Negotiating a local agreement under sub. (1m).

21 **(1m)** A county, town, village, city, or tribal government that requires an
22 operator to obtain an approval or permit under a zoning or land use ordinance and
23 a county, town, village, or city in which any portion of a proposed mining site is
24 located may, individually or in conjunction with other counties, towns, villages,
25 cities, or tribal governments, enter into one or more agreements with an operator for

1 the development of a mining operation. The local agreement may include any of the
2 following:

3 (a) A legal description of the land subject to the agreement and the names of
4 its legal and equitable owners.

5 (b) The duration of the agreement.

6 (c) The uses permitted on the land.

7 (d) A description of any conditions, terms, restrictions, or other requirements
8 determined to be necessary by the county, town, village, city, or tribal government for
9 the public health, safety, or welfare of its residents.

10 (e) A description of any obligation undertaken by the county, town, village, city,
11 or tribal government to enable the development to proceed.

12 (f) The applicability or nonapplicability of county, town, village, city, or tribal
13 ordinances, approvals, or resolutions.

14 (g) A provision for the amendment of the agreement.

15 (h) Other provisions determined to be reasonable and necessary by the parties
16 to the agreement.

17 **(2)** A county, town, village, city, or tribal government affected in common with
18 another county, town, village, city, or tribal government by a proposed or existing
19 mine may cooperatively designate or establish a joint committee, but may also
20 maintain a separate committee under sub. (1). Committees under this section may
21 include representatives of affected units of government, business, and industry,
22 manpower, health, protective or service agencies, school districts, or environmental
23 and other interest groups or other interested parties.

24 **(3)** Persons applying for an exploration license under s. 295.44 shall thereafter
25 appoint a liaison person to any committee established under sub. (1) or (2), and shall

1 provide such reasonable information as is requested by the committee. Operators
2 and persons applying for an exploration license under s. 295.44 shall thereafter
3 make reasonable efforts to design and operate mining operations in harmony with
4 community development objectives.

5 (4) Committees established under sub. (1) or (2) may be funded by their
6 appointing authority, and may, through their appointing authority, submit a request
7 for operating funds to the investment and local impact fund board under s. 70.395.
8 Committees established under sub. (1) shall be eligible for funds only if the county,
9 town, village or city is also a participant in a joint committee, if any, established
10 under sub. (2). The investment and local impact fund board may not grant funds for
11 the use of more than one committee established under sub. (1) in relation to a
12 particular mining proposal unless a joint committee has been established under sub.
13 (2). The investment and local impact fund board shall grant operating funds to any
14 committee that submits a request and is eligible under this subsection and s. 70.395
15 (2) (fm). Committees may hire staff, enter into contracts with private firms or
16 consultants or contract with a regional planning commission or other agency for staff
17 services for mining-related purposes or the purposes under s. 70.395 (2) (fm).

18 **295.45 Bulk sampling plan.** (1) A person who intends to engage in bulk
19 sampling may file a bulk sampling plan with the department. The collection of data
20 under a bulk sampling plan may include sampling and analysis related to
21 geophysical, geochemical, groundwater, and surface water conditions, as well as any
22 other data or studies necessary to prepare an application for a mining permit,
23 including the mining plan, reclamation plan, mining waste site feasibility study and
24 plan of operation, or any other approval required for the proposed mining.

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

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

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

6 (c) A site-specific plan for controlling surface erosion that conforms to
7 requirements under ss. 281.33 (3) and 283.33 and that identifies how impacts to
8 plant and wildlife habitats will be avoided or minimized to the extent practicable.

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

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

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

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

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

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

17 **(3e)** If a storm water discharge permit under s. 283.33 (1) (a) or a water quality
18 certification under rules promulgated under subch. II of ch. 281 to implement 33
19 USC 1341 (a) is required before bulk sampling may be implemented, the person filing
20 the bulk sampling plan may apply for and be issued the permit or certification.

21 **(3m)** The department shall act on any required construction site erosion
22 control and storm water management approval, notwithstanding any authorization
23 by the department of a local program to administer construction site erosion control
24 and storm water management requirements.

25 **(3s)** An applicant shall submit all of the following at the same time:

1 (a) Applications for individual approvals identified under sub. (3).

2 (b) Applications for coverage under general permits or registration permits
3 identified under sub. (3).

4 (c) Applications for waivers, exemptions, or exceptions identified under sub.
5 (3).

6 (d) A bond, as provided in sub. (5).

7 **(4)** (a) Notwithstanding any provision in ch. 23, 29, 30, 31, 169, 281, 283, 285,
8 289, or 291 or in a rule promulgated under those chapters that is applicable to an
9 approval identified under sub. (3), the application for any approval, for a waiver,
10 exemption, or exception to an approval, or for a determination that the proposed bulk
11 sampling activity is below the threshold that requires an approval, is considered to
12 be complete on the 30th day after the department receives the application, unless,
13 before that day, the department provides the applicant with written notification that
14 the application is not complete, stating the reason for the determination and
15 describing the specific information necessary to make the application complete.

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

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

24 **(5)** (a) A person who intends to engage in bulk sampling shall submit with the
25 bulk sampling plan a bond in the amount of \$5,000 that is conditioned on faithful

1 performance of the requirements of this section, that is issued by a surety company
2 licensed to do business in this state, and that provides that the bond may not be
3 canceled by the surety, except after not less than 90 days' notice to the department
4 in writing by registered or certified mail.

5 (b) If the surety for a bond submitted under par. (a) issues a cancellation notice,
6 the person who filed the bulk sampling plan shall deliver a replacement bond at least
7 30 days before the expiration of the 90-day notice period. If the person fails to submit
8 a replacement bond, the person may not engage in bulk sampling until the person
9 submits a replacement bond.

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

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

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

23 (7) Notwithstanding any provision in ch. 23, 29, 30, 31, 169, 281, 283, 285, 289,
24 or 291 or a rule promulgated under those chapters applicable to an approval
25 identified under sub. (3), the department shall require the bulk sampling activity for

1 which the approval is issued to be conducted at locations that result in the fewest
2 overall adverse environmental impacts.

3 (8) (a) In determining whether to approve or deny an application for an
4 approval identified under sub. (3), the department shall consider the site-specific
5 erosion control plan, the revegetation plan, and any mitigation program under s.
6 295.60 (8), any measures under s. 295.605, or any conservation measures under s.
7 295.61 that the applicant proposes to take.

8 (b) The department may modify the application for an approval identified
9 under sub. (3) in order to meet the requirements applicable to the approval, and, as
10 modified, approve the application.

11 (9) Notwithstanding any inconsistent period in ch. 23, 29, 30, 31, 169, 281, 283,
12 285, 289, or 291 or in a rule promulgated under those chapters that is applicable to
13 an approval identified under sub. (3), the department shall approve or deny an
14 application within 30 days after the day on which the application is considered to be
15 complete under sub. (4) if any of the following apply:

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

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

21 (10) (a) Notwithstanding any inconsistent period in ch. 23, 29, 30, 31, 169, 281,
22 283, 285, 289, or 291 or in a rule promulgated under those chapters that is applicable
23 to an approval identified under sub. (3), the department shall approve or deny any
24 application for an approval identified under sub. (3) to which sub. (9) does not apply
25 within 60 days after the date on which the application is considered to be complete

1 under sub. (4), unless the application is for an individual permit for which federal law
2 requires the opportunity for public comment or the ability to request a public hearing
3 prior to issuance of the approval.

4 (b) The department shall publish a class 1 notice, under ch. 985, and shall
5 publish notice on the department's Internet site, that describes the availability of
6 information concerning the activity for which an approval described in par. (a) is
7 required, its proposed decision, its draft approval, information or summaries related
8 to the approval, the department's analyses and preliminary determinations relating
9 to the approval, the preapplication description under s. 295.46, any additional
10 information that a law concerning the approval requires to be made available, and
11 the opportunity to submit written comments within 30 days after the date of the
12 publication of the notice. The date on which the department first publishes the notice
13 on its Internet site shall be considered the date of the publication of the notice
14 required to be published under this paragraph.

