

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

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

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

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

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

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

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

22          (a) No mining waste will be deposited in such a way that the mining waste or  
23 leachate from the mining waste will result in a violation of any applicable surface  
24 water quality criteria or standards, applicable wetland water quality standards, or  
25 applicable groundwater quality standards.

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

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

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

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

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

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

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

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

23 (i) All surface water drainage ditches, culverts, and other drainage control  
24 structures are designed for a rainfall event measured in terms of the depth of the

1      rainfall occurring within a 24-hour period and having an expected recurrence  
2      interval of once in 100 years.

3           (j) The final slopes of the completed mining waste site will be no greater than  
4      50 percent, unless the mining waste site is specifically designed for a final use  
5      compatible with other slopes.

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

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

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

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

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

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

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

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

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

11 (t) The mining waste site is located in the same watershed as the surface  
12 facilities for the mining unless it is not practicable to locate the mining waste site in  
13 the same watershed as the surface facilities for the mining, as determined on a site  
14 specific basis.

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

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

18 (x) Upstream rainfall catchment areas are minimized.

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

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

22 **(8) LIMITATION ON REGULATION OF CERTAIN MINING WASTE.** The department may  
23 not regulate the use of mining waste in reclamation or in the construction of any  
24 facility or structure on a mining site except through the department's review of the

1 mining plan and reclamation plan and the approval of the application for the mining  
2 permit.

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

7 **295.53 Environmental impact statement.** (1) CONSULTANTS. The  
8 department may enter into contracts for environmental consultant services under  
9 s. 23.41 to assist in the preparation of an environmental impact statement or to  
10 provide assistance to applicants.

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

15 (3) ENVIRONMENTAL IMPACT REPORT. (a) An applicant shall prepare an  
16 environmental impact report for the mining project. In the environmental impact  
17 report, the applicant shall provide a description of the proposed mining project, the  
18 present environmental conditions in the area and the anticipated environmental  
19 impacts of the proposed mining project, the present socioeconomic conditions in the  
20 area and the anticipated socioeconomic impacts of the proposed mining project,  
21 details of any wetlands mitigation program under s. 295.60 (8), any measures for  
22 navigable waters under s. 295.605 (4), any proposed changes to the forest  
23 designations specified in sub. (4) (c), and the alternatives to the proposed mining  
24 project. As the applicant provides more information or makes modifications to the  
25 proposed mining project, the department may revise the requirements it specified

1 under s. 295.465 (1) (b) to ensure the potential environmental effects can be  
2 identified in the department's environmental impact statement.

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

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

11 3. Upon receipt of the environmental impact report, the department shall  
12 review the environmental impact report and, if the department finds that the  
13 environmental impact report does not contain information reasonably necessary for  
14 the department to evaluate the proposed mining project and its environmental  
15 effects, the department may request additional information from the applicant.

16 (d) The department shall accept original data from an environmental impact  
17 report for use in the environmental impact statement and need not verify all original  
18 data provided by the applicant to accept the data as accurate. The department shall  
19 use original data from an environmental impact report in the environmental impact  
20 statement if the data contains the information identified under s. 295.465 (1) (b) and  
21 any of the following conditions is met:

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

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

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

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

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

- 14           1. Tourism.
- 15           2. Employment.
- 16           3. Schools and medical care facilities.
- 17           4. Private and public social services.
- 18           5. The tax base.
- 19           6. The local economy.
- 20           7. Archaeological sites.

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

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

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

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

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

13           (d) The public notice, informational hearing, and comment provisions in s.  
14 295.57, the provision concerning the effective date of approvals in s. 295.58 (6), and  
15 the provisions for review in s. 295.77 (1) and (2) apply to an environmental impact  
16 statement prepared under this subsection. If the department revises and  
17 redistributes an environmental impact statement or portion of an environmental  
18 impact statement prepared under this subsection, the department shall distribute  
19 the environmental impact statement or portion of the environmental impact  
20 statement as provided in s. 295.57, but the period for public comment is 30 days,  
21 rather than 45 days.

