

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

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

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

9           4. The proposed withdrawal and use of the water will not significantly impair  
10 the rights of riparian owners or the applicant obtains the consent of the riparian  
11 owners.

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

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

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

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

22           1. Environmentally sound and economically feasible water conservation  
23 measures.

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

4           3. Protection of important upland groundwater recharge areas.

5           4. Stabilization of shorelands.

6           5. Restoration or enhancement of the natural beneficial uses and values of a  
7 stream or river.

8           6. Implementation of any feasible methods to offset impacts to water quality  
9 or quantity.

10          7. Supplementation of additional water to water bodies to offset lower water  
11 levels.

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

14          9. A mitigation program as provided in s. 295.60 (8).

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

18          11. A riparian restoration project.

19          12. Measures as provided in s. 295.605.

20          (bn) *Plan review; finding.* In reviewing the plan, the department may require  
21 that conservation measures that are in addition to, or in conjunction with, one or  
22 more of the conservation measures specified in par. (b) 1. to 12. be included in the  
23 plan. After reviewing the plan and application, if the department finds that the  
24 requirements under par. (a) will be met by implementing some or all of the  
25 conservation measures contained in the plan, the department shall determine which

1 measures shall be required, shall approve a schedule for implementation, and shall  
2 issue the permit.

3 (cm) *Impacts to water supplies.* If the department determines that a proposed  
4 withdrawal or use of water will result in a significant impact to a public or private  
5 water supply, the department shall require the applicant to offset that impact in a  
6 manner approved by the department, which may include a requirement that the  
7 applicant provide a replacement water supply of similar quality or provide an  
8 increased amount of water to the water supply.

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

11 (f) *Limits on permit denials.* If the department determines that one of the water  
12 withdrawal activities subject to an application for a water withdrawal permit does  
13 not meet the requirements for issuing the permit under par. (a) and will not be  
14 authorized under the permit, the failure to authorize the activity may not affect the  
15 department's determination as to whether to approve or deny the permit for other  
16 water withdrawal activities that are subject to the application.

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

- 21 1. The location of the withdrawal or use.
- 22 2. The authorized base level of water loss from the withdrawal or use.
- 23 3. The dates on which or seasons during which withdrawal or use of the water  
24 may occur.
- 25 4. The purposes for the withdrawal or use of the water.

1           5. The amount and quality of return flow required and the place of the  
2 discharge.

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

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

8           (b) If the department determines that a high capacity well that would be  
9 covered by a water withdrawal permit may impair a privately owned high capacity  
10 well, the department shall include in the water withdrawal permit conditions that  
11 will ensure that the privately owned high capacity well will not be impaired, unless  
12 the private high capacity well owner agrees to the impairment.

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

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

20           3. a. If the request for a modification under subd. 1. results in an increase in  
21 an existing withdrawal resulting in a water loss averaging more than 2,000,000  
22 gallons per day in any 30–day period above the operator’s authorized base level of  
23 water loss, the department shall determine, using the environmental review process  
24 under s. 1.11, whether it is required to prepare an environmental assessment or  
25 environmental impact statement and, if so, shall prepare an environmental

1 assessment or an environmental impact statement. If the department determines,  
2 using the environmental review process under s. 1.11, that the operator must  
3 prepare an environmental impact report, the department may only request  
4 information in the environmental impact report that relates to decisions that the  
5 department makes under this section related to the permit and the department shall  
6 limit its analysis to an evaluation of the request for the modification.

7 b. The department shall publish a class 1 notice, under ch. 985, and shall  
8 publish notice on the department's Internet site, of the availability of information  
9 about a request to which this subdivision applies, its proposed decision on the  
10 request, the opportunity to comment within 30 days after the date of the publication  
11 of the notice, and the opportunity to request a public informational hearing. The  
12 department shall also provide the notice to the applicant, the persons specified in s.  
13 30.18 (4) (a), and if the modification involves a structure through which water  
14 transferred from the Great Lakes basin would be returned to the source watershed  
15 through a stream tributary to one of the Great Lakes, the governing body of each city,  
16 village, and town through which the stream flows or that is adjacent to the stream  
17 downstream from the point at which the water would enter the stream. The  
18 department's notice to interested persons under this subd. 3. b. may be given through  
19 an electronic notification system established by the department. The date on which  
20 the department first publishes notice on its Internet site shall be considered the date  
21 of the publication of the notice required to be published under this subd. 3. b.

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

1 (b) 1. The department may propose modifications to any of the conditions in the  
2 water withdrawal permit that it determines to be necessary to ensure compliance  
3 with the standards in sub. (4). If it proposes a modification, the department shall  
4 determine, using the environmental review process under s. 1.11, whether it is  
5 required to prepare an environmental assessment or environmental impact  
6 statement and, if so, shall prepare an environmental assessment or an  
7 environmental impact statement. If the department determines, using the  
8 environmental review process under s. 1.11, that the operator must prepare an  
9 environmental impact report, the department may only request information in the  
10 environmental impact report that relates to decisions that the department makes  
11 under this section related to the permit and the department shall limit its analysis  
12 to an evaluation of the proposed modification.

