

## Chapter NR 132

## NONFERROUS METALLIC MINERAL MINING

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**Note:** Chapter NR 132 as it existed on August 31, 1982 was repealed and a new chapter NR 132 was created effective September 1, 1982. **Chapter NR 132 as it existed on December 31, 2021, was repealed and a new chapter NR 132 was created effective January 1, 2022.**

**NR 132.101 Purpose.** The purpose of this chapter is to implement ch. 293, Stats., by establishing procedures and standards for the comprehensive regulation of nonferrous metallic mineral mining in this state and facilitating a coordinated procedure by which department permits, licenses, and approvals may be applied for, hearings may be held, and determinations may be made by the department in an integrated manner.

**History:** CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22; correction made under s. 35.17, Stats., Register December 2021 No. 792.

**NR 132.102 Applicability.** (1) The provisions of this chapter are applicable to all nonferrous metallic mineral mining, including the storage, handling, processing, transportation, and disposal of all materials resulting from a mining operation except to the extent that mining wastes are regulated under ch. NR 182.

(2) If a standard under any state or federal statute, rule, or regulation other than this chapter specifically regulates in whole an activity or facility on a mining site regulated under this chapter the other state or federal statute, rule, or regulation shall be the controlling standard. If the other state or federal statute, rule, or regulation only specifically regulates the activity or facility in part, the other statute, rule, or regulation shall only be controlling as to that part.

**History:** CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22.

**NR 132.103 Definitions.** In this chapter:

(1) "Applicant" means a person who has applied for a mining permit.

(2) "Background water quality" or "background concentration" means surface water or groundwater quality at or near a facility, practice or activity which has not been affected by that facility, practice or activity, established by monitoring at the proposed site, upgradient and downgradient of the proposed site and at representative reference sites, as necessary.

(3) "Baseline data" means the data collected by the applicant or the department which the department has accepted through the regulatory process of ss. NR 132.105 and 132.117, and s. 293.31, Stats., as representing the existing environmental conditions prior to the commencement of mining and established by monitoring at the proposed site, upgradient and downgradient of the proposed site and at representative reference sites, as necessary.

(4) "Department" means the department of natural resources.

(5) "Environmental pollution" has the meaning specified in s. 293.01 (4), Stats.

**Note:** Section 293.01 (4), Stats., defines "environmental pollution" to mean: "the contaminating or rendering unclean or impure the air, land or waters of the state, or

making the same injurious to public health, harmful for commercial or recreational use, or deleterious to fish, bird, animal or plant life."

(6) "Groundwater" means any waters of the state, as defined in s. 281.01 (18), Stats., occurring in a saturated subsurface geological formation of rock or soil.

(7) "Materials" means all solid, liquid and gaseous, substances handled, processed, transported, stored or disposed of on the mining site during the mining, cleaning, concentrating and reclamation operation, including merchantable by-product and other substances generated by the operation as well as those brought onto the mining site.

(8) "Merchantable by-product" means all waste soil, rock, mineral, liquid, vegetation, and other material directly resulting from or displaced by the mining, cleaning, or preparation of nonferrous metallic minerals during mining operations which are determined by the department to be marketable upon a showing of marketability made by the operator, accompanied by a verified statement by the operator of his or her intent to sell such material within 3 years from the time it results from or is displaced by mining. If after 3 years, from the time merchantable by-product results from or is displaced by mining, such material has not been transported off the mining site, it shall be considered and regulated as refuse unless removal is continuing at a rate of more than 12,000 cubic yards per year or an exemption has been granted under s. NR 132.112 extending designation of the material as merchantable by-product.

(9) "Mill" means an enclosed facility, such as a concentrator building, where ore is separated into values and rejects, including tailings, and may include facilities and processes for crushing, cleaning, grinding and separating ore minerals through flotation, magnetic separation, leaching or other processes.

(10) "Mining" or "mining operation" means all or part of the process in the mining of nonferrous metallic minerals other than for exploration, bulk sampling or prospecting, and includes commercial extraction, agglomeration, beneficiation, site preparation and clearing, construction of project facilities including roads and other corridors, removal of overburden, and the production of refuse.

(11) "Mining permit" means the permit that is required of all operators as a condition precedent to commencing mining at a mining site as required under s. 293.37 (1) (a), Stats.

(12) "Mining plan" means the proposal for the mining of the mining site which must be approved by the department under s. 293.49, Stats., as part of the mining permit.

(13) (a) "Mining site" means the surface area disturbed by a mining operation, including the surface area from which the nonferrous metallic minerals or refuse or both have been removed, the surface area covered by refuse, all lands disturbed by the construction or improvement of haulageways, pipelines and pipeline corri-

dors, and any surface areas in which structures, equipment, materials, and any other things used in the mining operation are situated.

(b) "Mining site" includes but is not limited to all of the following:

1. Facilities required as a condition of a mining permit under s. 293.65 (3) (b), Stats.

2. Corridors for access roads and rail spurs from the location where the corridor connects with the main portion of the mining site extending to the location where it connects with a public road or rail line owned by another entity.

(c) "Mining site" does not include environmental monitoring sites located off of the main portion of the mining site.

(14) (a) "Mining waste" or "nonferrous mining waste" means any refuse, sludge, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material, resulting from nonferrous metallic mineral prospecting or mining, or from the cleaning or preparation of nonferrous metallic minerals during prospecting or mining operations.

(b) "Mining waste" includes tailings, waste rock, mine overburden, and waste treatment sludges.

(c) "Mining waste" does not include topsoil and mine overburden not disposed of in a waste site, but placed in a facility permitted under ch. NR 131 or this chapter, to be returned to the mine site or used in the reclamation process, and does not include merchantable by-product.

(d) "Mining waste" does not include trees and other vegetation removed from the mining site during site preparation and facility construction.

(15) "Monitoring data" means the data collected by the operator or the department after the commencement of mining.

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

**Note:** This definition does not apply to substances mined primarily for their iron oxide content. This definition includes substances mined for the purpose of extracting a metal or metals such as copper, zinc, lead, gold, silver, titanium, vanadium, nickel, cadmium, molybdenum, chromium, manganese, cobalt, zirconium, beryllium, thorium, and uranium.

(17) "Non-mining solid waste" means solid waste generated as part of a nonferrous prospecting or mining operation that is not mining waste and includes materials such as discarded vegetation, tires, barrels, sanitary waste, and various other solid waste materials defined in ch. NR 500, including construction and demolition waste, garbage, commercial solid waste and municipal solid waste.

(18) "Operator" means any person who is engaged in, or who has applied for or holds a permit to engage in mining, whether individually, jointly or through subsidiaries, agents, employees or contractors.

(19) "Ore" means a naturally occurring material from which nonferrous metallic minerals may be recovered at a profit.

(20) "Overburden" means any unconsolidated geologic material, such as till, sand and gravel, and weathered bedrock that may be removed during mining.

(21) "Person" has the meaning specified in s. 293.01 (16), Stats.

**Note:** Section 293.01 (16), Stats., defines "person" to mean: "an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency" or federal agency."

(22) "Principal shareholder" has the meaning specified in s. 293.01 (17), Stats.

**Note:** Section 293.01 (17), Stats., defines "principal shareholder" to mean: "any person who owns at least 10 percent of the beneficial ownership of an operator."

(23) "Reclamation" has the meaning specified in s. 293.01 (23), Stats.

**Note:** Section 293.01 (23), Stats., defines "reclamation" to mean: "the process by which an area physically or environmentally affected by prospecting or mining is rehabilitated to either its original state or, if this is shown to be physically or economi-

cally impracticable or environmentally or socially undesirable, to a state that provides long-term environmental stability. Reclamation shall provide the greatest feasible protection to the environment and shall include, but is not limited to, the criteria for reclamation set forth in s. 293.13 (2) (c), Stats."

(24) "Reclamation plan" means the proposal for the reclamation of the mining site that must be approved by the department under s. 293.49, Stats., as part of the mining permit, and includes the closure requirements of ch. NR 182 for facilities licensed under that chapter.

(25) "Refuse" has the meaning specified in s. 293.01 (25), Stats.