22           (e) The department shall conduct its environmental review process jointly with  
23 any federal or local agency that consents to a joint environmental review process.  
24 The department may adopt any environmental analysis prepared by another state  
25 agency or by a federal or local agency. The department may enter into a written

1 agreement with any of those agencies that have a major responsibility related to or  
2 that are significantly affected by the proposed mining. In the written agreement, the  
3 parties shall define the responsibility of each agency in the development of a single  
4 environmental impact statement on the proposed mining and outline the procedures  
5 to be used in the regulatory process. The department shall be the lead agency for any  
6 environmental review process involving other state agencies. To the extent that any  
7 federal or local agency's environmental review process conflicts with the provisions  
8 of this section or s. 295.57, the department shall follow the provisions of this section  
9 and s. 295.57 and may only coordinate its environmental review to the extent  
10 consistent with the provisions of this section and s. 295.57. The department shall  
11 comment on any federal agency's environmental assessment or environmental  
12 impact statement associated with a mining project in accordance with s. NR 150.30,  
13 Wis. Adm. Code.

14 (5) RELATIONSHIP TO OTHER LAWS. This section and s. 295.57 govern the  
15 department's obligations under ss. 1.11 and 1.12 with respect to a mining project.  
16 Sections 23.11 (5) and 23.40 and ss. NR 2.085, 2.09, and 2.157, Wis. Adm. Code, do  
17 not apply with respect to a mining project. The rest of ch. NR 2, Wis. Adm. Code, only  
18 applies with respect to a mining project to the extent that it does not conflict with this  
19 section and s. 295.57. Sections NR 150.24 and 150.25, Wis. Adm. Code, do not apply  
20 with respect to a mining project. The rest of ch. 150, Wis. Adm. Code, only applies  
21 with respect to a mining project to the extent that it does not conflict with this section  
22 and s. 295.57.

23 **295.56 Exemptions.** (1) The department may grant an exemption, as  
24 provided in this section, from any of the requirements of this subchapter applicable  
25 to any of the following:

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

3 (b) A mining permit.

4 (c) Any other approval.

5 (2) (a) An applicant shall submit a request for an exemption in writing and  
6 shall describe the grounds for the exemption and provide documentation identifying  
7 the conditions requiring the exemption, the reasons for the exemption, and the  
8 reasonableness of the exemption.

9 (b) An applicant may obtain an exemption only if the applicant submits the  
10 request no later than the 180th day after the application for the mining permit is  
11 administratively complete under s. 295.57 (2), unless the condition that is the basis  
12 for the requested exemption is not known to the applicant before that day, in which  
13 case the deadline is extended to the 20th day before the deadline under s. 295.57 (7)  
14 (a).

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

21 1. The exemption will not result in significant adverse environmental impacts  
22 on the mining site or, if the exemption will result in significant adverse  
23 environmental impacts on the mining site, the applicant will offset those impacts  
24 through a mitigation program, as provided in s. 295.60 (8), through the measures  
25 provided in s. 295.605, or through the conservation measures provided in s. 295.61.

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

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

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

11           **295.57 Application procedure. (1) SUBMISSION.** (a) An applicant shall  
12 submit the application for a mining permit as provided in s. 295.47.

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

19           **(2) DETERMINATION OF ADMINISTRATIVE COMPLETENESS.** (a) The department shall  
20 review an application for a mining permit and, within 30 days after the application  
21 is submitted, shall determine either that the application is complete or that  
22 additional information is needed. If the department determines that the application  
23 is complete, the department shall notify the applicant in writing of that fact within  
24 the 30-day period and the date on which the department sends the notice is the day  
25 on which the application is administratively complete.

1           (b) If the department determines under par. (a) that an application is  
2 incomplete, the department shall notify the applicant in writing and may make one  
3 request for additional information during the 30–day period specified in par. (a).  
4 Within 10 days after receiving additional requested information from the applicant,  
5 the department shall notify the applicant in writing as to whether it has received all  
6 of the requested information. The day on which the department sends the 2nd notice  
7 under this paragraph is the day on which the application is administratively  
8 complete.

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

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

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

20           **(3m)** RECEIPT OF CERTAIN APPROVALS. If a storm water discharge permit under  
21 s. 283.33 (1) (a) or a water quality certification under rules promulgated under subch.  
22 II of ch. 281 to implement 33 USC 1341 (a) is needed for a mining operation, the  
23 person applying for the mining permit may apply for and be issued the permit or  
24 certification.

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

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

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

7           a. The application.

8           b. A draft approval.

9           c. Information or summaries relating to the approval.

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

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

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

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

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

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

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

10          5. Any regional planning commission for the area within which the proposed  
11 mining site lies.

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

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

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

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

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

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

10           12. The applicant.