15 (c) In the notice under par. (b), the department shall also specify the date, time,
16 and location of the public informational hearing under par. (e). The department shall
17 send the notice to any person to whom the department is required to give notice of
18 any proposed determination, application, or hearing concerning an approval
19 described in par. (a) under the laws relating to the issuance of the approval and to
20 any person who has requested notice. The department's notice to interested persons
21 under this paragraph may be given through an electronic notification system
22 established by the department.

23 (d) If there is more than one approval described in par. (a), the department shall
24 issue one notice and coordinate the public comment period for all of the approvals.
25 If possible, the department shall coordinate the notice and the public comment

1 period for an approval that is an individual permit for which federal law requires the
2 opportunity for public comment or the ability to request a public hearing prior to
3 issuance of the approval with notice and the public comment period for the approvals
4 described in par. (a).

5 (e) The department shall hold a public informational hearing within 30 days
6 after the date of the publication of the notice under par. (b). The department shall
7 hold the public informational hearing in the county where the majority of the
8 proposed bulk sampling site is located. If there is more than one approval described
9 in par. (a), the department shall hold a single public informational hearing covering
10 all of the approvals and the preapplication description under s. 295.46. If possible,
11 the department shall include consideration of an approval that is an individual
12 permit for which federal law requires the opportunity for public comment or the
13 ability to request a public hearing prior to issuance of the approval in the public
14 informational hearing under this paragraph. The public informational hearing
15 under this paragraph is not a contested case hearing under ch. 227.

16 **(10g)** (a) If it is not possible to coordinate the public comment period and public
17 informational hearing for an approval that is an individual permit for which federal
18 law requires the opportunity for public comment or the ability to request a public
19 hearing prior to issuance of the approval with the public comment period and public
20 informational hearing under sub. (10), the department shall issue a separate public
21 notice and hold a separate public informational hearing for the approval in
22 accordance with the law governing the approval.

23 (b) The department shall approve or deny the application for an approval that
24 is an individual permit for which federal law requires the opportunity for public
25 comment or the ability to request a public hearing prior to issuance of the approval

1 within 180 days after the date on which the application is considered to be complete
2 under sub. (4).

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

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

8 **295.46 Preapplication description.** (1) A person who files a bulk sampling
9 plan under s. 295.45 with regard to a proposed mining project shall file, together with
10 the bulk sampling plan, a general description of the proposed mining project. A
11 person who proposes to engage in a mining project, but who does not file a bulk
12 sampling plan, shall file a general description of the proposed mining project with
13 the department at the time that the person provides the notice of intent to file an
14 application for a mining permit under s. 295.465. The general description shall
15 include all of the following:

16 (a) A description of the proposed mining site.

17 (b) A map that shows all of the following:

18 1. The boundaries of the area of land that will be affected by the proposed
19 mining project.

20 2. The location and names of all streams, roads, railroads, pipelines, and utility
21 lines on or within 1,000 feet of the proposed mining site.

22 3. The name or names of the owner or owners of the proposed mining site.

23 4. The name of each city, village, or town in which the proposed mining site is
24 located and the name of any other city, village, or town that is located within 3 miles
25 of the proposed mining site.

1 5. The federal natural resources conservation service land capabilities
2 classifications of the area affected by the proposed mining project.

3 6. The elevation of the water table.

4 (c) A general description of the nature, extent, and final configuration of the
5 proposed excavation and mining site, including an estimate of the production of
6 tailings, waste rock, and other refuse and the location of their disposal.

7 (d) A general conceptual description of the likely operating procedures of the
8 proposed mining project.

9 (e) The likely location, and a general description, of the excavation, waste site,
10 and processing facilities relating to the proposed mining project.

11 **(2)** (a) If the department provides notice to an applicant under s. 295.45 (3) that
12 no approvals are required for bulk sampling or if a person who proposes to engage
13 in a mining project files a preapplication description of the proposed mining project
14 at the time that the person provides the notice of intent to file an application for a
15 mining permit under s. 295.465 because the person did not file a bulk sampling plan,
16 the department shall publish a class 1 notice, under ch. 985, and shall publish notice
17 on the department's Internet site, of a public informational hearing on the proposed
18 mining project. The date on which the department first publishes the notice on its
19 Internet site shall be considered the date of the publication of the notice required to
20 be published under this paragraph. The department shall publish the notice when
21 it notifies the applicant that no approvals are required or after it receives the notice
22 of intent.

23 (b) In a notice under par. (a), the department shall do all of the following:

24 1. Describe the availability of the preapplication description.

1 2. Describe the opportunity to submit written comments within 30 days after
2 the date of the publication of the notice.

3 3. Specify the date, time, and location of the public informational hearing.

4 (c) The department shall send a notice under par. (a) to all of the following:

5 1. The clerk of any city, village, town, or county within which any part the
6 proposed mining site lies.

7 2. The clerk of any city, village, or town, contiguous to any city, village, or town
8 within which any portion of the proposed mining site is located.

9 3. Any regional planning commission for the area within which the affected
10 area lies.

11 4. Any state agency that the department knows may be required to grant a
12 permit or other authorization necessary for the proposed mining project.

13 5. Any interested person who has requested notification. The department's
14 notice under this subdivision may be given through an electronic notification system
15 established by the department.

16 (d) The department shall hold a public informational hearing within 30 days
17 after the date of the publication of the notice under par. (a). The department shall
18 hold the public informational hearing in the county in which the majority of the
19 proposed mining site is located.

20 **295.465 Preapplication notification.** (1) Except as provided in sub. (3), at
21 least 12 months before filing an application for a mining permit under s. 295.47, a
22 person proposing to engage in a mining project shall notify the department and the
23 U.S. Army Corps of Engineers in writing of the intention to file an application for a
24 mining permit. After receiving the notification, the department shall hold at least
25 one meeting with the person to make a preliminary assessment of the project's scope,

1 to make an analysis of alternatives, to identify potential interested persons, and to
2 ensure that the person making the proposal is aware of all of the following:

3 (a) The approvals, including the filing requirements for the approvals, that the
4 person may be required to obtain for the mining project.

5 (b) The requirements for submission of an environmental impact report and for
6 submission of any other information required by the department to prepare an
7 environmental impact statement under s. 295.53.

8 (c) The information the department will require to enable the department to
9 process the application for the mining permit in a timely manner.

10 (2) Within 60 days of a meeting under sub. (1), the department shall provide
11 all of the following to the person:

12 (a) A detailed written summary of the requirements under sub. (1) (a) to (c).

13 (b) Any available information relevant to the potential impacts of the mining
14 project on rare, threatened, or endangered species and historic or cultural resources
15 and any other information relevant to potential impacts that may occur from the
16 project that are required to be considered under s. 1.11.

17 (c) Available information to evaluate the environmental impact of the project
18 and to expedite the preparation of the environmental impact report and the
19 environmental impact statement, including information concerning preliminary
20 environmental reviews, field studies, and investigations; monitoring programs to
21 establish baseline water quality; laboratory studies and investigations; advisory
22 services; and the timing and the processes associated with any necessary
23 consultations with other state or federal agencies and within the department, such
24 as those required for endangered resources and cultural resource consultations and
25 approvals.

1 **(3)** A person who files an application under s. 295.47 for a mining proposal is
2 not required to provide notice under sub. (1) if the person files the application no
3 more than one year after the department denied the person’s application for the same
4 mining proposal.

5 **(4)** After providing notice to the U.S. Army Corps of Engineers under sub. (1),
6 a person shall make a good faith effort to meet with the U.S. Army Corps of Engineers
7 to discuss the mining project, the environmental impact report, and information
8 related to federal requirements that may be applicable to the mining project.

9 **(5)** After receiving notice under sub. (1), the department shall seek to enter into
10 a memorandum of understanding with any federal regulatory agency with
11 responsibilities related to the potential mining operation covering timelines,
12 sampling metrology, and any other issue of mutual concern related to processing an
13 application for a mining permit.