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

1 notice on its Internet site shall be considered the date of the publication of the notice  
2 required to be published under this subdivision.

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

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

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

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

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

16 (8) DAMAGE CLAIMS. (a) As used in this subsection, “person” does not include  
17 a city, village, or town.

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

1           (c) The city, village, or town in which is located the private water supply that  
2 is the subject of a complaint under par. (a) shall, upon request, supply necessary  
3 amounts of water to replace the water formerly obtained from the damaged private  
4 supply. Responsibility to supply water begins at the time the complaint is filed and  
5 ends at the time the decision of the department made at the conclusion of the hearing  
6 is implemented.

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



1 (e) If the department concludes after the hearing that bulk sampling or mining  
2 is not the cause of any damage, reimbursement to the city, village, or town for the  
3 costs of supplying water under par. (c), if any, is the responsibility of the person who  
4 filed the complaint.

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

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

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

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

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

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

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

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

1 completes the steps, the operator shall notify the department that the steps have  
2 been completed.

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

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

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

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

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

22 (b) The department shall grant a request under par. (a) unless it determines  
23 that the requested change makes it impossible for the permit holder to substantially  
24 comply with the approved mining plan, reclamation plan, or mining waste site  
25 feasibility study and plan of operation. If the department determines that the

1 requested change would make substantial compliance impossible, it shall follow the  
2 procedure in sub. (3).

3 (c) If the request under par. (a) is to cancel any or all of the unmined part of a  
4 mining site, the department shall ascertain, by inspection, if mining has occurred on  
5 the land. If the department finds that no mining has occurred, the department shall  
6 order release of the bond or other security posted for the land being removed from  
7 the permitted mining site and cancel or amend the operator's written authorization  
8 to conduct mining on the mining site. The department may not approve the removal  
9 of land where mining has occurred from a permitted mining site, or release that land  
10 from the bond or other security under this subsection, unless the operator has  
11 completed reclamation to the satisfaction of the department.

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

- 21 (a) Location and boundary of the mining area.
- 22 (b) Any mine mill.
- 23 (c) Any open pit.
- 24 (d) Stockpiles of overburden.
- 25 (e) Stockpiles of waste rock.

1 (f) Ferrous ore stockpiles.

2 (g) Streams, lakes, and reservoirs.

3 (h) Tailings basins.

4 (i) Roads.

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

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

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

13 (m) Elevations of stockpiles and tailings basins.

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

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

19 (p) The date the map was prepared.

20 **(2m)** Annually, the department shall review the bond or other security under  
21 s. 295.59 (1) to ascertain its adequacy. If the department after review determines  
22 that the amount of the bond or other security should be changed, it shall notify the  
23 permit holder of the necessary changes. If the permit holder does not seek a  
24 contested case hearing under s. 295.77 (3) within 30 days, the changes are considered  
25 to be accepted.

1           (3) If the department finds that a change requested under sub. (1) (a) would  
2 make substantial compliance with the approved mining plan, reclamation plan, or  
3 mining waste site feasibility study and plan of operation impossible or it finds, based  
4 on a review conducted no more frequently than every 5 years, that because of  
5 changing conditions, including changes in reclamation costs or reclamation  
6 technology, the reclamation plan for a mining site is no longer sufficient to  
7 reasonably provide for reclamation of the mining site consistent with this  
8 subchapter, it shall require the operator to submit an amended mining plan,  
9 reclamation plan, or mining waste site feasibility study and plan of operation and  
10 applications for amending any approval associated with the proposed amendments  
11 to the mining plan, reclamation plan, or mining waste site feasibility study and plan  
12 of operation. The public notice, public comment, and public hearing procedures in  
13 s. 295.57 apply to amended plans and applications under this subsection. The  
14 department shall approve or deny the amended mining plan, reclamation plan, or  
15 mining waste site feasibility study and plan of operation in accordance with s.  
16 295.58, within 30 days following the close of the public comment period. The  
17 applicant may continue to operate under the existing mining permit until the  
18 amended mining permit is issued or denied.

19           **295.635 Required mining waste site inspections, record keeping,**  
20 **reporting, and responses. (1) DEFINITIONS.** In this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (5) DEFECTIVE CONDITIONS OF DAMS POSING RISK OF ADVERSE IMPACT. When a  
8 defective condition that poses a significant risk of adverse impact to the environment  
9 is found during an inspection of a dam, the operator shall ensure that it is recorded  
10 and corrected at the earliest practicable time. At the earliest practicable time, the  
11 operator shall make a written report to the department of the condition and the  
12 actions proposed and taken for its correction. Within 5 business days of receipt of a  
13 written report, the department may confirm the correction of the condition and  
14 specify any necessary additional corrective action. An operator shall consider any  
15 of the following items as indicating a condition that requires prompt investigation  
16 and that may require corrective action:

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

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

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

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

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

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



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

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

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

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

10          (d) Erosion below any conduit.