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

14           (c) The department shall coordinate the public comment period for the mining  
15 permit with the public comment period for any other approval for the mining  
16 operation, except that if an application for an approval is filed too late to allow public  
17 comment within the public comment period for the mining permit, the department  
18 shall issue separate notice, as described in par. (b), for the approval after the  
19 application is filed.

20           **(5) INFORMATIONAL HEARING.** The department shall hold a public informational  
21 hearing before it approves or denies an application for a mining permit and not less  
22 than 30 days after the date of the publication of the notice under sub. (4) (b). The  
23 department shall hold the public informational hearing in the county where the  
24 majority of the proposed mining site is located. The department shall hold a single  
25 public informational hearing covering the mining permit, all other approvals, and

1 the environmental impact statement, except that if an application for an approval  
2 is filed too late to allow the application to be considered at the public informational  
3 hearing for the mining permit, the department shall hold a separate public  
4 informational hearing on the approval in the county where the majority of the  
5 proposed mining site is located not less than 30 days after the date of the publication  
6 of the notice under sub. (4) (b) for the approval. The department shall publish the  
7 notice on its Internet site not more than 10 days after the application is considered  
8 to be complete under sub. (8) (b) 1. The public informational hearing under this  
9 subsection is not a contested case hearing under ch. 227. At the hearing, the  
10 department shall take testimony on all of the following with regard to any proposed  
11 withdrawal of groundwater or surface water:

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

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

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

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

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

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

23 **(6) SUMMARY.** After considering the comments received under subs. (4) and (5)  
24 and before acting on the application for the mining permit, the department shall

1 prepare a summary of the comments and the department's response to the  
2 comments.

3 (7) DEADLINE FOR ACTING ON MINING PERMIT APPLICATION. (a) No later than the  
4 deadline specified by the applicant under s. 295.47 (1) (am) or, if the applicant does  
5 not specify a deadline under s. 295.47 (1) (am), no more than 420 days after the day  
6 on which the application for a mining permit is administratively complete under sub.  
7 (2), the department shall approve the application, and issue a mining permit, or deny  
8 the application, in accordance with s. 295.58, unless the department and the  
9 applicant agree to extend the deadline. The department and the applicant may agree  
10 to not more than one extension and that extension may not exceed 60 days. The  
11 department and the applicant may enter into an extension only if one of the following  
12 applies:

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

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

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

20 (c) If the department does not comply with the deadline under par. (a),  
21 including any extension agreed to by the applicant, the applicant may bring an action  
22 for mandamus in the circuit court for the county in which the majority of the proposed  
23 mining site is located to compel the department to approve or deny the application.

24 Notwithstanding s. 814.04 (1), in an action under this paragraph the court shall

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

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

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

23 2. Except as provided in subd. 3., the department shall approve the application  
24 for an approval described in subd. 1., and issue the approval, or deny the application  
25 after the separate public informational hearing for the approval required under sub.

1 (5) and no later than 75 days after the application for the approval is considered to  
2 be complete under subd. 1.

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

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

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

16 **(8m)** SUBMISSION OF TECHNICAL REVIEW TO GREAT LAKES REGIONAL BODY. If an  
17 applicant files an application under s. 281.346 for an approval for a withdrawal of  
18 surface water or groundwater that is subject to regional review or council approval,  
19 the department shall provide its technical review, as defined in s. 281.346 (1) (u), to  
20 the regional body, as defined in s. 281.346 (1) (q), no later than 90 days after the  
21 applicant files the application for the approval.

22 **(9)** APPLICABLE PROCEDURE. (a) The provisions of this section and ss. 295.58 (5)  
23 and (6) and 295.77 concerning public notice, comment, and hearing; issuance of  
24 department decisions; effective date of department decisions; and review of  
25 department decisions; and the duration of approvals apply to any approval for which

1 the application is filed before the department issues the decision to grant or deny the  
2 application for the mining permit, notwithstanding any provisions related to those  
3 matters in s. 44.40 or 169.25, subch. I or VI of ch. 77, ch. 23, 29, 30, 31, 169, 281, 283,  
4 285, 289, or 291, or rules promulgated under those provisions, except as provided in  
5 s. 281.343 (7r) and except that if a withdrawal of surface water or groundwater is  
6 subject to regional review or council approval under s. 281.346, the applicable  
7 provisions related to regional review or council approval apply.