**Note:** Section 293.01 (25), Stats., defines "refuse" to mean: "all waste soil, overburden, rock, mineral, liquid, vegetation, and other material, except merchantable by-products, directly resulting from or displaced by the prospecting or mining, and from the cleaning or preparation of nonferrous metallic minerals during prospecting or mining operations, and shall include all waste materials deposited on or in the prospecting or mining site from other sources."

(26) "Surface mine" or "surface mining" means all or any part of a process of mining non-ferrous minerals in which the non-ferrous ore lies at or near the surface and can be extracted directly from the land surface if the ore body is exposed or can be accessed from the surface and extracted after removing the overlying layers of overburden and rock.

(27) "Tailings" means waste material resulting from the beneficiation of ore at a mill facility.

(28) "Unsuitable" or "unsuitability" means that the land proposed for surface mining is not suitable for such activity because the surface mining activity itself may reasonably be expected to destroy or irreparably damage any of the following:

(a) Habitat required for survival of species of vegetation or wildlife as designated in ch. NR 27, if such endangered species cannot be firmly reestablished elsewhere.

(b) Unique features of the land, as determined by state or federal designation as any of the following, that cannot have their unique characteristic preserved by relocation or replacement elsewhere:

1. Wilderness areas designated by statute or administrative rule.

2. Wild and scenic rivers designated by statute or administrative rule.

3. National or state parks designated by statute or administrative rule.

4. Wildlife refuges and areas designated by statute or administrative rule.

5. Properties of historical significance identified as listed properties under s. 44.31 (4), Stats., and archaeological sites, as defined in s. 44.47 (1) (b), Stats.

6. State natural areas designated under s. 23.28, Stats.

(c) Other areas of a type designated by statute or administrative rule as unique or unsuitable for prospecting or surface mining.

(29) "Waste rock" means consolidated geologic material that has been excavated during the mining process but is not of sufficient value to constitute ore.

(30) "Wetlands" means an area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

**History:** CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22; correction in (4), (22), (28) (b) 5. made under s. 35.17, Stats., Register December 2021 No. 792.

## NR 132.104 Environmental baseline data collection prior to preapplication notification. (1) A person who

intends to submit a preapplication notification under s. 293.31, Stats., may, prior to obtaining, collecting, or generating environmental baseline data intended to be used to support the permit application, submit to the department a description of the methodology that the person intends to use in obtaining, collecting, or generating the data. The description shall specify sampling equipment and instrumentation, sampling locations, sample collection

protocols, sampling schedules, analytical methods and reporting procedures. The person shall provide the department with a complete electronic version of the information submitted under this subsection in a format prescribed by the department and duplicate reproducible paper copies of the information in a quantity specified by the department.

(2) Any request under sub. (1) for department review of proposed environmental data collection methodology shall be accompanied by a fee of \$1,500. The department may waive the fee if the requested review is of limited scope or is substantively duplicative of previous requests.

(3) (a) The department shall review the proposed methodology and shall either inform the person that the proposed methodology is accepted by the department or provide the person with the methodology that the department requires the person to use.

(b) The department review under this subsection is limited specifically to the proposed methodology for data collection and analysis. Department approval of the methodology is not an endorsement or approval of the intended data collection program, including adequacy of the scope of the data collection program and appropriateness of sampling locations and analytical parameters.

(c) In approving the proposed methodology under this subsection, the department may require the person to provide notice to the department prior to specific data collection activities to facilitate verification of data collection by department staff, as necessary.

(4) If a person obtains, collects, or generates data or information intended to be used to support a mining permit application without obtaining department approval of the person's methodology under sub. (3), the department may not exclude any of the data or information that consists of general environmental information such as soil characteristics, hydrologic conditions, and air and water data contained in publications, maps, documents, studies, reports, and similar sources, whether public or private, not prepared by or for the applicant.

(5) If the period of data collection prior to the filing of a preapplication notice under s. NR 132.105 continues for longer than 12 months, the department may require the person to enter into a preapplication services agreement with the department under s. 23.40 (4), Stats., to cover costs incurred by the department in verifying or reviewing the environmental data.

History: CR 20-043; cr. Register December 2021 No. 792, eff. 1-1-22.

**NR 132.105 Preapplication notification and data collection.** (1) At least 12 months before filing an application for a mining permit under s. NR 132.107 a person proposing to engage in a mining project shall notify the department in writing of the person's intention to apply for a mining permit and submit to the department a project review fee under s. NR 132.106. The person submitting the preapplication notification shall provide the department with a complete electronic version of the notice in a format prescribed by the department and shall provide duplicate paper copies of the notice in a quantity specified by the department. The notice shall include all of the following information:

(a) The name, address, and telephone number of the person submitting the preapplication notification.

(b) A map showing the approximate location of the mining site including anticipated project boundaries, locations of surface waters, roads, railroads, pipelines and utilities within the project area and identification of property ownership of lands included in the project site and adjacent areas.

(c) The expected date when a mining permit application may be submitted under s. NR 132.107.

(d) A preliminary project description addressing all of the following:

1. A topographic map showing the location of the ore body and preliminary location of major project facilities.

2. A general description of the ore body including available details on size, shape, and orientation, faulting and fracturing systems and patterns, origin, lithology, and mineralogic composition, including approximate metal grades and content.

3. A discussion of the anticipated mining and ore processing methods, a general description of the wastes expected to be generated, and potential locations of anticipated mining, milling, and mining waste facilities.

4. The following information pertaining to potential mining sites:

a. A discussion of land uses at the proposed mining site and the surrounding area which may have an impact on the suitability of the property as a mining site or on groundwater quality.

b. A discussion of land use zoning, with particular attention given to areas where zoning variances will be required, where agricultural impact statements may be required, or where floodplain, conservancy, shoreland or wetland zoning is designated.

c. Identification of known recreational, historical, archaeological areas, areas that contain threatened or endangered species per s. 29.604, Stats., and ch. NR 27, state or local natural areas and county forest lands.

d. A discussion of the regional setting of the proposed mining site generally documented by currently available public information addressing the topography, surface hydrology including the presence of any resources designated as areas of special natural resources interest under s. 30.01 (1am), Stats., geology and hydrogeology of the area surrounding the potential mining site.

5. An estimate of the project schedule.

(e) A proposed scope of study that includes all of the following:

1. Identification of data requirements needed for preparation of the mining permit application, environmental impact report, mining waste site feasibility report and plan of operation and other applications for permits, licenses, and approvals issued by the department.

2. Specific methodologies to be utilized in data collection, data processing and synthesis, laboratory methods, and analyses.

3. Description of the format in which the data will be presented in the environmental impact statement and applications for other approvals, permits and licenses.

4. Tentative schedule for collection of field data.

5. Names, addresses, and qualifications of persons who will be responsible for data collection, laboratory work, and impact analysis. Data shall be submitted under the seal of a licensed professional engineer, geologist or hydrologist registered with or licensed by the Wisconsin department of safety and professional services or other professional with expertise directly applicable to the data.

6. Quality assurance programs employed in obtaining, collecting, generating, and evaluating all baseline data.

7. Identification of anticipated modeling studies necessary to evaluate facility design and complete environmental impact assessments.

(f) Other pertinent information as requested by the department.

(2) The person giving notice under sub. (1) may submit, as part of the notification, specific environmental data that were obtained, collected, or generated prior to submitting a preapplication notification under this section including data reviewed under s. NR 132.104 and data that were not reviewed under s. NR 132.104. To the extent such information is available, the person shall include substantiating background information that will assist the department in establishing the validity of the data including the following:

(a) The data obtained, the method of data collection, and the analytical methods employed.

(b) The identity of persons obtaining, collecting, and generating the data and their qualifications. Data shall be submitted under



the seal of a licensed professional engineer, geologist or hydrologist registered with or licensed by the Wisconsin department of safety and professional services or other professional with expertise directly applicable to the data.

(c) Permits, licenses, and approvals that were in effect when the data and information were obtained, collected, and generated prior to submitting the preapplication notification.