14 **295.47 Application for mining permit.** (1) (a) No person may engage in
15 mining or reclamation at any mining site unless the mining site is covered by a
16 mining permit and by written authorization to mine under s. 295.59 (3). An
17 applicant shall submit an application for a mining permit to the department in
18 writing and in reproducible form and shall provide the number of copies that are
19 requested by the department. An application and a mining permit are required for
20 each separate mining site. The applicant shall distribute copies of the application
21 to the clerk of any city, village, town, or county with zoning jurisdiction over the
22 proposed site, to the clerk of any city, village, town, or county within whose
23 boundaries any portion of the proposed mining site is located, to the elected
24 governing body of any federally recognized American Indian tribe or band with a
25 reservation the boundaries of which are within 20 miles of the proposed site, and to

1 the main public library of each city, village, town, or county with zoning jurisdiction
2 over the proposed site or within whose boundaries any portion of the proposed site
3 is located.

4 (am) For the purposes of s. 295.57 (7) (a), as part of the application for a mining
5 permit, an applicant may specify a deadline for the department to act on the mining
6 permit that is more than 420 days after the day on which the application is
7 administratively complete under s. 295.57 (2).

8 (b) If a person proposes to conduct mining at a mining site that includes an
9 abandoned mining site, the person shall include plans for reclamation of the
10 abandoned mining site, or the portion of the abandoned mining site that is included
11 in the mining site, in its mining plan and reclamation plan.

12 (2) As a part of each application for a mining permit, the applicant shall furnish
13 all of the following:

14 (a) A mining plan under s. 295.48.

15 (b) A reclamation plan under s. 295.49.

16 (c) A mining waste site feasibility study and plan of operation under s. 295.51.

17 (e) The name and address of each owner of land within the mining site and each
18 person known by the applicant to hold any option or lease on land within the mining
19 site.

20 (f) A list of all mining permits in this state held by the applicant.

21 (g) Evidence the applicant has applied or will apply for necessary permits or
22 other permissions under all applicable zoning ordinances and that the applicant has
23 applied or will apply to the department for any approval and has applied or will apply
24 for any other license or permit required under state law.

1 (h) 1. The information specified in subd. 2. concerning the occurrence of any of
2 the following within 10 years before the application is submitted:

3 a. A forfeiture by the applicant, principal shareholder of the applicant, or a
4 related person of a mining reclamation bond that was sufficient to cover all costs of
5 reclamation and was posted in accordance with a permit or other approval for a
6 mining operation in the United States, unless the forfeiture was by agreement with
7 the entity for whose benefit the bond was posted.

8 b. A felony conviction of the applicant, a related person, or an officer or director
9 of the applicant for a violation of a law for the protection of the natural environment
10 arising out of the operation of a mining site in the United States.

11 c. The bankruptcy or dissolution of the applicant or a related person that
12 resulted in the failure to reclaim a mining site in the United States in violation of a
13 state or federal law.

14 d. The permanent revocation of a mining permit or other mining approval
15 issued to the applicant or a related person if the permit or other mining approval was
16 revoked because of a failure to reclaim a mining site in the United States in violation
17 of state or federal law.

18 2. The applicant shall specify the name and address of the person involved in
19 and the date and location of each occurrence described in subd. 1.

20 (i) A description of any land contiguous to the proposed mining site that the
21 applicant owns or leases or has an option to purchase or lease.

22 (j) Any other pertinent information that the applicant believes may be useful
23 to the department.

24 **295.48 Mining plan. (1) GENERAL.** An applicant for a mining permit shall
25 submit as part of the application a mining plan that includes a description of the

1 proposed mining site and either a detailed map drawn to a scale approved by the
2 department or aerial photographs, if the photographs show the details to the
3 satisfaction of the department, prepared and certified by a competent engineer,
4 surveyor, or other person approved by the department that show all of the following:

5 (a) The boundaries of the area of land that will be affected.

6 (b) The drainage area above and below the area that will be affected.

7 (c) The location and names of all streams, roads, railroads, pipelines, and
8 utility lines on or within 1,000 feet of the mining site.

9 (d) The name or names of the owner or owners of the mining site.

10 (e) The name of the city, village, or town in which the mining site is located and
11 the name of any other city, village, or town that is within 3 miles of the mining site.

12 **(2) DESCRIPTIVE DATA.** The applicant shall provide descriptive data to
13 accompany the map or photographs under sub. (1), including all of the following:

14 (a) The federal natural resources conservation service land capabilities
15 classifications of the affected area.

16 (b) The elevation of the water table.

17 (c) Details of the nature, extent, and final configuration of the proposed
18 excavation and mining site, including the total estimated production of tailings,
19 waste rock, and other refuse and the location of their disposal.

20 (d) The nature and depth of the overburden.

21 **(3) OPERATING PROCEDURES.** The applicant shall also include in the mining plan
22 the details of the proposed operating procedures, including descriptions of all of the
23 following:

24 (a) The sequence of mining operations.

25 (b) The handling of overburden materials.

- 1 (c) The production, handling, and final disposition of tailings.
- 2 (d) The milling, concentrating, refining, and other processing of ferrous
3 minerals.
- 4 (e) The storage, loading, and transportation of the final product.
- 5 (f) Groundwater and surface water management techniques, including
6 provisions for erosion protection and drainage control, and a water management
7 plan showing water sources, flow paths and rates, storage volumes, and release
8 points.
- 9 (g) Plans for collection, treatment, and discharge of any water resulting from
10 the mining.
- 11 (h) Plans for protecting air quality under ch. 285.
- 12 (hm) A plan for monitoring environmental changes at the mining site.
- 13 (hr) An assessment of the risk of the occurrence of an accidental health or
14 environmental hazard in connection with the operation of the mine. The assessment
15 shall include, with specificity, a description of the assumptions that the applicant
16 used in making the risk assessment and the contingency measures that the applicant
17 proposes to take in the event that an accidental health or environmental hazard
18 occurs.
- 19 (i) Measures for notifying the public and responsible governmental agencies of
20 potentially hazardous conditions, including the movement or accumulation of toxic
21 wastes in groundwater and surface water, soils, and vegetation, and other
22 consequences of the operation of importance to public health, safety, and welfare.
- 23 (j) All surface facilities associated with the mining site and any use of mining
24 waste in reclamation or the construction of any facility or structure.
- 25 (k) All geological and geotechnical investigations and drilling programs.

1 (L) A plan for completing and submitting a preblasting survey to the
2 department before any blasting is conducted.

3 (4) REQUIRED DEMONSTRATIONS. The applicant shall demonstrate in the mining
4 plan that the proposed mining will be consistent with the reclamation plan under s.
5 295.49 and that all of the following will apply, at a minimum:

6 (a) Handling and storage of all materials on the mining site will be done in an
7 environmentally sound manner.

8 (b) Buildings and other structures will be painted and maintained in a manner
9 that is visually compatible with the surrounding vegetational and earth conditions,
10 except that if a building or other structure cannot be painted and maintained in a
11 manner that is visually compatible or if painting and maintaining a building or other
12 structure in a manner that is visually compatible would cause safety concerns, the
13 building or structure will be made as visually inconspicuous as is practicable.

14 (c) Effective means will be taken to limit access to the mining site to minimize
15 exposure of the public to hazards.

16 (d) The use of mine mill chemicals and processing reagent wastes will be
17 governed by all of the following:

18 1. Reagents and mine mill chemicals will not be used in a manner that will
19 result in substantial harm to public safety or health or to the environment.

20 2. Reagents and mine mill chemicals that consist of or contain water soluble
21 salts or metals will be used in accordance with any applicable approval.

22 3. Reagents will not be used or stored at the mining site if they are not included
23 in the mining waste site feasibility study and plan of operation or in the mining plan,
24 except for reagents for laboratory, testing, research, or experimental purposes.

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

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

6 (g) Mining site facilities are designed to minimize disturbance to surface areas,
7 to the extent practicable.

8 (h) Where practicable, elevation differences in water-based transport systems
9 will be used for gravity flows to minimize pumping facilities and pressures.

10 (i) The following apply:

11 1. Systems for transporting tailings in slurry through pipelines that are not
12 buried are designed to provide for emergency tailings conveyance or storage in case
13 a pipeline breaks, plugs, freezes, or needs repairs and will be accessible for
14 inspection, emergency repair, and maintenance.

15 2. The location of emergency spill containment areas is consistent with the
16 prevention of substantial environmental pollution of surface waters.

17 3. In the event of a power failure, tailings pipelines will be self draining to a
18 tailings area or an emergency spill containment area or standby pumps and pipelines
19 or standby power is provided.