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

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

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

20           1. Aerial photos of the construction site before construction.

21           2. Construction drawings and modifications of the drawings.

22           3. Construction specifications and modifications of the specifications.

23           4. Results of all soil tests on foundations and fill materials.

24           5. Logs of borings and engineering geology reports.

1           6. Copies of construction progress inspections pertinent to core trench, toe  
2 drain, internal drains, and other significant phases of the structure including, at the  
3 option of the operator, photographs of various structural items.

4           7. Aerial photos of the entire dam taken within 90 days after all construction  
5 is completed.

6           8. A description of and justification for all deviations or variances from the  
7 construction plans and specifications.

8           **(8) RESPONSES TO UNPLANNED EVENTS.** If a mining waste site has an accidental  
9 or emergency discharge, a fire, an explosion, or other unplanned or unpredicted  
10 event that is likely to damage human health or the environment, the operator shall  
11 follow the procedures set forth in the contingency plan under s. 295.51 (6) (f) and  
12 shall report the incident to the department and to county, town, and tribal  
13 governmental agencies immediately after the operator has discovered the event.

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

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

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

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

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

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

3           **295.64 Mining site monitoring; general.** (1) GENERAL. The department,  
4 as a condition of a mining permit, shall require the operator to perform adequate  
5 monitoring of environmental changes during the course of the mining and for the  
6 additional period of time that is necessary to satisfactorily complete reclamation and  
7 completely release the operator from any bonds or other security required. The  
8 department may monitor environmental changes concurrently with the operator  
9 and for an additional period after the security is released.

10           (2) ANALYSES. (a) The department shall review baseline water quality data  
11 with respect to groundwater and monitoring data associated with the mine, mining  
12 waste sites, and sites for the disposal of wastes that are not mining wastes at the time  
13 of each review of the mining permit or reclamation plan under s. 295.63 (3) and when  
14 the operator requests a modification of the mining permit or reclamation plan.

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

- 22           1. Physical testing of soil.
- 23           2. Air quality tests.
- 24           3. Tests for hydrogen ion concentration (pH).
- 25           4. Tests for chlorine residual.

1           5. Tests for temperature.

2           **295.643 Mining waste site monitoring.** (1) GENERAL. The department may  
3 require the monitoring of groundwater, surface water, leachate, or other physical  
4 features associated with a mining waste site.

5           (2) PHYSICAL FEATURES. The department may require the monitoring of air  
6 quality, berms, embankments, vegetation growth, and drainage control structures  
7 associated with the mining waste site. The department may require monitoring of  
8 other chemical or biological conditions, if the department determines that the  
9 monitoring is necessary to assess the impact of the mining waste site on critical  
10 aquatic and terrestrial ecosystems.

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

16           (b) The department shall determine the required number of groundwater  
17 monitoring wells based on the size of the mining waste site, the design of the mining  
18 waste site, the types of mining waste, and the hydrologic and geologic setting of the  
19 mining waste site. The department shall ensure that the number of wells is adequate  
20 to yield samples representative of the groundwater quality both up gradient and  
21 down gradient of the mining waste site.

22           (c) An operator shall construct all monitoring wells in accordance with ch. NR  
23 141, Wis. Adm. Code, and in such a manner as to prevent, to the extent practicable,  
24 the exchange of water between aquifers.

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

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

9           **(5) SAMPLING OTHER WELLS.** The department may require an operator to sample  
10 public or private wells as part of a regular monitoring program or to determine the  
11 extent of groundwater contamination associated with a mining waste site. If the  
12 owner of a well does not authorize access for sampling, the operator shall promptly  
13 notify the department.

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

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

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

3           (8) OPERATIONS REPORT. The department may require an operator to submit an  
4 operations report to assess the effectiveness and environmental acceptability of  
5 mining waste site operations. The operator may include in the report a discussion  
6 of confinement of the active fill area and an analysis of leachate and other  
7 monitoring, surface water control and erosion control, revegetation, settlement,  
8 volume of the mining waste site utilized, leachate quantity and quality, slope  
9 stability, equipment performance, volume and type of waste disposed of, and other  
10 relevant parameters.