8 (b) The provisions of ss. 295.58 (5) and (6) and 295.77 concerning review of  
9 department decisions and the duration of department decisions apply to any  
10 approval for which the application is filed after the department issues the mining  
11 permit, notwithstanding any provisions related to those matters in s. 44.40 or  
12 169.25, subch. I or VI of ch. 77, ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291, or  
13 rules promulgated under those provisions, except as provided in s. 281.343 (7r).

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

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

20 2. That the waste site feasibility study and plan of operation complies with s.  
21 295.51.

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

24 3m. That the proposed mining is likely to meet or exceed the requirements of  
25 any municipal floodplain zoning ordinance applicable to the proposed mining under

1 s. 295.607 (3) to the extent that the ordinance has not been made inapplicable to the  
2 proposed mining by a local agreement under s. 295.443 (1m).

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

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

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

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

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

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

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

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

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

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

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

10           a. A dwelling house.

11           b. A public building.

12           c. A school.

13           d. A church.

14           e. A cemetery.

15           f. A commercial or institutional building.

16           g. A public road.

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

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

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

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

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

- 14           1. The person convicted has been pardoned for all of the felonies.
- 15           2. The person convicted is a related person or an officer or director of the  
16 applicant with whom the applicant terminates its relationship.
- 17           3. The applicant included in its permit application under s. 295.47 a plan to  
18 prevent the occurrence in this state of events similar to the events that directly  
19 resulted in the convictions.

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

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

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

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

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

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

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

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

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

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

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

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

23           2. Cash.

24           3. Certificates of deposit.

25           4. Government securities.

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

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

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

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

- 1 (a) A bond.
- 2 (b) Cash.
- 3 (c) Certificates of deposit.
- 4 (d) Government securities.
- 5 (e) Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 **(1m) APPLICABILITY.** Subsections (2) to (11) do not apply to a wetland individual  
7 permit or other approval that requires a wetland impact evaluation if the operator  
8 files the application for the wetland individual permit or other approval after the  
9 department issues the mining permit for the mining operation.

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

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

4           (b) *Discharges of dredged or fill material.* No person may discharge dredged  
5 material or fill material associated with a mining operation or bulk sampling unless  
6 the discharge is authorized under a wetland individual permit issued under this  
7 section or under a wetland general permit issued under s. 281.36 (3g). The  
8 department may not issue a wetland individual permit unless it makes a finding  
9 under sub. (6) (a) that the discharge will comply with all applicable water quality  
10 standards. Section 281.36 (3g) and (11), and the rules promulgated under s. 281.36  
11 (3g) and (11), apply to authorizations to proceed under general permits.  
12 Notwithstanding s. 281.36 (3g) (h) 2., a person receiving authorization to proceed  
13 under a wetland general permit for a mining activity other than bulk sampling may  
14 not proceed until a mining permit is issued.

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

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

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

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

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

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

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

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

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

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

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

5           2. Taking into consideration the floristic province in which the mining site is  
6 located.

7           (e) *Method for assessing impacts.* In issuing a wetland individual permit under  
8 this section or in conducting a wetland impact evaluation, the department shall  
9 determine the impact of a proposed discharge or other activity upon the wetland  
10 functional values by using wetland ecological evaluation methods that are jointly  
11 accepted by the U.S. Army Corps of Engineers and the department and that are  
12 appropriate to the affected wetland.

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

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

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

23           1. Storm and flood water storage and retention and the moderation of water  
24 level fluctuation extremes.

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

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

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

8           5. Habitat for aquatic organisms in the food web including fish, crustaceans,  
9 mollusks, insects, annelids, and planktonic organisms and the plants and animals  
10 upon which these aquatic organisms feed and depend upon for their needs in all life  
11 stages.

12           6. Habitat for resident and transient wildlife species, including mammals,  
13 birds, reptiles, and amphibians, for breeding, resting, nesting, escape cover, travel  
14 corridors, and food.

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

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

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

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

- 4           a. Water currents and erosion and sedimentation patterns.
- 5           b. Water temperature variations.
- 6           c. The chemical, nutrient, and dissolved oxygen regime of the wetland.
- 7           d. The movement of aquatic fauna.
- 8           e. The pH of the wetland.
- 9           f. Water levels or elevations.

10          6. Adverse effects on existing habitat and populations of animals and  
11 vegetation found in wetlands.