(3) Upon receipt of the preapplication notification under sub. (1), the department shall give public notice of the department's receipt of the preapplication notification in the same manner as provided under s. 293.43 (2m) (b), Stats., and to the government of any American Indian tribe or band whose reservation boundaries are within 60 miles of any portion of the proposed project, and to the government of those American Indian tribes or bands with federally recognized treaty rights in the area of the project. The department shall make the preapplication notification available for review in the county, city, village, or town in which the mining site is located. The notice under this subsection shall invite interested persons to submit comments regarding information those interested persons believe should be requested from the person submitting a preapplication notification under sub. (1) and information that the interested persons believe the department should seek through independent studies. The department shall hold a public informational hearing to receive comments from interested persons and the hearing shall be completed within 45 days after public notice required under this subsection is given.

(4) The department shall receive and consider any comments from interested persons received within 45 days after public notice is given under sub. (3) as to information that the interested persons believe should be requested from the person submitting a preapplication notification under sub. (1) and the information that the interested persons believe the department should seek through independent studies.

(5) No later than 90 days after the period for receiving and considering comments from interested persons under sub. (4), the department shall inform the person giving notice under sub. (1) of the type and quantity of information that the department believes to be needed to support an application for a mining permit and the methodology to be used in gathering information and shall identify preliminary verification procedures to be conducted by the department under sub. (9). The department shall specifically inform the person submitting a preapplication notification under sub. (1) of the type and quantity of information on the characteristics of groundwater resources in the area in which mining is anticipated to occur that the department believes is needed to support an application, including the information that the department believes should be included in the applicant's environmental impact report and the information that the department will need to prepare an environmental impact statement. The department shall also inform the person submitting a preapplication notification under sub. (1) of the application timelines and other filing requirements for all other approvals, licenses, and permits relating to the proposed mining project.

(6) No later than 90 days after receiving the information from the department in sub. (5), the person submitting a preapplication notification under sub. (1) shall submit to the department a final scope of study incorporating information provided by the department in sub. (5).

(7) All environmental baseline data gathered by a person submitting a preapplication notification under sub. (1) shall be submitted to the department as soon as it is in final form as described in the scope of study. The department may require the person to submit any raw field data collected either by the applicant or by a consultant.

(8) The department may at any time after consultation with the person submitting a preapplication notification under sub. (1) revise or modify its requirements regarding information that must be gathered and submitted as part of the information needed for

preparation of the mining permit application, environmental impact report, mining waste site feasibility report, plan of operation, or other applications for permits, licenses, and approvals issued by the department.

(9) The department may conduct studies necessary to verify information that may be submitted in support of the environmental impact report, mining permit application, or applications for other permits and approvals issued by the department. The department shall develop studies and quality assurance and verification programs in a manner consistent with future monitoring requirements.

**History:** CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22; correction in (1) (d) 4. c. made under s. 35.17, Stats., and correction in numbering of (2) (a) to (c) made under s. 13.92 (4) (b) 1., Stats., Register December 2021 No. 792.

**NR 132.106 Mining project review fee.** (1) When a person gives notice under s. NR 132.105 (1) of the person's intention to apply for a mining permit, the person shall pay the department a fee of \$100,000 to reimburse the department for costs incurred by the department in connection with review of the proposed mining project during the year following receipt of the notice, other than any costs related to the environmental impact statement for the proposed mining.

(2) The department shall annually compare the fees paid under this section and under chs. 30, 280 to 292, and 295 to 299, Stats., in connection with proposed mining for which notice was given under s. NR 132.105 (1) with the costs incurred by the department in connection with the proposed mining project, including the costs incurred under chs. 30, 280 to 292, and 295 to 299, Stats., but excluding costs related to the environmental impact statement. If the costs incurred exceed the fees paid, the person who provided notice under s. NR 132.105 (1) shall pay a fee equal to the amount by which the costs exceed the fees previously paid.

(3) When the department issues or denies a mining permit or when a person who gave notice under s. NR 132.105 (1) ceases to seek approval of the proposed mining project, the department shall compare the fees paid under this section and under chs. 30, 280 to 292, and 299, Stats., in connection with the proposed mining project with the costs incurred by the department in connection with the proposed mining project, including the costs incurred under chs. 30, 280 to 292, and 299, Stats., but excluding costs related to the environmental impact statement. If the costs incurred are less than the fees paid, the department shall pay the person who gave notice under s. NR 132.105 (1) the amount by which the fees exceed the costs. If the costs incurred exceed the fees paid, the person who gave notice under s. NR 132.105 (1) shall pay a final fee equal to the amount by which the costs exceed the fees previously paid.

**History:** CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2021 No. 792.

**NR 132.107 Application to mine.** (1) No person may engage in mining or reclamation at any mining site that is not covered by a mining permit and a written authorization to mine as provided in s. NR 132.116 (4).

(2) No application for surface mining will be entertained by the department if within the previous 5 years the applicant, or a different person who had received a prospecting permit for a site had certified under s. 293.35 (1), Stats., that he or she would not subsequently make application for a permit to conduct surface mining at the site.

(3) (a) An applicant shall submit an application to the department in writing and in reproducible form and shall provide the department with paper copies of the application in a quantity specified by the department. The applicant shall also submit a complete copy of the application in an electronic format prescribed by the department.

(b) Upon receipt of the application under par. (a), the department shall give public notice of the department's receipt of the application and the availability, for review, of the mining permit application and additional documents specified under sub. (5), in the same manner as provided under s. 293.43 (2m) (b), Stats., and to the government of any American Indian tribe or band whose reservation boundaries are within 60 miles of any portion of the proposed project, and to the government of those American Indian tribes or bands with federally recognized treaty rights in the area of the project.

(4) The application shall be accompanied by all of the following:

(a) A mining plan in accordance with s. NR 132.108.

(b) A reclamation plan in accordance with s. NR 132.109 that includes an itemized statement showing the estimated costs that will be incurred by the state if it is necessary for the state to implement and fulfill the reclamation plan.

(c) A proposed monitoring and quality assurance plan consistent with the requirements of this chapter, ch. NR 182, and s. 1.11, Stats. The monitoring plan shall provide for adequate monitoring of project-related environmental changes during the course of the permitted activity and for such additional period of time as is necessary to satisfactorily complete reclamation and completely release the permit holder from the financial securities required under s. 293.51 (1), Stats. The monitoring plan shall include monitoring locations on the mining site and locations both upgradient and downgradient of the mining site. The plan shall summarize all project-related environmental monitoring programs and may cross reference monitoring provisions required under other permits, approvals, or licenses issued by the department.

(d) A list of names and addresses of each owner of land within the mining site and each person known by the applicant to hold any option or lease on land within the mining site and all prospecting and mining permits in this state held by the applicant.

(e) Evidence satisfactory to the department that the applicant has applied for necessary approvals and permits under all applicable zoning ordinances.

(f) Information specified in s. 293.37 (2) (e) 1., Stats., related to forfeiture of mining reclamation bonds, felony convictions, bankruptcies, or revocations of mining permits by the applicant or related persons within the preceding 10 years.

(g) Information relating to whether unsuitability may exist for surface mining to the extent not fully considered under s. 293.45, Stats.

(h) Descriptions of land contiguous to the proposed mining site that the applicant owns, leases, or has an option to purchase or lease.

(i) A summary of project-related impacts to wetlands and steps to minimize impacts to wetlands in accordance with s. 281.36, Stats.

(j) A summary of project-related impacts to water supply wells and surface water bodies as a result of groundwater pumping or mine dewatering and steps to mitigate the impacts as provided under s. 293.65 (3) (b), Stats.

(k) A summary of environmental management and pollution control technologies that will be implemented at the proposed mining site and documentation that the proposed technology is capable of resulting in compliance with all applicable air, groundwater, surface water, and solid and hazardous waste management laws and rules of the department and is reasonably certain to result in compliance with these laws and rules at the proposed mining site.

(L) If not provided in an environmental impact report, information demonstrating the proposed mine will result in a net positive economic impact in the area reasonably expected to be most impacted by the activity.