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

14           **295.645 Groundwater quality, monitoring, and response. (1)**

15           DEFINITIONS. In this section:

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

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

22           (2) DESIGN MANAGEMENT ZONE. (a) Notwithstanding the rule-making authority  
23 in s. 160.21 (2) and except as provided under par. (b), for the purposes of ch. 160, the  
24 horizontal distance to the boundary of the design management zone for a mining  
25 operation is 1,200 feet from the limits of the engineered structures of the mining

1 waste site, including any wastewater and sludge storage or treatment lagoons, the  
2 edge of the mine, and the adjacent mine mill and ferrous mineral processing facilities  
3 or at the boundary of the property owned or leased by the applicant or on which the  
4 applicant holds an easement, whichever distance is less.

5 (b) When issuing or modifying a mining permit or issuing or reissuing any other  
6 approval, the department may reduce the design management zone by a horizontal  
7 distance of not more than 600 feet. The department may not reduce the design  
8 management zone unless the department determines that preventive action limits  
9 and enforcement standards or alternative concentration limits will be met at the  
10 boundary of the reduced design management zone. The department shall consider  
11 the following factors in determining whether to reduce the design management zone:

12 1. Nature, thickness, and permeability of unconsolidated materials, including  
13 topography.

14 2. Nature and permeability of bedrock.

15 3. Groundwater depth, flow direction, and velocity.

16 4. Waste volume, type, and characteristics.

17 5. Contaminant mobility.

18 6. Distances to the property boundary and surface waters.

19 7. Engineering design of the facility.

20 8. Life span of the facility.

21 9. Present and anticipated uses of land and groundwater.

22 10. Potential abatement options if an enforcement standard is exceeded.

23 (c) Notwithstanding the rule-making authority in s. 160.21 (2), for the  
24 purposes of ch. 160, the vertical distance to the boundary of the design management  
25 zone for a mining site, including any mining waste site, extends no deeper than 1,000

1 feet into the Precambrian bedrock or than the final depth of the mining excavation,  
2 whichever is greater.

3 (d) An operator shall monitor groundwater quality at locations approved by the  
4 department along the boundary of the design management zone and within the  
5 design management zone.

6 (3) POINT OF STANDARDS APPLICATION. (a) Any point at which groundwater is  
7 monitored is a point of standards application to determine whether a preventive  
8 action limit or an alternative concentration limit to a preventive action limit has been  
9 attained or exceeded for an activity regulated under a mining permit or another  
10 approval related to the mining operation. Any of the following is a point of standards  
11 application to determine whether an enforcement standard or an alternative  
12 concentration limit to an enforcement standard has been attained or exceeded for an  
13 activity regulated under a mining permit or another approval related to the mining  
14 operation:

15 1. Any point of present groundwater use.

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

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

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

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



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

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

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

11           (c) Determine the extent of groundwater contamination or the potential for  
12 groundwater contamination.

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

14           (5) RESPONSE CONCERNING PREVENTIVE ACTION LIMITS. In accordance with s. NR  
15 140.24 (1) to (5), Wis. Adm. Code, the department shall evaluate the range of  
16 responses proposed by the operator when a preventive action limit or an alternative  
17 concentration limit to a preventive action limit is attained or exceeded and the  
18 analysis of samples indicates that the quality of groundwater is statistically  
19 significantly different from either baseline water quality or background water  
20 quality at a point of standards application. In designating the appropriate response,  
21 the department shall evaluate the operator's proposed range of responses, including  
22 any alternate responses to those identified in s. NR 140.24, Wis. Adm. Code. For any  
23 alternate responses, the department shall consider the technical and economic  
24 feasibility of alternate responses, the practicality of stopping the further release of  
25 the substance, and the risks and benefits of continued mining operations. The

1 department shall designate the appropriate response, except that, notwithstanding  
2 s. 160.21 (3) and the rule-making authority under s. 160.21 (1), the department may  
3 not prohibit a practice or activity or require closure and abandonment of a mining  
4 waste site, including any wastewater and sludge storage or treatment lagoon, unless  
5 it has followed the procedures in s. 295.78 and satisfies the requirements of s. 160.23  
6 (4) and (6). The department may determine that no response is necessary and that  
7 an exemption is not required when the requirements of s. NR 140.24 (5) (a) or (b), Wis.  
8 Adm. Code are met.

9 (6) RESPONSE CONCERNING ENFORCEMENT STANDARDS. (a) In accordance with s.  
10 NR 140.26 (1) and (2), Wis. Adm. Code, the department shall evaluate the range of  
11 responses proposed by the operator based on the responses listed in Table 6 of s. NR  
12 140.26, Wis. Adm. Code, when an enforcement standard or an alternative  
13 concentration limit to an enforcement standard is attained or exceeded and the  
14 analysis of samples indicates that the quality of groundwater is statistically  
15 significantly different from either baseline water quality or background water  
16 quality at a point of standards application. In designating the appropriate response,  
17 the department shall evaluate the operator's proposed range of responses against  
18 those identified in Table 6 of s. NR 140.26, Wis. Adm. Code. The department shall  
19 designate the appropriate response, except that, notwithstanding ss. 160.21 (3) and  
20 160.25 (1) (a) and the rule-making authority under s. 160.21 (1), the department may  
21 not prohibit a practice or activity or require closure and abandonment of a mining  
22 waste site, including any wastewater and sludge storage or treatment lagoon, unless  
23 it has followed the procedures in s. 295.78 and all of the following apply:

- 24 1. The department bases its decision upon reliable test data.