20 4. More than one emergency spill containment area is provided if necessary.

21 (j) If practicable, all liquid effluents from the mining site will be directed to a
22 common point, for treatment if necessary, before discharge to a natural watercourse.

23 (L) If sanitary wastes will be directed to a tailings area they will be
24 appropriately treated.

1 **295.49 Reclamation plan. (1)** An applicant for a mining permit shall submit
2 as part of the application a reclamation plan, designed to minimize adverse effects
3 to the environment to the extent practicable, that includes all of the following:

4 (a) A description of the manner, location, sequence, and timing of reclamation
5 of the mining site, including the mine, mining waste site, and sites for the disposal
6 of wastes that are not mining wastes.

7 (am) Prereclamation and postreclamation drawings.

8 (b) A map showing the specific reclamation proposal for each area of the mining
9 site.

10 (c) A description of ongoing reclamation procedures during mining.

11 (d) A description of proposed interim and final topography and slope
12 stabilization.

13 (e) A description of the proposed final land use and the relationship to
14 surrounding land and land use.

15 (f) Plans for the long-term care of the mining site, that include all of the
16 following:

17 1. Monitoring of the mine; mining waste sites; sites for the disposal of wastes
18 that are not mining wastes; groundwater quality; and surface water quality.

19 2. The names of persons legally and operationally responsible for long-term
20 care.

21 (g) Projected costs of reclamation, including the estimated cost of fulfilling the
22 reclamation plan.

23 **(2)** The applicant shall demonstrate in the reclamation plan that all of the
24 following will apply to the proposed reclamation, at a minimum:

1 (a) All toxic and hazardous wastes will be disposed of in conformance with
2 applicable state and federal laws.

3 (b) At the conclusion of mining activity, each tunnel, shaft, and other
4 underground opening will be sealed in a manner that will prevent seepage of water
5 in amounts that may be expected to create a safety, health, or environmental hazard,
6 unless the applicant demonstrates alternative uses for the tunnel, shaft, or other
7 underground opening that do not endanger public health or safety and that conform
8 to applicable environmental protection and mine safety laws and rules.

9 (c) Grading and stabilization of the excavation, sides, benches, and final slope
10 will conform with state and federal environmental and safety requirements and will
11 prevent erosion and environmental pollution to the extent practicable.

12 (d) Grading and stabilization of the mining waste site and sites for the disposal
13 of wastes that are not mining wastes will conform with state and federal
14 environmental and safety requirements.

15 (e) Merchantable by-products will be stabilized.

16 (f) Diversion and drainage of water from the mining site, including the mining
17 waste site and sites for the disposal of wastes that are not mining wastes, will be
18 adequate to prevent erosion and contamination of surface water and groundwater
19 to the extent practicable.

20 (g) Backfilling with tailings, waste rock, overburden, or borrow materials will
21 be conducted where the backfilling will not interfere with the mining and will not
22 cause an applicable groundwater quality standard to be exceeded.

23 (h) All underground and surface runoff waters from the mining site will be
24 managed, impounded, or treated in compliance with any approval that regulates
25 construction site erosion control or storm water management or discharge.

1 (i) All surface structures constructed as part of the mining activities will be
2 removed unless an alternate use is approved in the reclamation plan.

3 (j) Adequate measures will be taken to prevent significant subsidence, but if
4 subsidence does occur, the affected area will be reclaimed.

5 (k) All recoverable topsoil from surface areas disturbed by the mining will be
6 removed and stored in an environmentally acceptable manner for use in reclamation
7 or in offsetting or minimizing adverse environmental impacts.

8 (L) All disturbed surface areas will be revegetated as soon as practicable after
9 the disturbance to stabilize slopes and minimize air pollution and water pollution,
10 with the objective of reestablishing a variety of plants and animals indigenous to the
11 area immediately prior to mining to the extent practicable.

12 (m) Plant species not indigenous to the area will be used for revegetation only
13 if necessary to provide rapid stabilization of slopes and prevention of erosion and only
14 with the approval of the department, but the objective under par. (L) will be
15 maintained.

16 (3) If it is physically or economically impracticable or environmentally or
17 socially undesirable for the reclamation process to return the area affected by mining
18 to its original state, the applicant shall provide, in the reclamation plan, the reasons
19 it would be impracticable or undesirable and a discussion of alternative conditions
20 and uses to which the affected area can be put.

21 **295.51 Mining waste site location criteria; feasibility study, and plan**
22 **of operation. (1) DEFINITIONS.** In this section:

23 (a) “Groundwater flow net” means a drawing showing equipotential contour
24 lines and the direction that groundwater will flow.

1 (c) “Regional” means relating to the area that may affect or be affected by a
2 proposed mining waste site, which ordinarily will not exceed the area within a radius
3 of 5 miles of the mining waste site.

4 (e) “Water budget” means an assessment of water inputs, outputs, and net
5 changes to a natural system or engineered facility over a fixed period.

6 (f) “Well nest” means 2 or more wells constructed to different depths and
7 installed within 10 feet of each other at the ground surface.

8 **(1e) HAZARDOUS MINING WASTE.** (a) Prior to the informational hearing under s.
9 295.57 (5) the department shall designate any mining wastes identified by the
10 department as hazardous under s. 291.05 (1).

11 (b) The disposal of any mining wastes that are identified by the department as
12 hazardous under s. 291.05 (1) in a mining waste site is subject to this subchapter, and
13 not to chs. NR 660 to 679, Wis. Adm. Code, except as necessary to comply with
14 applicable federal regulations adopted under the federal Resource Conservation and
15 Recovery Act, 42 USC 6901 to 6991m.

16 **(1m) LOCATION CRITERIA.** (a) Except as provided in par. (b), no person may locate
17 or operate a mining waste site, excluding the portion of a mining site from which
18 ferrous minerals are extracted and that is backfilled with mining waste, within 1,000
19 feet of any of the following:

20 1. The nearest edge of the right-of-way of any state trunk highway, as defined
21 in s. 340.01 (60).

22 2. The boundary of any state or national park.

23 3. The boundary of a scenic easement purchased by the department or the
24 department of transportation.

25 4. The boundary of a designated scenic or wild river.

1 5. A scenic overlook designated by the department by rule.

2 6. A hiking or biking trail designated by the department or the U.S. Congress.

3 (b) The prohibition in par. (a) does not apply if, regardless of season, the
4 proposed mining waste site is visually inconspicuous due to screening or being
5 visually absorbed due to natural objects, compatible natural plantings, earth berm,
6 or other appropriate means; or if, regardless of season, the proposed mining waste
7 site is screened so as to be as aesthetically pleasing and inconspicuous as is feasible.

8 (b) Except as provided in par. (bn), no person may locate or operate a mining
9 waste site, excluding the portion of a mining site from which ferrous minerals are
10 extracted and that is backfilled with mining waste, within 1,000 feet of a navigable
11 water that is a lake, pond, or flowage.

12 (bg) Except as provided in par. (bn), no person may locate or operate a mining
13 waste site, excluding the portion of a mining site from which ferrous minerals are
14 extracted and that is backfilled with mining waste, within 300 feet of a navigable
15 water that is a river or stream.

16 (bn) The prohibitions in pars. (be) and (bg) do not apply to an activity that is
17 associated with a mining waste site and that is approved by the department under
18 s. 295.60, 295.605, or 295.61.

19 (bq) No person may locate or operate a mining waste site, excluding the portion
20 of a mining site from which ferrous minerals are extracted and that is backfilled with
21 mining waste, within a floodplain.

22 (bt) No person may locate or operate a mining waste site, excluding the portion
23 of a mining site from which ferrous minerals are extracted and that is backfilled with
24 mining waste, in an area within the property owned or leased by the mining operator,

1 or on which the mining operator holds an easement, and on which the mining site
2 is located if the area is closer than 200 feet to the outer boundary of that property.

3 (c) No person may locate or operate a mining waste site, excluding the portion
4 of a mining site from which ferrous minerals are extracted and that is backfilled with
5 mining waste, within 1,200 feet of any public or private water supply well that
6 provides water for human consumption.