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

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

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

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

24           (b) Notwithstanding par. (a) 3., if significant adverse impacts to wetland  
25 functional values will remain after the adverse impacts have been avoided and

1 minimized to the extent practicable, the department shall issue the permit if the  
2 department determines that the remaining impacts will be compensated for under  
3 a mitigation program under sub. (8).

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

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

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

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

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

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

24 **(7) FEDERAL WETLANDS.** (a) For a wetland individual permit under this section  
25 which involves a federal wetland or for any other approval for which a wetland

1 impact evaluation for a federal wetland is required, any mitigation program  
2 submitted by the applicant under sub. (8) shall include all the federal mitigation  
3 measures proposed by the applicant. The department shall review the federal  
4 mitigation measures and shall determine whether it has reasonable assurance that  
5 these will compensate for any significant adverse impacts to wetland functional  
6 values, any significant adverse impacts to water quality, and any other significant  
7 adverse environmental consequences. The department shall recognize all federal  
8 compensatory mitigation measures as being eligible for the purpose of making this  
9 determination. If the department determines that reasonable assurance exists, the  
10 department may not impose any additional conditions on the permit or other  
11 approval. If the department determines that reasonable assurance does not exist,  
12 it may impose conditions on the permit or other approval that are in addition to  
13 required federal compensatory mitigation measures, but such conditions shall be  
14 limited to those that are necessary to compensate for any significant adverse impacts  
15 to wetland functional values, any significant adverse impacts to water quality, and  
16 any other significant adverse environmental consequences that will remain after  
17 completion of the federal mitigation measures. Any conditions imposed by the  
18 department may be satisfied through a mitigation program as provided in sub. (8).  
19 In imposing any conditions under this paragraph, the department may not require  
20 that the number of acres to be mitigated be greater than the number that is required  
21 under federal law.

22 (b) A wetland individual permit issued under this section that authorizes a  
23 discharge of dredged or fill material in a federal wetland constitutes water quality  
24 certification as required by 33 USC 1341 (a). Any other approval issued by the  
25 department for which a wetland impact evaluation is required for a federal wetland

1 constitutes water quality certification under 33 USC 1341 (a) with respect to the  
2 discharges or activities affecting the federal wetland.

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

6 (am) *Contents.* A mitigation program to compensate for adverse impacts to  
7 functional values of wetlands shall contain proposed projects for mitigation and a  
8 schedule for implementing the projects. The department may not consider  
9 mitigation in determining whether to grant authorization to proceed under a general  
10 permit under s. 281.36 (3g). These projects may be performed by a person other than  
11 the applicant, subject to the department’s approval of the projects and schedule.

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

17 (c) *Ratios for mitigation.* The amount of mitigation required may not exceed  
18 1.5 acres of mitigation for each acre of adversely impacted wetland. For purpose of  
19 credits in a mitigation bank, each acre that is subject to mitigation shall count as at  
20 least one credit.

21 (d) *Sequence of mitigation.* If it is not practicable or ecologically preferable to  
22 conduct mitigation at an on-site location or if there is no on-site location that will  
23 provide sufficient wetland acreage, the department shall require that the applicant  
24 conduct mitigation within the same watershed in which the wetland to be affected  
25 is located, unless mitigation in the same watershed is not practicable or ecologically

1 preferable. If mitigation within the same watershed is not practicable or ecologically  
2 preferable, the department shall require that the applicant conduct mitigation  
3 within the same water basin in which the wetland to be affected is located. If  
4 mitigation in the same water basin is not practicable or ecologically preferable, the  
5 applicant may conduct mitigation at a site elsewhere in the state.

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

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

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

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

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

18 (e) *Ceded territory.* If a mining operation is located in whole or in part within  
19 the ceded territory, any mitigation, including mitigation accomplished through the  
20 purchase of mitigation bank credits and the in lieu fee subprogram that is authorized  
21 or required by the department, that will be required to compensate for adverse  
22 impacts to wetlands located in the ceded territory shall occur within the ceded  
23 territory. If the department determines under par. (d) that mitigation will occur  
24 within a certain watershed or water basin and if the watershed or water basin is not

1 located totally in the ceded territory, the mitigation shall occur within that part of  
2 the watershed or water basin that is located in the ceded territory.