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

4           3. The department establishes the basis for the boundary and duration of the  
5 prohibition.

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

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

17           (b) The department may only require a remedial action to be taken if the  
18 remedial action is reasonably related in time and scope to the substance, activity, or  
19 practice that caused the enforcement standard or alternative concentration limit to  
20 an enforcement standard to be attained or exceeded and the quality of groundwater  
21 to be statistically significantly different from either baseline water quality or  
22 background water quality at the point of standards application.

23           (c) If nitrates or any substance of welfare concern attains or exceeds an  
24 enforcement standard and if the analysis of samples indicates that the quality of  
25 groundwater is statistically significantly different from either baseline or

1 background water quality, then the department shall evaluate whether the  
2 enforcement standard was attained or exceeded in whole or in part due to high  
3 background water quality concentrations of the substance and whether the  
4 additional concentrations represent a public welfare concern before it designates the  
5 appropriate response and, notwithstanding ss. 160.21 (3) and 160.25 (1) (a) and the  
6 rule-making authority under s. 160.21 (1), the department may not prohibit a  
7 practice or activity or require closure and abandonment of a mining waste site,  
8 including any wastewater and sludge storage or treatment lagoon, unless it has  
9 followed the procedures in s. 295.78 and par. (a) 1. to 4. apply.

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

12 **(6m) MANDATORY INTERVENTION BOUNDARY FOR MINING WASTE SITE AND MINE.** (a)  
13 Except as provided under par. (am), the horizontal distance to the mandatory  
14 intervention boundary for a mining waste site is 300 feet from the outer waste  
15 boundary or the outer edge of the excavation, unless the boundary of the design  
16 management zone is within 600 feet of the outer waste boundary or the outer edge  
17 of the excavation, in which case the mandatory intervention boundary is one-half  
18 the distance from the outer waste boundary or the outer edge of the excavation to the  
19 boundary of the design management zone.

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

24 (b) An operator shall monitor groundwater quality at locations approved by the  
25 department along the mandatory intervention boundary, except for any portion of

1 the mandatory intervention boundary that is within another mandatory  
2 intervention boundary, and within the mandatory intervention boundary. When  
3 approving locations for monitoring, the department shall ensure that duplicative  
4 monitoring is not required within overlapping mandatory intervention boundaries.

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

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

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

18 (8) EXEMPTIONS TO GROUNDWATER QUALITY STANDARDS. When issuing or  
19 modifying a mining permit or issuing or reissuing any other approval, the  
20 department may grant an exemption from a groundwater quality standard and  
21 establish an alternative concentration limit to a groundwater quality standard.

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

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

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

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

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

15           **295.66 Cessation of mining or reclamation.** If there is a cessation of  
16 mining or reclamation for 30 days or more that is not set forth in either the mining  
17 plan or the reclamation plan, the operator shall notify the department of the  
18 cessation within 48 hours of the cessation of mining and shall begin stabilization of  
19 the mining site. The department may require the operator to provide technical,  
20 engineering, and any other information that the operator believes shows that its  
21 actions to stabilize the mining site are adequate. If the department determines, after  
22 reviewing the information provided by the operator, that the proposed stabilization  
23 of the mining site will result in a substantial adverse impact to the environment, the  
24 department shall order the operator to begin additional measures to protect the  
25 environment, including, if the cessation is reasonably anticipated to extend for a

1 protracted period of time, reclamation according to the reclamation plan or part of  
2 the reclamation plan. Usual and regular shutdown of operations on weekends, for  
3 maintenance or repair of equipment or facilities, or for other customary reasons do  
4 not constitute a cessation of mining.

5 **295.67 Determination of abandonment of mining.** (1) Except as provided  
6 in sub. (2), abandonment of mining occurs if there is a cessation of mining, not set  
7 forth in an operator's mining plan or reclamation plan or by any other sufficient  
8 written or constructive notice, extending for more than 6 consecutive months.

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

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

12 (b) The cessation of mining does not continue beyond the time, not to exceed  
13 5 years, specified by the department.

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

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

18 **295.68 Certificates of completion and release of security.** (1) Upon the  
19 petition of the operator, but not less than 4 years after notification to the department  
20 by the operator of the completion of the reclamation plan or not less than one year  
21 after notification to the department by the operator of the completion of the  
22 reclamation plan as to a portion of the mining site, if the department finds that the  
23 operator has completed reclamation of any portion of the mining site in accordance  
24 with the reclamation plan and this subchapter, the department shall issue a  
25 certificate of completion setting forth a description of the area reclaimed and a

1 statement that the operator has fulfilled its duties under the reclamation plan as to  
2 that area.