7 (d) No person may locate or operate a mining waste site, excluding the portion
8 of a mining site from which ferrous minerals are extracted and that is backfilled with
9 mining waste, within an area that contains mineral resources that are known at the
10 time the application for the mining permit is issued, are likely to be mined in the
11 future, and lie within 1,000 feet of the surface.

12 **(1s) BACKFILLED WASTE SITE.** For surface mining, the portion of a mining site
13 from which ferrous minerals are extracted and that is backfilled with mining waste
14 and any buildings, structures, roads, or drainage controls associated with that
15 portion of the mining site may be considered a single mining waste site.

16 **(2) GENERAL.** An applicant for a mining permit shall submit as part of the
17 application a mining waste site feasibility study and plan of operation that
18 demonstrates the suitability of the proposed mining waste site for the disposal of
19 mining wastes and that describes the operation of the mining waste site.

20 **(3) WASTE CHARACTERIZATION AND ANALYSIS.** For the purposes of this section, the
21 applicant shall perform waste characterization and analysis, to identify the
22 quantities, variability, and physical, radiological, and chemical properties of each
23 mining waste as necessary to assess the potential environmental impact of handling,
24 storage, and disposal. The applicant may include in the waste characterization and
25 analysis a review of the literature and results from similar existing facilities,

1 materials, or studies. For the purpose of the waste characterization and analysis,
2 the applicant shall conduct testing on representative samples of materials available,
3 on individual mining wastes from the mining process, and if the applicant proposes
4 mixed storage or disposal of individual mining wastes, on composite mining wastes.
5 If physical or chemical segregation of a mining waste is proposed, the applicant shall
6 test each individual waste resulting from the physical or chemical segregation. The
7 applicant shall complete all of the following components of the waste
8 characterization and analysis:

9 (a) Identification of all mining wastes that will be disposed of or stored in the
10 mining waste site, including classification of mining waste types, estimates of the
11 rates of generation and volumes of each type, and an explanation of the proposed
12 ultimate disposition of each type.

13 (b) Chemical, radiological, physical, and mineralogical analyses of each type
14 of mining waste.

15 (c) Analyses of the particle size of the mining wastes.

16 (d) Chemical and physical characteristics testing, including testing to
17 determine the leaching potential of the mining wastes and the composition of the
18 resulting leachate, using, at a minimum, static testing, kinetic testing, and
19 microscopic testing for mineralization characterization, except that this testing is
20 not required if the applicant demonstrates, based on the analyses in pars. (b) and (c)
21 or on past experience, that there is not a probability for significant adverse
22 environmental impact or a probability of an adverse impact on public health, safety,
23 or welfare.

24 (4) **SITE SPECIFIC INFORMATION.** In addition to performing the mining waste
25 characterization and analysis under sub. (3), for the purposes of the mining waste

1 site feasibility study and plan of operation, an applicant shall conduct field and
2 laboratory investigations to determine physical, chemical, and biological
3 characteristics of the proposed mining waste site. The applicant shall do all of the
4 following:

5 (a) Perform field investigations to determine the specific topography, soil types,
6 and depth to bedrock and groundwater.

7 (b) Perform at least one soil boring, to bedrock or refusal, every 80 acres,
8 characterizing the major geomorphic features such as ridges and lowlands and
9 characterizing each major soil layer according to the unified soil classification
10 system.

11 (c) Prepare a boring log for each soil boring, including soil and rock descriptions,
12 method of drilling, method of sampling, sample depths, date of boring, and water
13 level measurements and dates, with elevations referring to United States geological
14 survey mean sea level datum.

15 (d) Collect soil samples to adequately determine the geology and ensure the
16 proper design and monitoring of the mining waste site, including doing all of the
17 following:

18 1. Collecting the soil samples at not greater than 5 foot depth intervals, unless
19 physical conditions such as soil homogeneity indicate that greater intervals are
20 adequate.

21 2. Collecting the soil samples using generally accepted techniques for sampling
22 undisturbed soils, where that is appropriate.

23 3. Classifying all soil samples according to the unified soil classification
24 system.

1 (e) Perform soil tests as necessary for classification and correlation purposes
2 and to develop necessary geotechnical design parameters for the mining waste site,
3 without compositing soil samples.

4 (f) Determine the hydraulic conductivity of the various soil strata, using in situ
5 hydraulic conductivity testing procedures as appropriate to confirm values
6 determined in the laboratory.

7 (g) Determine horizontal and vertical groundwater flow patterns in and around
8 the proposed mining waste site based on data obtained from groundwater
9 monitoring wells and piezometers constructed in conformity with ch. NR 141, Wis.
10 Adm. Code.

11 (h) Conduct a program to establish baseline water quality through monitoring
12 groundwater and surface water in the vicinity of the mine and the proposed mining
13 waste site on a monthly basis and establishing physical–chemical and biological
14 characteristics of the concentrations of substances in the water before mining begins
15 at the mining site. The applicant shall do all of the following:

16 1. Select physical–chemical parameters based on transport and
17 transformation mechanisms in the environment as well as other factors affecting the
18 mobility and toxicity of pollutants.

19 2. Select biological parameters based on the environmental characterizations
20 under sub. (5) (g), the degree of impact predicted, and the potentially affected
21 organism’s sensitivity to contaminants.

22 3. Establish a final parameter list for groundwater and surface water based on
23 preliminary sampling and known information concerning the waters in the vicinity
24 of the mine and the mining waste site, consideration of applicable water quality
25 standards, and the geology and composition of the ferrous mineral deposit that will

1 be mined. At a minimum, in the program under this paragraph the applicant shall
2 collect water quality data for all of the following parameters:

- 3 a. Specific conductance.
- 4 b. Temperature.
- 5 c. Hydrogen ion concentration (pH).
- 6 d. Dissolved oxygen.
- 7 e. The major anions sulfate, chloride, and bicarbonate.
- 8 f. The major cations calcium, magnesium, potassium, and sodium.
- 9 g. Other total and dissolved metals, including aluminum, iron, and manganese,
10 that may be introduced by the mining activities.
- 11 h. General chemistry, including total alkalinity, total organic carbon, gross
12 alpha, gross beta, ammonia, nitrate, total dissolved solids, total hardness, and total
13 suspended solids.

14 **(5) CONTENTS RELATED TO WASTE SITE FEASIBILITY.** An applicant shall include all
15 of the following in the mining waste site feasibility study and plan of operation:

16 (a) A description of the mining waste site location, proposed acreage, proposed
17 mining waste site life and range of disposal capacity, and estimated types and
18 quantities of mining wastes to be contained.

19 (b) A description of the mining waste characterization and analysis conducted
20 under sub. (3), including a description of the test methods used in evaluating the
21 characteristics of the mining waste and the procedures and records for documenting
22 the chain of custody of the test samples.

23 (c) An existing site conditions plan sheet consisting of a topographic survey of
24 the area, with elevations tied to United States geological survey mean sea level
25 datum, illustrating the property boundaries, proposed boundaries of the mining

1 waste site, survey grid and north arrow, buildings, water supply wells, utility lines,
2 other man-made features, soil boring locations, observation well locations, and other
3 pertinent information.

4 (d) A series of geologic cross-sections illustrating existing topography; soil
5 borings; soil classification; soil properties; interpreted soil stratigraphy; bedrock;
6 well and boring locations and constructions; and stabilized water level readings.

7 (e) A water table map, using the existing site conditions plan under par. (c) as
8 a base, that is based on stabilized water level readings and, if seasonal changes in
9 groundwater levels are significant, maps those changes.

10 (f) If more than 2 well nests are constructed, groundwater flow nets to illustrate
11 horizontal and vertical flow, which may be illustrated on the geologic cross-sections
12 under par. (d), if appropriate.

13 (g) An environmental characterization that describes the structure and
14 functional relationships of ecosystems potentially affected by the proposed mining
15 waste site.

16 (h) A report on the water quality data collected under the baseline monitoring
17 program under sub. (4) (h) to establish baseline water quality.

18 (i) A land use map, using the existing site conditions plan under par. (c) as a
19 base, showing plant communities, wildlife habitat, places where rare and
20 endangered species have been sighted, archaeological or historic sites, buildings,
21 and areas of social importance.

22 (j) A table showing existing water quality of all potentially affected surface
23 waters, indicating important aquatic habitat.