(m) A description of any requested exemptions or variances to provisions of ch. 293, Stats., or this chapter, in accordance with s. NR 132.112.

(n) Other pertinent information or documentation that the department may require.

(5) At the time an applicant submits a mining permit application, the applicant shall also submit an environmental impact report consistent with the requirements of ch. NR 150, mining waste site feasibility report, mining waste site plan of operation and applications, and supporting documentation for other approvals, licenses, and permits relating to the proposed mining project and identified by the department in the response provided under s. NR 132.105 (5). These documents shall be provided in the format and quantities prescribed by the department.

(6) The hearing procedure outlined in s. 293.43, Stats., shall govern all hearings on the mining permit application, any statements prepared under s. 1.11, Stats., and, to the fullest extent possible, all other applications for approvals, licenses, and permits relating to the proposed mining project issued by the department.

**History:** CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22.

**NR 132.108 Mining plan.** The mining plan shall include all of the following:

(1) A detailed map of the proposed mining site in accordance with s. 293.37 (2) (a), Stats.

(2) Details of the nature, extent, and final configuration of the proposed excavation and mining site including location and total production of tailings and other mining refuse and the nature and depth of overburden.

(3) Details of the proposed operating procedures, including all of the following:

(a) Mining operation sequence and duration including site preparation, construction, operation and reclamation.

(b) Handling of topsoil, merchantable by-products, overburden, and waste rock materials.

(c) Tailings production, handling, and final disposition, including design specifications for any tailings transport pipelines.

(d) Ore processing including crushing, milling, concentrating, refining, and reagent use and storage.

(e) Storage, loading, and transportation of final product.

(f) Groundwater and surface water management techniques including provisions for erosion prevention and control, drainage control and a detailed water management plan showing sources, flow paths and flow rates, storage volumes, and release points. The water management plan shall include a detailed water budget that includes groundwater, surface water and process waters.

(g) Plans for adequate covering or isolation of all pollutant-bearing minerals or materials handled on the site.

(h) Plans for collection, treatment, and discharge of water resulting from the operation.

(i) Plans for the collection, disposal, and recycling of refuse and solid waste materials generated during the life of the project but not regulated as mining waste under ch. NR 182.

(j) Plans for air quality protection as required under ch. 285, Stats.

(k) A risk assessment of possible accidental health and environmental hazards potentially associated with the mining operation. The risk assessment shall include contingency measures with respect to these risks and hazards, and the assumptions in this assessment, shall be explicitly stated.

(L) Measures for notifying the public and responsible governmental agencies of potentially hazardous conditions including the movement or accumulation of contaminants in groundwater and surface water, soils, and vegetation and other consequences of the operation of importance to public health, safety and welfare.

(m) Description of all surface facilities associated with the mining site.

(n) Description of anticipated geological and geotechnical investigations and drilling programs.

(4) Evidence satisfactory to the department that the proposed mining operation will be consistent with the reclamation plan and will comply with all of the following minimum standards:

(a) Grading and stabilization of excavation, sides, and benches to conform with state and federal environmental and safety requirements and to prevent environmental pollution and prevent and control erosion.

(b) Grading and stabilization of deposits of mining refuse in conformance with applicable state and federal environmental and safety requirements and applicable solid waste laws and regulations.

(c) Stabilization of merchantable by-products.

(d) Adequate diversion and drainage of water from the mining site to prevent contamination of surface water and groundwater and prevent and control erosion.

(e) Notwithstanding the provisions of ch. NR 812, excavations shall be backfilled when the backfilling procedure will not interfere with the mining operation and will not do any of the following:

1. Cause an exceedance of any groundwater quality standards implemented under this chapter and ch. NR 182.

2. Adversely affect public health or welfare.

(f) Handling and storage, including covering as needed, of all materials on the mining site in an environmentally sound manner as determined by the department. Materials not licensed as mining waste under ch. NR 182, but deemed by the department to present a potential threat to the environment, shall be appropriately characterized in a manner consistent with procedures specified in s. NR 182.108.

(g) Removal and stockpiling, or other measures to protect topsoil or other soil materials from erosion and leaching, consistent with environmental considerations and reclamation, during mining site preparation and active mining unless the department determines that such action will be environmentally undesirable.

(h) Maintenance of adequate vegetative cover where feasible to prevent and control erosion.

(i) Impoundment of water where necessary in a safe and environmentally acceptable manner.

(j) Adequate planning of the site to achieve the aesthetic standards for the entire mining site described in ss. NR 132.110 (1) (e) and 132.111 (1).

(k) Identification and prevention of pollution, as defined in s. 281.01 (10), Stats., resulting from leaching of waste materials or other stockpiled materials, in accordance with state and federal solid waste laws and regulations.

(L) Identification and prevention of significant environmental pollution as defined in s. 293.01 (4), Stats.

(m) Maintenance of appropriate emergency procedures to minimize damage to public health, safety, and welfare and the environment from events described under sub. (3) (k).

(5) Submission of a plan for a pre-blasting survey to document the condition of permanent structures and buildings within the area potentially affected by blasting at the mining site as determined under s. SPS 307.41 (2), with such survey being completed and submitted to the department prior to any blasting.

**History:** CR 20-043; cr. Register December 2021 No. 792, eff. 1-1-22.

**NR 132.109 Reclamation plan.** The reclamation plan for the mining site shall include all of the following:

(1) Detailed information and maps on reclamation procedures including all of the following:

(a) Manner, location, sequence, and anticipated duration of reclamation.

(b) Ongoing reclamation procedures during mining operations.

(c) Proposed interim and final topography and slope stabilization.

(d) Proposed final land use and relationship to surrounding land and land use.

(e) Plans for long-term maintenance of the mining site, including all of the following:

1. Monitoring of all of the following, as applicable:

a. Wastes, groundwater levels and quality, and surface water levels and quality.

b. Leachate, slope stability, vegetation, groundwater elevation, surface water flows and elevations, wetlands, and other aquatic and terrestrial systems.

2. Details related to decommissioning or removing monitoring devices that are no longer in use.

3. The need for long-term water control, management, and treatment systems necessary to prevent pollution of groundwater or surface water.

4. Names of persons legally and operationally responsible for long-term maintenance.

(f) Projected costs of reclamation including an itemized statement showing the estimated costs that will be incurred by the state if it is necessary for the state to implement and fulfill the reclamation plan.

(g) Projected costs of periodic repair or replacement of any engineered cover systems or water management control systems used at the mining site or mining waste site to avoid adverse environmental consequences. The estimate shall cover the costs reasonably anticipated to occur during the period between 40 and 250 years after closure of the mining waste site.

(h) Proposed quantitative criteria and evaluation methods to demonstrate success and long-term stability of final reclamation for purposes of determining acceptable completion of reclamation and issuance of a certification of completion of reclamation under s. NR 132.122.

(2) Evidence satisfactory to the department that the proposed reclamation will conform with all of the following minimum standards:

(a) Toxic and hazardous wastes, refuse, tailings, and other solid waste shall be disposed of in conformance with applicable state and federal statutes or regulations.

(b) Tunnels, shafts, or other underground openings shall be sealed in accordance with applicable safety requirements and in a manner that will prevent seepage of water in amounts that may be expected to create a safety, health, or environmental hazard, unless the applicant can demonstrate alternative uses that do not endanger public health and safety and that conform to applicable environmental protection and mine safety laws and rules.

(c) Underground and surface runoff waters from mining sites shall be managed, impounded, or treated so as to prevent soil erosion, flooding, damage to agricultural lands or livestock, damage to wild animals, pollution of groundwater or surface waters, damage to public health, or threats to public safety.

(d) Surface structures constructed as a part of the mining activities shall be removed, unless they are converted to an acceptable alternate use, as determined by the department.

(e) Adequate measures shall be taken to prevent significant surface subsidence, but if such subsidence does occur, the affected area shall be reclaimed.

(f) Topsoil from surface areas disturbed during the mining operation shall be removed and stored in an environmentally acceptable manner for use in reclamation.