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

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

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

19 **295.69 Termination of proof of financial responsibility for long-term**  
20 **care of mining waste site. (1)** One year after closure, and annually thereafter  
21 until the department terminates the obligation to maintain proof of financial  
22 responsibility for long-term care of a mining waste site under sub. (2) (c), an operator  
23 who has carried out all necessary long-term care during the preceding year, may  
24 apply to the department for a reduction in the amount of the proof of financial  
25 responsibility provided under s. 295.59 (2m) equal to the costs of long-term care for



1 that year. The operator shall provide an itemized list of costs incurred. If the  
2 department determines that the costs incurred are in accordance with the long-term  
3 care requirements in the approved waste site feasibility study and plan of operation  
4 and that adequate funds exist to complete required long-term care for the remainder  
5 of the 40-year period on which the amount of the proof of financial responsibility was  
6 originally determined, the department shall authorize in writing a reduction in the  
7 amount of proof of financial responsibility provided. The department shall make its  
8 determinations within 90 days of an application.

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

19 (b) Within 30 days of receiving an application under par. (a), the department  
20 shall provide notice to the public of the application for termination of the obligation  
21 to maintain proof of financial responsibility for long-term care. In the notice, the  
22 department shall invite the submission of written comments by any person on the  
23 application within 30 days of the date of the publication of the notice. The  
24 department shall provide the notice by publishing a class 1 notice under ch. 985 in  
25 the official newspaper designated under s. 985.04 or 985.05 or, if none exists, in a

1 newspaper likely to give notice in the area of the mining waste site, and shall publish  
2 notice on the department's Internet site. The date on which the department first  
3 publishes the notice on its Internet site shall be considered the date of the publication  
4 of the notice required to be published under this paragraph. The department shall  
5 also send the notice to the operator.

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

14 **295.695 Inspections by the department.** (1) Any duly authorized officer,  
15 employee, or representative of the department who has received the safety training  
16 under 30 CFR 48.31 may enter and inspect any property, premises, or place on or at  
17 which any mining operation or facility is located or is being constructed or installed  
18 at any reasonable time for the purpose of ascertaining the state of compliance with  
19 this subchapter and the provisions of chs. 281, 283, 285, 289, 291, 292, and 299 and  
20 rules promulgated under those chapters that are applicable to the mining operation.  
21 No person may refuse entry or access to any authorized representative of the  
22 department who requests entry for purposes of inspection, and who presents  
23 appropriate credentials.

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

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

4           **295.73 Fees.** (1) (a) Except as provided in par. (b), an applicant for a mining  
5 permit is not required to pay any application or filing fee for any approval other than  
6 a mining permit, notwithstanding any fee required under ch. 23, 29, 30, 31, 169, 281,  
7 283, 285, 289, or 291, or rules promulgated under those chapters.

8           (b) An applicant for a mining permit shall pay any fee required under s. 281.343

9 (3) (c) 1.

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

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

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

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

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

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

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

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

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

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

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

19           (c) After the department approves or denies the application for a mining permit  
20 or, if the applicant withdraws the application for a mining permit, after the applicant  
21 withdraws the application, the department shall refund to the applicant any amount  
22 paid by the applicant under par. (a) but not fully allocated against the department's  
23 actual costs.

24           (d) In addition to the fees under par. (a), if the department contracts under s.  
25 295.53 (1) with a consultant to assist in preparation of an environmental impact

1 statement and awards the contract on the basis of competitive bids, the applicant  
2 shall pay the full costs as provided in the contract.

3 (e) In addition to the fees under par. (a), the department may assess an  
4 applicant a fee equal to the department's costs in providing wetland determinations  
5 and wetland boundary delineations under s. 295.60 (2).

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

9 **295.75 Effect of other laws.** (1) Except as provided in sub. (2), if there is a  
10 conflict between a provision in this subchapter and a provision in ch. 23, 29, 30, 31,  
11 160, 169, 281, 283, 285, 289, or 291 or in a rule promulgated under one of those  
12 chapters, the provision in this subchapter controls.

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

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

18 **295.77 Review.** (1) LIMITS ON CONTESTED CASE HEARINGS. No person is entitled  
19 to a contested case hearing on a decision by the department on an exploration license  
20 or an approval that is required before bulk sampling may be implemented. No person  
21 is entitled to a contested case hearing on a decision by the department on a mining  
22 permit application or any other approval, except as provided in subs. (2) and (3).