24 (k) Local climatological data for seasonal precipitation, evaporation, air
25 temperature, and wind velocity and direction. The applicant may use an annual

1 record on the proposed mining waste site or adequate data to correlate the proposed
2 mining waste site conditions to an existing observation station as the basis for this
3 data.

4 (L) A discussion of regional conditions, supplemented with maps or
5 cross-sections where appropriate, addressing all of the following:

6 1. Topography.

7 2. Hydrology, including surface water drainage patterns and important
8 hydrologic features such as navigable waters, springs, drainage divides, and
9 wetlands.

10 3. Geology, including the nature and distribution of bedrock and
11 unconsolidated deposits.

12 4. Hydrogeology, including depth of groundwater, flow directions, recharge and
13 discharge areas, groundwater divides, aquifers, and the identification of the aquifers
14 used by all public and private wells within at least 1,200 feet of the proposed mining
15 waste site.

16 5. Groundwater and surface water quality and precipitation chemistry.

17 6. Climatology.

18 7. Identification of owners of land adjacent to the proposed mining waste site.

19 8. Zoning.

20 9. Existing land uses with particular emphasis on known recreational, historic,
21 archaeological, scientific, cultural, or scenic significance.

22 10. Existing or proposed access roads and weight restrictions on those roads.

23 11. Identification of aquatic and terrestrial ecosystems such as stream orders
24 and classifications.

1 (m) A discussion of alternative methods of disposing of mining waste materials,
2 including an analysis of the practicability of the reuse, sale, recovery, or processing
3 of the mining wastes for other purposes.

4 (n) An analysis of the results of the mining waste characterizations under sub.
5 (3), the site specific information under sub. (4) and this subsection, and the regional
6 information under par. (L) in relation to the approach for locating the mining waste
7 site and developing appropriate design, construction, operation, monitoring, and
8 long-term care requirements for each type of mining waste.

9 (o) A proposed mining waste site design, based on conclusions resulting from
10 analysis of the mining waste characterizations under sub. (3) and the site data under
11 sub. (4), that includes all of the following:

12 1. A map, using the existing site conditions plan under par. (c) as a base, that
13 shows proposed access, lateral extent of filling, and phases of mining waste site
14 development.

15 2. A series of cross-sections, using the geologic cross-sections under par. (d) as
16 the base, that show existing topography, proposed base grades, and final grades.

17 3. Preliminary earthwork balance calculations, showing amounts of materials
18 expected to be moved on the mining waste site prior to the disposal of mining waste.

19 4. Proposed methods for leachate control.

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

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

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

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

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

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

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

12 9. The results of engineering and hydrologic modeling to assess mining waste
13 site performance relative to compliance with applicable groundwater quality
14 standards to a depth of not more than 1,000 feet into the Precambrian bedrock or to
15 the final depth of the mining excavation, whichever is greater, and to compliance
16 with applicable surface water quality standards, examining a period equal to the
17 proposed period in which the mining waste site is proposed to operate plus 250 years
18 after closure of the mining waste site. The applicant may also include information
19 from other mining operations and operations for the extraction of nonferrous
20 metallic minerals to substantiate that the proposed mining waste site design,
21 including associated contingency plans and monitoring and response plans, will
22 allow for the operation and closure of the mining waste site in a manner that will not
23 substantially adversely affect groundwater and surface water quality in accordance
24 with applicable standards.

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

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

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

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

16 1. Geology of the mining waste site including type and homogeneity of the
17 foundation.

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

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

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

23 5. Requirements of the mine safety and health administration of the federal
24 department of labor.

1 (s) An economic analysis, including an engineer’s cost estimate, for mining
2 waste site closure and long-term care.

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

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

7 1. Boring logs, soil tests, well construction data, and water level
8 measurements.

9 2. A description of the methods and equations used in the analysis of the raw
10 data.

11 3. References.

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

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

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

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

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

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

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

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

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

20 8. If applicable, the following information on the plan sheets under subds. 1.
21 to 7.:

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

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

24 c. All drainage patterns and surface water drainage control structures both
25 within the actual fill area and at the perimeter of the mining waste site, including

1 any berms, ditches, sedimentation basins, pumps, sumps, culverts, pipes, inlets,
2 velocity breaks, sodding, erosion matting, vegetation, or other methods of erosion
3 control.

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

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

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

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

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

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

13 j. All temporary and permanent fencing.

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

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

18 m. Leachate and groundwater monitoring devices and systems.

19 n. Disposal areas for severe weather operations.

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

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

22 q. Construction notes and references to details.

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

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

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

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

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

1 materials; monitoring; closure of filled areas; leachate control methods; and critical
2 backup equipment.

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

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

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

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

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

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

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

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

24 (g) A list of the groundwater and surface water quality parameters for which
25 the applicant will monitor under s. 295.643 and a description of the methods for

1 groundwater and surface water sample collection, preservation, and analysis that
2 will be used.

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

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

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

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

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

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

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

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

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

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

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

14 (j) The final slopes of the completed mining waste site will be no greater than
15 50 percent, unless the mining waste site is specifically designed for a final use
16 compatible with other slopes.

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

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

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

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

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

8 (p) Material used in earth embankments or drainage or filter beds will be free
9 of vegetation, organic soils, frozen soils, and other extraneous matter that could
10 affect the compactibility, density, permeability, or shear strength of the finished
11 embankment.

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

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

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

22 (t) The mining waste site is located in the same watershed as the surface
23 facilities for the mining unless it is not practicable to locate the mining waste site in
24 the same watershed as the surface facilities for the mining, as determined on a site
25 specific basis.

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

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

4 (x) Upstream rainfall catchment areas are minimized.

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

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

8 **(8) LIMITATION ON REGULATION OF CERTAIN MINING WASTE.** The department may
9 not regulate the use of mining waste in reclamation or in the construction of any
10 facility or structure on a mining site except through the department's review of the
11 mining plan and reclamation plan and the approval of the application for the mining
12 permit.

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

17 **295.53 Environmental impact statement. (1) CONSULTANTS.** The
18 department may enter into contracts for environmental consultant services under
19 s. 23.41 to assist in the preparation of an environmental impact statement or to
20 provide assistance to applicants.

21 **(2) NOTICE.** After the department receives an application for a mining permit,
22 it shall notify the public and affected agencies that an environmental impact
23 statement will be prepared for the proposed mine and that the process of identifying
24 major issues under s. NR 150.21 (3), Wis. Adm. Code, is beginning.

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

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

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

22 3. Upon receipt of the environmental impact report, the department shall
23 review the environmental impact report and, if the department finds that the
24 environmental impact report does not contain information reasonably necessary for

1 the department to evaluate the proposed mining project and its environmental
2 effects, the department may request additional information from the applicant.

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

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

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

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

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

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

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

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

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

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

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

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

1 (d) The public notice, informational hearing, and comment provisions in s.
2 295.57, the provision concerning the effective date of approvals in s. 295.58 (6), and
3 the provisions for review in s. 295.77 (1) and (2) apply to an environmental impact
4 statement prepared under this subsection. If the department revises and
5 redistributes an environmental impact statement or portion of an environmental
6 impact statement prepared under this subsection, the department shall distribute
7 the environmental impact statement or portion of the environmental impact
8 statement as provided in s. 295.57, but the period for public comment is 30 days,
9 rather than 45 days.

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

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

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

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

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

17 (b) A mining permit.

18 (c) Any other approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 a. The application.

24 b. A draft approval.

25 c. Information or summaries relating to the approval.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 12. The applicant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 a. A dwelling house.

4 b. A public building.

5 c. A school.

6 d. A church.

7 e. A cemetery.

8 f. A commercial or institutional building.

9 g. A public road.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 2. Cash.

14 3. Certificates of deposit.

15 4. Government securities.

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

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

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

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

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

17 (a) A bond.

18 (b) Cash.

19 (c) Certificates of deposit.

20 (d) Government securities.

21 (e) Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 a. Water currents and erosion and sedimentation patterns.

19 b. Water temperature variations.

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

21 d. The movement of aquatic fauna.

22 e. The pH of the wetland.

23 f. Water levels or elevations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 2. Construction or maintenance of irrigation ditches.