(g) Disturbed surface areas shall be revegetated as soon as practicable after the disturbance to stabilize slopes and prevent air and water pollution, with the objective of reestablishing a variety of plants and animals indigenous to the area immediately prior to mining, unless such reestablishment is inconsistent with the provisions of s. 293.01 (23), Stats. Plant species not indigenous to the area may be used if necessary, to provide rapid stabilization of slopes and prevention of erosion, if such species are acceptable to the department, but the ultimate goal of reestablishment of indigenous species shall be maintained.

(3) An analysis of alternative viable final land uses for the reclaimed site, including the presumed final use of returning affected areas to their approximate original state. The analysis of all options shall consider the extent to which the option is physically, economically and environmentally achievable and socially acceptable.

(4) If requested by the department, a comprehensive long-term plan as provided in s. 293.37 (4) (b), Stats., related to reclamation of operator-controlled lands contiguous to the mining site.

History: CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22.

**NR 132.110 Location criteria and environmental standards.** (1) No person shall establish, construct, operate, or maintain the use of property for any mining related buildings, roads, ponds, or other purposes within the following areas, except pursuant to an exemption granted under s. NR 132.112 or in compliance with another approval, license, or permit issued by the department:

(a) Within areas identified as unsuitable under s. NR 132.103 (23).

(b) Within 500 feet of the ordinary high-water mark of any existing navigable lake, pond, or flowage.

(c) Within 500 feet of the ordinary high-water mark of a navigable river or stream.

(d) Within a floodplain.

(e) Within 1,000 feet of the nearest edge of the right-of-way of any of the following unless regardless of season, the site is visually inconspicuous due to screening or being visually absorbed due to natural objects, compatible natural plantings, earth berm, or other appropriate means, or unless, regardless of season, the site is screened so as to be aesthetically pleasing and inconspicuous to the extent feasible:

1. Any state trunk highway, interstate, or federal primary highway.

2. The boundary of a state public park.

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

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

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

6. A bike or hiking trail designated by the United States congress or the state legislature.

(f) Within wetlands, except pursuant to the provisions under s. 281.36, Stats.

(g) Within areas that will result in noncompliance with applicable groundwater quality and quantity protection provisions.

(h) Within areas that will result in noncompliance with other applicable federal and state laws and regulations.

History: CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22.

**NR 132.111 Minimum design and operation.** An operator shall construct, establish, operate, and maintain a mining site in conformance with the requirements of this chapter, conditions attached to the mining permit, and all of the following requirements:

(1) An operator shall construct a mining site to meet all of the following requirements:

(a) Place site elements where least observable from off the premises in any season.

(b) Place site elements within the area of the overall site that is most visually compatible in respect to building shape.

(c) Paint and maintain buildings and other structures in a manner that is visually compatible with the surrounding vegetational and earth conditions. If a building or other structure cannot be painted and maintained in a manner that is visually compatible or if painting and maintaining a building or other structure in a manner that is visually compatible would cause safety concerns, the building or structure shall be made as visually inconspicuous as is practicable.

(2) An operator shall implement effective means, consistent with applicable state and federal safety-related regulations, to limit access to the site to minimize exposure of the public to hazards.

(3) An operator shall use mine-mill chemicals and reagents on the mining site and handle materials containing residual amounts of reagents in accordance with all of the following requirements:

(a) An operator may not use reagents on the mining site in a manner that will result in any substantial harm to public health and safety or result in significant environmental pollution.

(b) An operator shall provide adequate treatment of any discharge to waters of the state that contains reagents or residuals of reagents, as required under chs. 281 and 283, Stats., and rules promulgated under those sections.

(c) An operator shall not use or store reagents on the mining site if they are not approved in the plan of operation under s. NR 182.109 or the mining plan under s. NR 132.108, except for reagents for laboratory, testing, research, or experimental purposes.

(d) An operator shall handle and store reagents and other chemicals used in the mining and milling processes on the mining site in compliance with all applicable state and federal regulations.

(4) An operator shall handle and store flammable, combustible, or hazardous liquids, including fuel and oil products, on the mining site in compliance with applicable state and federal regulations including ch. ATCP 93 and federal spill prevention control and countermeasure regulations in 40 CFR part 112.

(5) Reasonable effort shall be made to reduce and control the production of contaminated water.

(6) Contaminated water, including liquid effluents, from whatever source associated with the project should be collected, stored, recycled or treated to ensure compliance with applicable water quality standards.

(7) An operator shall collect and treat contaminated nonpoint source runoff from disturbed areas within the mining site in a manner that facilitates monitoring, maximum practicable recycling, reuse, and consumption within the mining operation. An operator shall minimize nonpoint sources of water pollution. The department shall regulate discharges of pollutants from storm water and wastewater pursuant to ch. 283, Stats.

(8) An operator shall make provisions for critical back-up equipment in the event of operation equipment breakdown.

(9) An operator shall include contingencies for emergency conditions in design and operation specifications for mining site facilities. Such contingencies may include emergency power supplies, equipment redundancies, or temporary holding facilities.

(10) An operator shall design, construct, maintain, operate, and reclaim any mining site permitted under this chapter to protect groundwater quality and quantity in accordance with the requirements of ch. NR 182 and ss. 293.37 (5), 293.65, and 293.66, Stats.

(11) An operator may not use waste containing potentially harmful concentrations of acid generating material for purposes

such as construction fill material for surface facilities or the construction of parking lots or roads at a permitted mining site.

(12) An operator shall design mining site facilities to minimize surface area disturbance unless an alternate mining site design results in less overall environmental impact.

(13) An operator shall utilize, where practicable, elevation differences in water-based transport systems for gravity flows to minimize pumping facilities and pressures.

(14) An operator shall design tailings transport pipelines in accordance with all of the following criteria:

(a) Design tailings pipelines, if not buried, to provide for emergency tailings conveyance or storage should a pipeline break, plug, freeze, or require repairs and make accessible for inspection, emergency repair, and maintenance.

(b) Provide adequately sized emergency spill areas near the tailings pipeline in case of power or pipeline failure. The location of emergency spill areas shall be consistent with the prevention of environmental pollution of surface waters and with the requirements of this chapter unless subject to an exemption under s. NR 132.112. In some cases, as determined by the department, such as a long pipeline over rough country, more than one spill area may be necessary.

(c) Tailings pipelines shall be self-draining to the tailings area or to an emergency spill area, or both, and provisions shall be made for availability and use of standby pumps, pipelines, and power supplies.

(d) Tailings pipelines shall be as short as practicable and pipeline routes shall be selected that result in the least overall environmental impact and avoid crossing navigable waters and passing through wetlands whenever possible. If a route which crosses a navigable waterway or passes through a wetland is unavoidable or is the route that results in the least overall environmental impact, the pipeline shall be designed and constructed in compliance with all applicable rules of the department.

(e) Tailings pipelines shall include flow monitoring and leak detection systems.

(15) An operator shall employ best management practices to control the spread of invasive species on the mining site during construction, operation and reclamation of project facilities.

**History:** CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22; correction in (4), (10) made under s. 35.17, Stats., Register December 2021 No. 792.

**NR 132.112 Exemptions and variances.** (1) AUTHORITY TO GRANT EXEMPTIONS AND VARIANCES. The department may grant an exemption or variance, as provided in this section, from any of the requirements of this chapter applicable to any of the following:

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

(b) A mining permit.

(2) EXEMPTION AND VARIANCE REQUESTS SUBMITTED AS PART OF THE MINING PERMIT APPLICATION PROCESS. (a) To the extent feasible, an applicant shall submit all requests for exemptions or variances under this section as part of an application for a mining permit or the mining waste site feasibility report or plan of operation and shall describe the grounds for the exemption or variance including documentation identifying the physical conditions that necessitate the exemption or variance, other reasons for the exemption or variance, discussion of any environmental impacts that will result from issuance of the exemption or variance, mitigation measures, if any, proposed to offset adverse impacts resulting from the exemption or variance, and the reasonableness of the exemption or variance.

(b) An applicant shall submit an application for an exemption or variance under this subsection no later than 60 days after the mining permit application is considered complete under s. 293.495 (1) (a) 2., Stats. The department may consider an applica-

tion for an exemption or variance submitted after that time, but only if the application is received in time to allow the application to be considered at the public informational hearing for the mining permit under s. 293.43 (3m), Stats.