23 (2) CONTESTED CASE HEARINGS; AFTER INITIAL MINING PERMIT DECISION OR DECISION  
24 ON AMENDED PLAN. (a) *Entitlement.* 1. A person is entitled to a contested case hearing  
25 on a decision by the department related to a mining permit for a proposed mining

1 operation, including a decision related to the environmental impact statement for  
2 the proposed mining operation, or on any decision that is related to an approval  
3 associated with the proposed mining operation and that is issued no later than the  
4 day on which the department issues its decision on the application for the mining  
5 permit, only if the person is entitled to a contested case hearing on the decision under  
6 s. 227.42 and the person requests the hearing within 30 days after the department  
7 issues the decision to approve or deny the application for the mining permit.

8 2. A person is entitled to a contested case hearing on a decision by the  
9 department related to an amended mining plan, reclamation plan, or mining waste  
10 site feasibility study and plan of operation required under s. 295.63 (3) or to any  
11 amendment to an approval associated with the amended mining plan, reclamation  
12 plan, or mining waste site feasibility study and plan of operation only if the person  
13 is entitled to a contested case hearing on the decision under s. 227.42 and the person  
14 requests the hearing within 30 days after the department issues the decision to  
15 approve or deny the amended mining plan, reclamation plan, or mining waste site  
16 feasibility study and plan of operation.

17 3. All issues raised by all persons requesting a contested case hearing in  
18 accordance with subd. 1. or 2. in connection with the same mining operation shall be  
19 considered in one contested case hearing.

20 (b) *Deadline for decision.* 1. The hearing examiner presiding over a contested  
21 case hearing under this subsection shall issue a final decision on the case no more  
22 than 150 days after the department issues the decision to grant or deny the mining  
23 permit or to approve or deny the amended mining plan, reclamation plan, or mining  
24 waste site feasibility study and plan of operation.

1           2. If the hearing examiner does not issue a final decision by the deadline under  
2           subd. 1., the decision of the department being reviewed by the hearing examiner is  
3           affirmed.

4           (c) *Restriction on orders.* The hearing examiner presiding over a contested case  
5           hearing under this subsection may not issue an order prohibiting activity authorized  
6           under a decision of the department that is being reviewed in the contested case  
7           hearing.

8           (d) *Judicial review.* A person seeking judicial review of the decision in a  
9           contested case hearing under this subsection shall comply with the requirements for  
10          service and filing in s. 227.53 (1) (a) and shall commence the action no more than 30  
11          days after service of the decision or, if the hearing examiner does not issue a final  
12          decision by the deadline under par. (b) 1., no more than 30 days after that deadline.

13          **(3) CONTESTED CASE HEARINGS ON OTHER DECISIONS.** A person is entitled to a  
14          contested case hearing on a decision by the department related to a mining operation  
15          that is issued after the department issues the decision to approve the application for  
16          the mining permit for the mining operation, other than a decision described in sub.  
17          (2) (a) 2., if the person is entitled to a contested case hearing under s. 227.42 and  
18          complies with the requirements for service and filing in s. 227.53 (1) (a).

19          **(4)** Notwithstanding s. 227.53 (1) (a) 3., any person seeking judicial review of  
20          the decision on a contested case under sub. (2) or (3) or of any decision of the  
21          department under this subchapter shall bring the action in the circuit court for the  
22          county in which the majority of the bulk sampling site or mining site is located or in  
23          which the majority of the exploration will occur.

24          **295.78 Mining and reclamation; orders.** (1) (a) If the department finds a  
25          violation of law or any unapproved deviation from the mining plan, reclamation plan,

1 or mining waste site feasibility study and plan of operation at a mining site under  
2 a mining permit, the department shall do one of the following:

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

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

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

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

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

17 (d) If an operator fails to comply with an order issued under par. (a) 1. within  
18 the time for compliance specified in the order, the department shall suspend the  
19 mining permit until the operator fully complies with the order, except that if the  
20 operator seeks review of the order under s. 295.77 (3), mining may continue until the  
21 final disposition of the action, except as provided under sub. (4).

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



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

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

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

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

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

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

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

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

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

23           (4) (a) Any person who commits a violation of this subchapter or any permit or  
24 order issued under this subchapter, except for the violations enumerated in subs. (2)  
25 and (3), shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each

1 day of continued violation is a separate offense, except that no forfeiture may be  
2 imposed during the time that continued mining is authorized under s. 295.63 (3).  
3 While an order is suspended, stayed, or enjoined, this penalty does not accrue.

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

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

12 **SECTION 97.** 299.85 (7) (a) 2. and 4. of the statutes are amended to read:

13 299.85 (7) (a) 2. Notwithstanding minimum or maximum forfeitures specified  
14 in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969,  
15 29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and  
16 (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2),  
17 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97,  
18 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a),  
19 295.19 (3) (a) and (b) 1., 295.37 (2), 295.79 (2) and (4), 299.15 (4), 299.51 (5), 299.53  
20 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if a regulated entity that qualifies  
21 under sub. (2) for participation in the Environmental Compliance Audit Program  
22 corrects violations that it discloses in a report that meets the requirements of sub.  
23 (3) within 90 days after the department receives the report that meets the  
24 requirements of sub. (3), the regulated entity may not be required to forfeit more than

1 \$500 for each violation, regardless of the number of days during which the violation  
2 continues.