3 (9) SUBSEQUENT PROTECTION FOR WETLANDS. (a) If a wetland individual permit  
4 issued under this section, or other approval that required a wetland impact  
5 evaluation, authorizes a mitigation project, the person who is the holder of the permit  
6 or approval shall grant a conservation easement under s. 700.40 to the department  
7 or shall execute a comparable legal instrument to ensure that a wetland that is being  
8 restored, enhanced, created, or preserved will not be destroyed or substantially  
9 degraded by any subsequent proprietor of or holder of interest in the property on  
10 which the wetland is located. The department shall suspend the mining permit if the  
11 holder of the permit fails to grant the easement or execute this instrument within  
12 the time limit set forth in the mining permit. If the holder subsequently grants the  
13 conservation easement or executes the instrument, the department shall reinstate  
14 the mining permit.

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

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

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

22 1.

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

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

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

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

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

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

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

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

23           2. Construction or maintenance of irrigation ditches.

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

4           4. Maintenance of drainage ditches.

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

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

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

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

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

14           **295.605 Impacts to navigable waters. (1) DEFINITION.** In this section,  
15 “navigable water activity” means an activity for which an approval is required under  
16 s. 30.12, 30.123, 30.19, 30.195, or 30.20.

17           **(1m) LIMITATION.** This section does not apply to any navigable water activity  
18 associated with a mining operation if the application for the approval for the  
19 navigable water activity is filed after the department issues a mining permit for the  
20 mining operation.

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

24           **(3) APPLICATION; RIPARIAN STATUS.** (a) For purposes of an approval under ss.  
25 30.12, 30.123, 30.19, 30.195, and 30.20, a person who is not the owner of a piece of

1 riparian property may exercise a riparian right held by the owner of the piece of  
2 riparian property if any of the following apply:

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

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

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

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

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

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

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

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

19 (b) *Measures.* The person applying for the approval shall submit a plan to the  
20 department containing proposed measures to meet the requirements under par. (a)  
21 and a proposed schedule for implementing the measures. The plan shall include one  
22 or more of the following measures:

23 1. Measures to offset significant impacts to navigable waters by providing  
24 public access to, restoring, or enlarging up to 1.5 acres, but not less than one acre,

1 of navigable waters in exchange for each acre of navigable waters that is significantly  
2 impacted.

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

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

5 4. Measures to enhance flood storage.

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

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

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

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

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

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

20 (bn) *Plan review; finding.* In reviewing the plan, the department may require  
21 that measures that are in addition to, or in conjunction with, one or more of the  
22 measures specified in par. (b) 1. to 6. be included in the plan. After reviewing the plan  
23 and application, if the department finds that the requirements under par. (a) will be  
24 met by implementing some or all of the measures contained in the plan, the

1 department shall determine which measures shall be required, shall approve a  
2 schedule for implementation, and shall grant the approval.

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

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

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

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

18 **295.607 Shoreland and floodplain zoning.** (1) (a) In this section:

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

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

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

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

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

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

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

15 DEFINITIONS. In this section:

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

17 (b).

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

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

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

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

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

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

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

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

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

4 (2) PERMIT REQUIRED. No person may engage in any withdrawal or use of surface  
5 water as part of a mining operation or bulk sampling, including a withdrawal or use  
6 associated with a system or plant under s. 281.41, unless the person has been issued  
7 a water withdrawal permit under this section. No person may engage in any  
8 withdrawal or use of groundwater, including a withdrawal or use associated with a  
9 system or plant under s. 281.41, as part of a mining operation or bulk sampling if the  
10 capacity and rate of withdrawal of all wells involved in the withdrawal of  
11 groundwater or in the dewatering of mines exceeds 100,000 gallons each day unless  
12 the person has been issued a water withdrawal permit under this section.

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

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

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

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

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

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

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

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

4           (b) *Siting analysis.* If withdrawal of water at a mining operation or for bulk  
5 sampling will involve one or more high capacity wells, the department shall require  
6 an applicant for a water withdrawal permit to submit a siting analysis for the  
7 purpose of determining the location of the high capacity wells. The analysis shall  
8 include alternate proposed locations for each high capacity well. In evaluating a  
9 submitted analysis, the department shall recognize there is a need for mining waste  
10 sites and processing facilities, including wastewater and sludge storage or treatment  
11 lagoons, to be contiguous to the location of the ferrous mineral deposit, and shall  
12 allow any high capacity well to be located so that need will be met. The department  
13 shall approve the location of each high capacity well as part of the permit issued  
14 under sub. (4).

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

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