(c) The department shall issue a decision on a request for an exemption or variance as part of the decision on the mining permit under s. NR 132.114 and, except as provided in par. (d), the department shall grant the exemption or variance if it is consistent with the purposes of this chapter and ch. 293, Stats., will not violate any applicable state environmental law outside of this chapter and ch. 293, Stats., will not endanger public health, safety, or welfare and will not result in significant adverse environmental impacts on or off the mining site.

(d) The department shall deny a request for an exemption or variance if granting the exemption or variance will result in a violation of federal law.

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

(3) EXEMPTION AND VARIANCE REQUESTS SUBMITTED AFTER PERMIT APPLICATION REVIEW PERIOD AND BEFORE ISSUANCE OF MINING PERMIT. If an applicant submits a request for a variance or exemption under this section more than 60 days after the mining permit application is considered complete but before the department issues or denies the mining permit, the application for an exemption or variance shall be processed following the provisions of s. 293.495 (1) (c), Stats.

(4) EXEMPTION AND VARIANCE REQUESTS SUBMITTED AFTER ISSUANCE OF MINING PERMIT. The department shall process exemption and variance requests under this section submitted after issuance of a mining permit as a modification under s. 293.55, Stats., and s. NR 132.120.

(5) REQUEST FOR FURTHER STUDY AND ANALYSIS. The department may require the applicant submitting the request for a variance or exemption to conduct specific studies and analyses and submit additional supporting documentation, as necessary, to facilitate the review of the request by the department.

**History:** CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22.

**NR 132.113 Timeline for review of mining permit application.** (1) Subject to subs. (4) and (5), within 180 days after an applicant submits an application for a mining permit, an environmental impact report, if required, and any applications for other approvals, licenses, or permits relating to the mining operation, the department shall review the information submitted and, if necessary, provide comments to the applicant and request additional information from the applicant relating to the proposed mining project. The applicant shall provide any additional information required under this section in a manner and format prescribed by the department.

(2) Subject to subs. (4) and (5), if the department requests additional information from an applicant under sub. (1), within 90 days after the applicant provides additional information the department shall review the information submitted and, if necessary, provide comments to the applicant and request additional information from the applicant relating to the proposed mining project.

(3) Subject to sub. (5), if the department requests additional information from an applicant under sub. (2), within 180 days after the applicant provides additional information the department shall prepare a draft environmental impact statement, a draft mining permit, and draft approvals, licenses, or permits relating to the mining operation. If the department requests additional information from an applicant under sub. (1), but not under sub. (2), the



department shall prepare these draft documents within 180 days after the expiration of the 90-day period under sub. (2). If the department does not request additional information from an applicant under sub. (1) or (2), the department shall prepare those draft documents within 180 days after the expiration of the 180-day period under sub. (1).

(4) Subject to sub. (5), if before the expiration of the 90-day period under sub. (2) the secretary of the department determines that the applicant has made a substantial modification to the mining plan or reclamation plan that significantly changes the information necessary to prepare an environmental impact statement or adequately review an application, the department shall notify the applicant of the secretary's determination and request additional information from the applicant. In reaching this determination, the department shall consider the extent to which the modification necessitates new data collection programs and analyses or substantive expansions or modifications of ongoing monitoring activities and analyses. Upon submission of additional information by the applicant, the timeline under this section shall begin again, starting with the period described in sub. (1). A determination by the secretary under this subsection is not subject to administrative or judicial review and may be made only once during an applicant's permitting process.

(5) The department and the applicant may agree to modify all or part of the timeline under this section.

(6) The department may request additional information needed to process a mining permit application or any other application for an approval, license, or permit related to the mining operation after making requests for additional information under this section, but the department may not delay the application and review process based on another request for additional information.

**History:** CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22.

**NR 132.114 Mining permit issuance.** (1) Unless denied pursuant to s. NR 132.115 and except with respect to property specified in s. 41.41 (11), Stats., within 90 days of the completion of the record for the public hearing held under s. 293.43, Stats., the department shall issue the mining permit if it finds all of the following:

(a) The mining plan and reclamation plan are reasonably certain to result in reclamation of the mining site consistent with this chapter and ch. 293, Stats., and the mining plan and reclamation plan are approved as part of the mining permit.

(b) The proposed operation will comply with all applicable air, groundwater, surface water, and solid and hazardous waste management laws and rules implemented by the department.

(c) The technology that will be used at the proposed operation is capable of resulting in compliance with all applicable air, groundwater, surface water, and solid and hazardous waste management laws and rules of the department and is reasonably certain to result in compliance with these laws and rules at the proposed mining site.

(d) In the case of a surface mine, the site is not unsuitable for mining.

(e) The proposed mining operation will not endanger public health, safety, or welfare.

(f) The proposed mining operation will result in a net positive economic impact in the area reasonably expected to be most impacted by the activity.

(g) The proposed mining operation conforms with all applicable zoning ordinances.

(2) The department shall make an approval or denial in findings of fact, conclusions of law, and an order setting forth reasons with clarity and in detail. The department may modify or conditionally approve the operator's proposed mining or reclamation

plans in order to meet the requirements of this chapter, and, as modified or conditioned, grant its approval.

(3) Except as otherwise provided in ss. 293.53 (2), 293.55 to 293.59, 293.63, 293.81, and 293.83, Stats., mining permits shall be valid for the life of the project unless canceled under s. 293.83 (1) or (3) or 293.85, Stats., or revoked under s. 293.87 (2) or (3), Stats. Unless previously modified, canceled, or revoked, the mining permit issued under this section shall remain valid until reclamation of the entire mining site has been certified as complete under s. NR 132.122 and the department issues a revised mining permit under s. NR 132.122 (7) (b).

**History:** CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22.

**NR 132.115 Mining permit denial.** (1) Within 90 days of the completion of the record for the public hearing held under s. 293.43, Stats., the department shall deny the mining permit if it finds any of the following:

(a) That the site is unsuitable for surface mining, if the application is for a proposed surface mine.

(b) That the applicant has violated and continues to fail to comply with this chapter, ch. 293, Stats., or any rule adopted under ch. 293, Stats.

(c) That any of the following situations may reasonably be expected to occur during or subsequent to mining:

1. Landslides or substantial deposition from the proposed operation in stream or lake beds which cannot be feasibly prevented.

2. Significant surface subsidence that cannot be reclaimed because of the geologic characteristics present at the proposed site.

3. Hazards resulting in irreparable damage to any of the following that cannot be prevented under the requirements of this chapter, avoided to the extent applicable by removal from the area of hazard, or mitigated by purchase or by obtaining the consent of the owner:

a. Dwelling houses.

b. Public buildings.

c. Schools.

e. Cemeteries.

f. Commercial or institutional buildings.

g. Public roads.

h. Other public property designated by the department by rule.

4. Irreparable environmental damage to lake or stream bodies despite adherence to the requirements of this chapter. This subdivision does not apply to an activity that the department has authorized pursuant to statute, except that the destruction or filling in of a lakebed shall not be authorized notwithstanding any other provision of law.

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

(e) That the applicant, a related person, or an officer or director of the applicant has, within 10 years before the application is submitted, been convicted of more than one felony for violations of laws for the protection of the natural environment arising out of the operation of a mining site in the United States, unless any of the following applies:

1. The person convicted has been pardoned for all of the felonies.

2. The person convicted is a related person or an officer or director of the applicant with whom the applicant terminates its relationship.

3. The applicant included in its permit application under s. NR 132.107 plans to prevent the occurrence in this state of events similar to the events that directly resulted in the convictions.

(f) That the applicant or a related person has, within 10 years before the application is submitted, filed a petition for bankruptcy or undergone dissolution that resulted in the failure to reclaim a mining site in the United States in violation of a state or federal law and that failure has not been remedied and is not being remedied.