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

14 **SECTION 98.** 299.95 of the statutes is amended to read:

15 **299.95 Enforcement; duty of department of justice; expenses.** The  
16 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except  
17 ss. 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan approvals,  
18 permits, and water quality certifications of the department, except those  
19 promulgated or issued under ss. 285.57, 285.59, and 299.64 and except as provided  
20 in ss. 285.86 and 299.85 (7) (am). The Except as provided in s. 295.79 (1), the circuit  
21 court for Dane county or for any other county where a violation occurred in whole or  
22 in part has jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this chapter or  
23 the rule, special order, license, plan approval, permit, or certification by injunctive  
24 and other relief appropriate for enforcement. For purposes of this proceeding where  
25 chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan

1 approval, permit or certification prohibits in whole or in part any pollution, a  
2 violation is considered a public nuisance. The department of natural resources may  
3 enter into agreements with the department of justice to assist with the  
4 administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid  
5 to the department of justice under these agreements shall be credited to the  
6 appropriation account under s. 20.455 (1) (k).

7 **SECTION 99.** 323.60 (1) (gm) of the statutes is created to read:

8 323.60 (1) (gm) “Minerals” mean unbeneficiated metallic ore but does not  
9 include mineral aggregates such as stone, sand, and gravel.

10 **SECTION 100.** 323.60 (5) (d) 3. of the statutes is amended to read:

11 323.60 (5) (d) 3. All facilities with 10 or more employees in major group  
12 classifications 10 to 13 in the standard industrial classification manual, 1987  
13 edition, published by the U.S. office of management and budget, at which a toxic  
14 chemical is used at or above an applicable threshold quantity, except that compliance  
15 with the toxic chemical release form requirements under this subdivision is not  
16 required for the placement of a toxic chemical in a storage or disposal site or facility  
17 that is located at a facility with a permit under ch. 293 or a mining permit under  
18 subch. III of ch. 295 if the toxic chemical consists of or is contained in merchantable  
19 by-products, as defined in s. 293.01 (7) or 295.41 (25), minerals as defined in s. ~~293.01~~  
20 ~~(8)~~, or refuse, as defined in s. 293.01 (25) or 295.41 (41).

21 **SECTION 101.** 706.01 (9) of the statutes is amended to read:

22 706.01 (9) “Mining company” means any person or agent of a person who has  
23 a prospecting permit under s. 293.45 or a mining permit under s. 293.45 ~~or 293.49~~  
24 or 295.58.

25 **SECTION 102.** 710.02 (2) (d) of the statutes is amended to read:

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

3           **SECTION 103. Nonstatutory provisions.**

4           (1) RULES.

5           (a) The department of natural resources shall promulgate rules revising  
6 chapters NR 130, 131, 132, and 182, Wisconsin Administrative Code, that are in  
7 effect on the effective date of this paragraph and revising any other rules  
8 promulgated under section 293.13 (1) (a) of the statutes that are in effect on the  
9 effective date of this paragraph to clarify that chapters NR 130, 131, 132, and 182,  
10 Wisconsin Administrative Code, and any other rules promulgated under section  
11 293.13 (1) (a) of the statutes do not apply to ferrous metallic mining.

12           (b) The department of natural resources shall promulgate rules revising  
13 chapters NR 500 to 555 and 660 to 679, Wisconsin Administrative Code, that are in  
14 effect on the effective date of this paragraph and revising any other rules  
15 promulgated under sections 289.05 and 289.06 (1) of the statutes that are in effect  
16 on the effective date of this paragraph so that the rules are consistent with  
17 subchapter III of chapter 295, of the statutes, as created by this act.

18           (c) The department of natural resources shall promulgate rules revising any  
19 rules of the department that are in effect on the effective date of this paragraph, in  
20 addition to the rules under paragraphs (a) and (b), that provide exemptions for  
21 nonferrous mining or associated activities to provide the same exemptions for  
22 ferrous mining and associated activities.

23           (d) The department of natural resources shall present the statement of scope  
24 of the rules required under paragraphs (a) to (c) to the governor for approval under  
25 section 227.135 (2) of the statutes no later than the 30th day after the effective date

1 of this paragraph. The department of natural resources shall submit in proposed  
2 form the rules required under paragraphs (a) to (c) to the legislative council staff  
3 under section 227.15 (1) of the statutes no later than the first day of the 5th month  
4 beginning after the governor approves the statement of scope of the rules.

5

**(END)**