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

18 4. Maintenance of drainage ditches.

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

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

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

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

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

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

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

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

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

- 17 1. The person leases the piece of riparian property from the owner.
18 2. The person holds an easement on the piece of riparian property and the
19 easement authorizes the person to exercise that riparian right.

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

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

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

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

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

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

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

12 1. Measures to offset significant impacts to navigable waters by providing
13 public access to, restoring, or enlarging up to 1.5 acres, but not less than one acre,
14 of navigable waters in exchange for each acre of navigable waters that is significantly
15 impacted.

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

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

18 4. Measures to enhance flood storage.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

295.61 Withdrawals of surface waters and groundwater. (1)

DEFINITIONS. In this section:

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

(b).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 3. Protection of important upland groundwater recharge areas.

15 4. Stabilization of shorelands.

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

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

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

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

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

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

4 11. A riparian restoration project.

5 12. Measures as provided in s. 295.605.

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

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

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

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

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

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

7 1. The location of the withdrawal or use.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (b) Any mine mill.

7 (c) Any open pit.

8 (d) Stockpiles of overburden.

9 (e) Stockpiles of waste rock.

10 (f) Ferrous ore stockpiles.

11 (g) Streams, lakes, and reservoirs.

12 (h) Tailings basins.

13 (i) Roads.

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

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

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

22 (m) Elevations of stockpiles and tailings basins.

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

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

3 (p) The date the map was prepared.

4 **(2m)** Annually, the department shall review the bond or other security under
5 s. 295.59 (1) to ascertain its adequacy. If the department after review determines
6 that the amount of the bond or other security should be changed, it shall notify the
7 permit holder of the necessary changes. If the permit holder does not seek a
8 contested case hearing under s. 295.77 (3) within 30 days, the changes are considered
9 to be accepted.

10 **(3)** If the department finds that a change requested under sub. (1) (a) would
11 make substantial compliance with the approved mining plan, reclamation plan, or
12 mining waste site feasibility study and plan of operation impossible or it finds, based
13 on a review conducted no more frequently than every 5 years, that because of
14 changing conditions, including changes in reclamation costs or reclamation
15 technology, the reclamation plan for a mining site is no longer sufficient to
16 reasonably provide for reclamation of the mining site consistent with this
17 subchapter, it shall require the operator to submit an amended mining plan,
18 reclamation plan, or mining waste site feasibility study and plan of operation and
19 applications for amending any approval associated with the proposed amendments
20 to the mining plan, reclamation plan, or mining waste site feasibility study and plan
21 of operation. The public notice, public comment, and public hearing procedures in
22 s. 295.57 apply to amended plans and applications under this subsection. The
23 department shall approve or deny the amended mining plan, reclamation plan, or
24 mining waste site feasibility study and plan of operation in accordance with s.
25 295.58, within 30 days following the close of the public comment period. The

1 applicant may continue to operate under the existing mining permit until the
2 amended mining permit is issued or denied.

3 **295.635 Required mining waste site inspections, record keeping,**
4 **reporting, and responses. (1) DEFINITIONS.** In this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (d) Erosion below any conduit.

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

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

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

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

5 2. Construction drawings and modifications of the drawings.

6 3. Construction specifications and modifications of the specifications.

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

8 5. Logs of borings and engineering geology reports.

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

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

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

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

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

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

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

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

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

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

12 **295.64 Mining site monitoring; general.** (1) GENERAL. The department,
13 as a condition of a mining permit, shall require the operator to perform adequate
14 monitoring of environmental changes during the course of the mining and for the
15 additional period of time that is necessary to satisfactorily complete reclamation and
16 completely release the operator from any bonds or other security required. The
17 department may monitor environmental changes concurrently with the operator
18 and for an additional period after the security is released.

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

24 (b) An operator shall have bacteriological analyses of water samples and all
25 radiological analyses associated with the mining site performed by the state

1 laboratory of hygiene or at a laboratory certified or approved by the department of
2 health services. An operator shall have other laboratory tests the results of which
3 are submitted to the department under this subchapter performed by a laboratory
4 certified or registered under s. 299.11, except that this requirement does not apply
5 to any of the following:

- 6 1. Physical testing of soil.
- 7 2. Air quality tests.
- 8 3. Tests for hydrogen ion concentration (pH).
- 9 4. Tests for chlorine residual.
- 10 5. Tests for temperature.

11 **295.643 Mining waste site monitoring.** (1) GENERAL. The department may
12 require the monitoring of groundwater, surface water, leachate, or other physical
13 features associated with a mining waste site.

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

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

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

7 (c) An operator shall construct all monitoring wells in accordance with ch. NR
8 141, Wis. Adm. Code, and in such a manner as to prevent, to the extent practicable,
9 the exchange of water between aquifers.

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

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

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

23 **(6) REQUIRED MONITORING AND ANALYSIS.** (a) An operator shall monitor
24 groundwater at locations identified in the waste site feasibility study and plan of
25 operation on a quarterly basis, during March, June, September, and December,

1 unless the department agrees to an alternate schedule. The department may base
2 an alternate schedule on the hydrogeologic system's characteristics, such as flow
3 velocity and stratigraphy, and on fluctuations in quality as determined through
4 background water quality or baseline water quality sampling and mining waste
5 type. The operator shall analyze for the parameters listed in the approved waste site
6 feasibility study and plan of operation.

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

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

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

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

23 **295.645 Groundwater quality, monitoring, and response. (1)**

24 DEFINITIONS. In this section:

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

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

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

15 (b) When issuing or modifying a mining permit or issuing or reissuing any other
16 approval, the department may reduce the design management zone by a horizontal
17 distance of not more than 600 feet. The department may not reduce the design
18 management zone unless the department determines that preventive action limits
19 and enforcement standards or alternative concentration limits will be met at the
20 boundary of the reduced design management zone. The department shall consider
21 the following factors in determining whether to reduce the design management zone:

22 1. Nature, thickness, and permeability of unconsolidated materials, including
23 topography.

24 2. Nature and permeability of bedrock.

25 3. Groundwater depth, flow direction, and velocity.

- 1 4. Waste volume, type, and characteristics.
- 2 5. Contaminant mobility.
- 3 6. Distances to the property boundary and surface waters.
- 4 7. Engineering design of the facility.
- 5 8. Life span of the facility.
- 6 9. Present and anticipated uses of land and groundwater.
- 7 10. Potential abatement options if an enforcement standard is exceeded.

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

13 (d) An operator shall monitor groundwater quality at locations approved by the
14 department along the boundary of the design management zone and within the
15 design management zone.

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

- 25 1. Any point of present groundwater use.

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

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

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

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

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

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

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

20 (c) Determine the extent of groundwater contamination or the potential for
21 groundwater contamination.

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

23 **(5) RESPONSE CONCERNING PREVENTIVE ACTION LIMITS.** In accordance with s. NR
24 140.24 (1) to (5), Wis. Adm. Code, the department shall evaluate the range of
25 responses proposed by the operator when a preventive action limit or an alternative

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

18 **(6) RESPONSE CONCERNING ENFORCEMENT STANDARDS.** (a) In accordance with s.
19 NR 140.26 (1) and (2), Wis. Adm. Code, the department shall evaluate the range of
20 responses proposed by the operator based on the responses listed in Table 6 of s. NR
21 140.26, Wis. Adm. Code, when an enforcement standard or an alternative
22 concentration limit to an enforcement standard is attained or exceeded and the
23 analysis of samples indicates that the quality of groundwater is statistically
24 significantly different from either baseline water quality or background water
25 quality at a point of standards application. In designating the appropriate response,

1 the department shall evaluate the operator’s proposed range of responses against
2 those identified in Table 6 of s. NR 140.26, Wis. Adm. Code. The department shall
3 designate the appropriate response, except that, notwithstanding ss. 160.21 (3) and
4 160.25 (1) (a) and the rule-making authority under s. 160.21 (1), the department may
5 not prohibit a practice or activity or require closure and abandonment of a mining
6 waste site, including any wastewater and sludge storage or treatment lagoon, unless
7 it has followed the procedures in s. 295.78 and all of the following apply:

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

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

12 3. The department establishes the basis for the boundary and duration of the
13 prohibition.