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

(2) The department may not deny a mining permit under sub. (1) (d) to (g) if the person subject to the convictions, forfeiture, permanent revocation, bankruptcy, or dissolution is a related person but the applicant shows that the person was not the parent corporation of the applicant, a person that holds more than a 30 percent ownership in the applicant, or a subsidiary or affiliate of the applicant in which the applicant holds more than a 30 percent interest at the time of the convictions, forfeiture, permanent revocation, bankruptcy, or dissolution.

(3) If the department denies an application for a mining permit, the department shall furnish the operator findings of fact, conclusions of law, and an order setting forth the reasons for denial.

**History:** CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22.

**NR 132.116 Reclamation bond and other financial assurance securities.** (1) (a) Upon notification that a mining permit has been issued by the department but prior to commencing mining, the operator shall file with the department a bond conditioned on faithful performance of all of the requirements of this chapter and ch. 293, Stats. In lieu of a bond, the operator may deposit cash, certificates of deposit, or government securities with the department. Interest received on certificates of deposit and government securities shall be paid to the operator. The amount of the bond or other security required shall be equal to the estimated cost to the state of fulfilling the reclamation plan, in relation to that portion of the site that will be disturbed by the end of the following year. The department shall determine the estimated cost of reclamation of each mining site on the basis of relevant factors including expected changes in the price index, topography of the site, methods being employed, depth and composition of overburden, and depth of nonferrous metallic mineral deposit being mined.

(b) The department, as provided under s. 293.53 (1) (a), Stats., may increase the amount of the bond, cash, certificates of deposit, or government security filed under par. (a), to assure adequate financing for the reclamation plan.

(c) A bond filed under par. (a) shall be issued by a surety company licensed to do business in Wisconsin. If the surety company's license to do business is revoked or suspended, the operator, within 30 days after receiving written notice thereof from the department, shall substitute surety underwritten by a surety company licensed to do business in Wisconsin. Upon failure of the operator to make a substitution, the department shall suspend the operator's mining permit until an acceptable substitute surety has been submitted.

(d) A bond filed under par. (a) shall provide that the bond shall not be canceled by the surety, except after not less than 90 days' notice to the department in writing by registered or certified mail. Not less than 30 days prior to the expiration of the 90-day notice of cancellation, the operator shall deliver to the department a replacement bond in the absence of which all mining shall cease.

(2) Upon notification that a mining permit has been issued by the department but prior to commencing mining, the operator shall file with the department a bond issued by a surety company licensed to do business in this state, cash, certificates of deposit, or government security, to cover unforeseen remedial contingencies not otherwise covered by the bonds or other security required under sub. (1) or (5), including for the provision of a replacement water supply if required under s. 293.65 (4) (d), Stats. The amount of the bond or other security required shall be 10 percent of the total amount of the bonds or other security required under subs. (1) and (5). The operator shall increase, and may decrease, the amount of the bond or other security under this subsection according to any increase or decrease in the amount of the bonds or other security required under sub. (1) or (5) until the operator ceases to extract material from the mining site, at which point the amount of the bond or other security under this subsection shall remain the same until released by the department. The bond or other security under this subsection shall be released no later than 40 years after the operator ceases to extract material from the mining site.

(3) The applicant shall submit a certificate of insurance certifying that the applicant has in force a liability insurance policy issued by an insurer authorized to do business in this state, or in lieu of a certificate of insurance evidence that the applicant has satisfied state or federal self-insurance requirements, covering all mining operations of the applicant in this state and affording personal injury and property damage protection in a total amount deemed adequate by the department but not less than \$50,000.

(4) Upon approval of the financial instruments related to cost of reclamation under sub. (1) and unforeseen remedial contingency costs under sub. (2), and the certificate of insurance under sub. (3), the department shall issue written authorization to commence mining at the permitted mining site in accordance with the mining permit and approved mining and reclamation plans.

(5) If the department approves a mining waste site as part of a permitted mining project, the owner shall maintain proof of financial responsibility ensuring the availability of funds for compliance with the long-term care requirements specified in the waste site feasibility study and plan of operation in accordance with ss. 293.51 (1g) and 289.41, Stats., and ch. NR 182. Proof of financial responsibility for long term care shall be submitted prior to operation of the mining waste facility.

(6) The operator shall provide and maintain proof of financial responsibility as required under s. 293.51 (1r), Stats., related to replacement of engineered cover systems or water management control systems used at the mining site or mining waste site to avoid adverse environmental consequences following closure of the mining waste site. The department shall determine the amount of the security required under this subsection as provided in s. 293.51 (1r), Stats., and shall specify the amount as part of the mining permit and reclamation plan approval. An operator shall submit proof of financial responsibility under this subsection at the time of closure of the mining waste site and in accordance with provisions of ch. NR 182.

**History:** CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22; correction in (5) made under s. 35.17, Stats., Register December 2021 No. 792.

**NR 132.117 Monitoring.** (1) An operator shall monitor the mining site and adjacent areas in accordance with the monitoring plan approved as part of the mining permit. The department may require the operator to perform additional monitoring of environmental changes during the course of the permitted activity and for such additional periods of time as is necessary to satisfactorily complete reclamation of the mining site and long-term care of the mining waste facility.

(2) The department may monitor environmental changes concurrently with the operator as stated in sub. (1) and for an additional period after the full reclamation bond is released under s. 293.63, Stats.

(3) (a) The department shall review baseline data, monitoring data, and the monitoring plan at the time of annual permit review or at such time as the operator requests any modification of the mining permit, mining plan, reclamation plan, or monitoring plan.

(b) The department shall consider baseline data and monitoring data in all enforcement actions including issuance of a stop order to an operator, requiring an immediate cessation of mining, in whole or in part, at any time that the department determines that there exists an immediate and substantial threat to public health and safety or the environment.

(c) If the analyses of samples indicate the quality of the groundwater is statistically significantly different from either baseline or background, the operator shall notify the department immediately and implement applicable provisions of the contingency plan submitted under s. NR 182.109 (2) (d).

(4) Any request for modification of the scope of the monitoring plan approved as part of the mining permit, including sampling parameters, monitoring locations and frequency and duration of sampling, shall comply with the procedures in s. NR 132.120. Changes in monitoring equipment and sampling and analytical protocols may be reviewed and approved by the department and are not subject to the modification procedural requirements of s. NR 132.120.

(5) An operator shall ensure that all laboratory chemical analyses required under the monitoring plan are conducted by a laboratory certified under s. 299.11, Stats., and ch. NR 149 or other certification program applicable to specific test categories.

**History:** CR 20-043; cr. Register December 2021 No. 792, eff. 1-1-22.

**NR 132.118 Inspections.** (1) Subject to applicable state and federal safety rules or regulations, any authorized officer, employee, or representative of the department may enter and inspect any property, premises or place on or at which any mining operation or facility is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and chs. 30, 281, 283, 285, 289 to 292, and 299, Stats., and rules adopted under those chapters.

(2) No operator may refuse entry or access to any authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials, nor may any person obstruct, hamper, or interfere with any such inspection.

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

**History:** CR 20-043; cr. Register December 2021 No. 792, eff. 1-1-22.

**NR 132.119 Reporting and mining permit review.**

(1) **RECLAMATION REPORTING.** An operator shall submit all the following reports to the department documenting plans, progress, and evaluation of reclamation activities at the mining site. For each report, the operator shall provide the department with a quantity of paper copies specified by the department and shall provide a complete electronic version in a format specified by the department:

(a) In January of each year, a report detailing planned reclamation activities the operator intends to complete in that calendar year. The plan shall document the extent of new surface disturbance, areas of the mining site that will be temporarily and permanently reclaimed during the year, site preparation activities, reclamation materials, including seed mixes, bare root stock and other materials, mining site maintenance activities, ongoing reclamation monitoring and test plot evaluation, and any other information specified by the department in the mining permit and reclamation plan approval.

(b) By November 30 of each year, a report summarizing the extent of reclamation activities completed at the mining site during the calendar year. The report shall include descriptions, maps,

and photographs documenting temporary and permanent reclamation and ongoing site maintenance activities that were completed during the year, a summary of reclamation monitoring results, an evaluation of completed reclamation as related to the reclamation success criteria specified in the approved reclamation plan, and an assessment of the effectiveness of specific reclamation activities conducted that year and recommendations for changes to specific reclamation protocols to consider for future work.