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

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

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

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

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

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

1 of the excavation, in which case the mandatory intervention boundary is one-half
2 the distance from the outer waste boundary or the outer edge of the excavation to the
3 boundary of the design management zone.

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

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

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

18 2. If sampling results indicate that an enforcement standard or a preventive
19 action limit has been exceeded within, but not beyond, the mandatory intervention
20 boundary and a comparison of sampling results to the results of modeling indicates
21 that the sampling results are consistent with the design and expected performance
22 of the mining waste site, the operator may recommend a no response action, and the
23 department may approve a no response action if that is authorized under s. NR
24 140.24 (5), Wis. Adm. Code.

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

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

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

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

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

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

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

24 **295.66 Cessation of mining or reclamation.** If there is a cessation of
25 mining or reclamation for 30 days or more that is not set forth in either the mining

1 plan or the reclamation plan, the operator shall notify the department of the
2 cessation within 48 hours of the cessation of mining and shall begin stabilization of
3 the mining site. The department may require the operator to provide technical,
4 engineering, and any other information that the operator believes shows that its
5 actions to stabilize the mining site are adequate. If the department determines, after
6 reviewing the information provided by the operator, that the proposed stabilization
7 of the mining site will result in a substantial adverse impact to the environment, the
8 department shall order the operator to begin additional measures to protect the
9 environment, including, if the cessation is reasonably anticipated to extend for a
10 protracted period of time, reclamation according to the reclamation plan or part of
11 the reclamation plan. Usual and regular shutdown of operations on weekends, for
12 maintenance or repair of equipment or facilities, or for other customary reasons do
13 not constitute a cessation of mining.

14 **295.67 Determination of abandonment of mining.** (1) Except as provided
15 in sub. (2), abandonment of mining occurs if there is a cessation of mining, not set
16 forth in an operator's mining plan or reclamation plan or by any other sufficient
17 written or constructive notice, extending for more than 6 consecutive months.

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

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

21 (b) The cessation of mining does not continue beyond the time, not to exceed
22 5 years, specified by the department.

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

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

3 **295.68 Certificates of completion and release of security.** (1) Upon the
4 petition of the operator, but not less than 4 years after notification to the department
5 by the operator of the completion of the reclamation plan or not less than one year
6 after notification to the department by the operator of the completion of the
7 reclamation plan as to a portion of the mining site, if the department finds that the
8 operator has completed reclamation of any portion of the mining site in accordance
9 with the reclamation plan and this subchapter, the department shall issue a
10 certificate of completion setting forth a description of the area reclaimed and a
11 statement that the operator has fulfilled its duties under the reclamation plan as to
12 that area.

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

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

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

5 **295.69 Termination of proof of financial responsibility for long-term**
6 **care of mining waste site.** (1) One year after closure, and annually thereafter
7 until the department terminates the obligation to maintain proof of financial
8 responsibility for long-term care of a mining waste site under sub. (2) (c), an operator
9 who has carried out all necessary long-term care during the preceding year, may
10 apply to the department for a reduction in the amount of the proof of financial
11 responsibility provided under s. 295.59 (2m) equal to the costs of long-term care for
12 that year. The operator shall provide an itemized list of costs incurred. If the
13 department determines that the costs incurred are in accordance with the long-term
14 care requirements in the approved waste site feasibility study and plan of operation
15 and that adequate funds exist to complete required long-term care for the remainder
16 of the 40-year period on which the amount of the proof of financial responsibility was
17 originally determined, the department shall authorize in writing a reduction in the
18 amount of proof of financial responsibility provided. The department shall make its
19 determinations within 90 days of an application.

20 (2) (a) An operator may apply to the department for termination of its
21 obligation to maintain proof of financial responsibility for long-term care of the
22 mining waste site under s. 295.59 (2m) at any time after the mining waste site has
23 been closed for 20 years by submitting an application that demonstrates that
24 continuation of the obligation to maintain proof of financial responsibility for
25 long-term care is not necessary for adequate protection of public health or the

1 environment. The burden is on the operator to prove by a preponderance of the
2 evidence that continuation of the obligation to maintain proof of financial
3 responsibility for long-term care is not necessary for adequate protection of public
4 health or the environment.

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

17 (c) Within 120 days of the date of the publication of the notice under par. (b),
18 the department shall determine either that proof of financial responsibility for
19 long-term care of the mining waste site is no longer required, in which case the
20 applicant is relieved of the responsibility of providing proof of financial responsibility
21 for long-term care, or that proof of financial responsibility for long-term care of the
22 mining waste site is still required, in which case the applicant may not submit
23 another application under par. (a) until at least 5 years have elapsed since the
24 previous application.

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

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

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

16 **295.73 Fees.** (1) (a) Except as provided in par. (b), an applicant for a mining
17 permit is not required to pay any application or filing fee for any approval other than
18 a mining permit, notwithstanding any fee required under ch. 23, 29, 30, 31, 169, 281,
19 283, 285, 289, or 291, or rules promulgated under those chapters.

20 (b) An applicant for a mining permit shall pay any fee required under s. 281.343

21 (3) (c) 1.

22 (3) (a) The department shall assess an applicant a fee equal to its costs, other
23 than costs of a contract under par. (d), for evaluating the mining project, including
24 the costs for consultants retained by the department to evaluate the application for

1 the mining permit and the application for any other approval, or \$2,000,000,
2 whichever is less.

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

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

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

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

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

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

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

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

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

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

7 (c) After the department approves or denies the application for a mining permit
8 or, if the applicant withdraws the application for a mining permit, after the applicant
9 withdraws the application, the department shall refund to the applicant any amount
10 paid by the applicant under par. (a) but not fully allocated against the department's
11 actual costs.

12 (d) In addition to the fees under par. (a), if the department contracts under s.
13 295.53 (1) with a consultant to assist in preparation of an environmental impact
14 statement and awards the contract on the basis of competitive bids, the applicant
15 shall pay the full costs as provided in the contract.

16 (e) In addition to the fees under par. (a), the department may assess an
17 applicant a fee equal to the department's costs in providing wetland determinations
18 and wetland boundary delineations under s. 295.60 (2).

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

22 **295.75 Effect of other laws.** (1) Except as provided in sub. (2), if there is a
23 conflict between a provision in this subchapter and a provision in ch. 23, 29, 30, 31,
24 160, 169, 281, 283, 285, 289, or 291 or in a rule promulgated under one of those
25 chapters, the provision in this subchapter controls.

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

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

6 **295.77 Review. (1) LIMITS ON CONTESTED CASE HEARINGS.** No person is entitled
7 to a contested case hearing on a decision by the department on an exploration license
8 or an approval that is required before bulk sampling may be implemented. No person
9 is entitled to a contested case hearing on a decision by the department on a mining
10 permit application or any other approval, except as provided in subs. (2) and (3).

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

21 2. A person is entitled to a contested case hearing on a decision by the
22 department related to an amended mining plan, reclamation plan, or mining waste
23 site feasibility study and plan of operation required under s. 295.63 (3) or to any
24 amendment to an approval associated with the amended mining plan, reclamation
25 plan, or mining waste site feasibility study and plan of operation only if the person

1 is entitled to a contested case hearing on the decision under s. 227.42 and the person
2 requests the hearing within 30 days after the department issues the decision to
3 approve or deny the amended mining plan, reclamation plan, or mining waste site
4 feasibility study and plan of operation.

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

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

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

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

20 (d) *Judicial review.* A person seeking judicial review of the decision in a
21 contested case hearing under this subsection shall comply with the requirements for
22 service and filing in s. 227.53 (1) (a) and shall commence the action no more than 30
23 days after service of the decision or, if the hearing examiner does not issue a final
24 decision by the deadline under par. (b) 1., no more than 30 days after that deadline.

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

7 **(4)** Notwithstanding s. 227.53 (1) (a) 3., any person seeking judicial review of
8 the decision on a contested case under sub. (2) or (3) or of any decision of the
9 department under this subchapter shall bring the action in the circuit court for the
10 county in which the majority of the bulk sampling site or mining site is located or in
11 which the majority of the exploration will occur.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14 **SECTION 103. Nonstatutory provisions.**

15 (1) RULES.

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

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

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

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

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

16 (END)