(2) **ANNUAL REPORT.** By January 31 of each year, an operator of a permitted mining site shall submit an annual report to the department summarizing the extent of mining and other activities conducted at the mining site in the preceding calendar year. The operator shall provide the department with a quantity of paper copies specified by the department and shall provide a complete electronic version in a format specified by the department. The annual report shall include text, maps, tabular summaries and graphics as appropriate, documenting all of the following:

(a) The extent of additional surface disturbance during the year and total acres of disturbed area on the mining site.

(b) A summary of construction, mine development, and reclamation activities completed on the mining site.

(c) The volume of material removed, stockpiled, or disposed of on the mining site including ore, concentrates, mining wastes by category, topsoil, merchantable by-product, and non-mining solid waste.

(d) A summary of mine dewatering statistics including monthly pumping totals.

(e) A summary of water treatment activities including monthly totals of water treated and discharged.

(f) A summary of any incidents and related responses concerning spills, pond overflows, embankment failures or leakage, liner failures, pipeline failures or leaks, or other unforeseen environmental releases that occurred at the mining site.

(g) A summary of any plan or permit modifications and any deviations from approved plans not subject to a modification.

(h) A summary of environmental monitoring activities and results required under the approved monitoring plan, including an analysis of the data to determine the development of any observable trends and a comparison of the data to background values and predicted values, if predictive modeling or similar analyses were conducted as part of the mining permit review process.

(i) A discussion of the extent of additional surface disturbance to be expected by the end of the next calendar year including estimates of the volumes of topsoil, ore, mining waste, merchantable by-products, and other materials to be removed.

(j) An assessment of the adequacy of the amount of the financial surety posted under s. NR 132.116 (1) considering the anticipated condition of the mining site at the end of the next calendar year, applicable provisions of the approved reclamation plan, any changes in reclamation costs or changes in state, federal or local regulatory requirements applicable to the mining operation. This analysis shall clearly identify the amount of financial security necessary to fulfill the reclamation plan relative to the mining site as it is projected to exist at the end of the calendar year.

(3) **PERMIT REVIEW.** The department shall review the mining permit, mining plan, reclamation plan, and required financial securities annually after issuance of the mining permit, or as part of a review as provided in s. NR 132.117 (3), to ascertain adequacy, compliance with state or federal laws enacted after the issuance of the permit, and technological currency. The department shall provide its findings to the operator within 30 days after receipt of the annual report submitted under sub. (2). If the department, after review, determines that the plans should be modified or the bond amount changed, it shall notify the operator of the nec-



essary modifications or changes and establish a schedule for submitting modified plans.

**History:** CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22.

**NR 132.120 Mining permit and plan modifications.**

(1) **MODIFICATION OF MINING PERMIT AND ASSOCIATED PLANS.** (a) *Application.* An operator, at any time, may apply for amendment or cancellation of a mining permit or for a change in the mining plan, reclamation plan, or monitoring plan for any mining operation that the operator owns or leases. The operator shall submit any application for the amendment, cancellation, or change in a format specified by the department. The request shall identify the tract of land to be added to or removed from the permitted mining site or to be affected by a change in the mining or reclamation plans. The request shall clearly identify any proposed changes in the mining plan, reclamation plan, or monitoring plan, reasons for the changes and anticipated environmental and economic impacts of the proposed changes.

(b) *Procedure.* Except as provided under par. (d), the department shall process the application for an increase or decrease in the area of a mining site or for a substantial change in the mining plan, reclamation plan, or monitoring plan in the same manner as an original application for a mining permit.

(c) *Substantial changes.* The department shall determine if any change in the mining plan, reclamation plan, or monitoring plan is substantial and provide notice of its determination in the same manner as specified under s. 293.43 (2m) (b), Stats.

(d) *Notice.* The department shall provide notice of any modification that involves an increase or decrease in the area of a mining site or a substantial change in the mining plan, reclamation plan, or monitoring plan in the same manner as an original application for a mining permit under s. 293.43 (2m), Stats. If the department receives less than 5 requests in writing from interested persons for a public hearing within 30 days of notice, no hearing is required on the modification. The notice shall include a statement to this effect.

(e) *Hearing.* If the department holds a hearing, it shall be conducted as an informational hearing and shall be subject to the notice and procedural provisions under s. 293.43 (3m), Stats. The department may offer any information presented in a prior hearing on either the original application or any previous modification as part of the hearing record on the proposed modification.

(f) *Removal.* If the application cancels any portion of the unmined area of a mining site, the department shall verify that mining has not occurred on the portion of the mining site identified in the request. If the department finds that no mining has occurred, the department shall modify the mining permit and the operator's written authorization to conduct mining on the mining site accordingly and, if applicable, shall authorize the operator to modify the financial securities required under s. NR 132.116 to reflect the decrease in the mining site.

(2) **DEPARTMENT REQUEST FOR MODIFICATION OF MINING OR RECLAMATION PLAN.** The department, as provided under s. 293.55 (2), Stats., may require an operator to submit amended mining and reclamation plans if the department determines the existing plans are no longer sufficient to reasonably provide for reclamation of the mining site.

**History:** CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22.

**NR 132.121 Temporary cessation of mining.**

(1) If there is a cessation of mining or reclamation expected to last 30 days or more that is not set forth in either the mining plan or the reclamation plan, the operator shall notify the department of the cessation within 48 hours of the cessation of mining and shall begin stabilization of the mining site. If the cessation of mining extends for more than 6 consecutive months, the operator shall begin final reclamation of the mining site in accordance with the approved reclamation plan unless all of the following apply:

(a) The cessation of mining is due either to labor strikes or to such unforeseen developments as adverse market conditions, as determined by the department.

(b) The cessation of mining does not continue beyond the time specified by the department. The time limit specified by the department may not exceed 5 years.

(c) The operator maintains the site in an environmentally stable manner, as determined by the department, during the cessation of mining.

(d) The operator continues the reclamation of the site according to appropriate provisions of the reclamation plan during the cessation of mining.

(e) The operator continues environmental monitoring in accordance with the monitoring plan during the cessation of mining, as determined by the department.

(2) The operator shall identify in the notice provided under sub. (1) the reasons for the temporary shutdown, the anticipated duration of the shutdown, the measures that will be taken to ensure environmental stability of the mining site during the shutdown, procedures required to resume operation of project facilities following the shutdown, and which specific environmental monitoring activities, if any, will be discontinued during the shutdown.

(3) Temporary cessation of mining described in a notice submitted under sub. (1) shall constitute a substantial modification of the mining plan under s. 293.55, Stats., and the department shall process the modification in accordance with the applicable procedures under s. NR 132.120 and s. 293.55, Stats.

(4) The department's decision on the request for temporary cessation of mining status shall specify the approved duration of the cessation of mining, required stabilization and reclamation measures to be implemented during the cessation, required environmental monitoring activities, and any other conditions necessary to ensure environmental protection during the temporary shutdown and anticipated resumption of mining activities.

**History:** CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22; correction in (1) (intro.), (b) made under s. 35.17, Stats., Register December 2021 No. 792.

**NR 132.122 Certificate of completion of reclamation and reclamation bond release.**

(1) Upon completion of final reclamation in accordance with the approved reclamation plan for a portion of the mining site or the entire mining site the operator may provide notice to the department that final reclamation has been completed. The notice shall include all of the following:

(a) Clear delineation of the portion of the mining site addressed by the notification.

(b) Documentation that all applicable reclamation success criteria specified in the approved reclamation plan have been satisfied for the portion of the mining site addressed in the notification.

(c) Identification of routine management and maintenance activities that may be necessary to maintain the reclaimed portion of the site.

(d) A description of the ongoing reclamation monitoring activities.

(e) Documentation that the reclamation activities, as implemented, have achieved the minimum standards specified in s. 293.13 (2) (c), Stats.

(2) Upon receipt of the notification of completion of final reclamation under sub. (1) the department shall review the information contained in the notification and take one of the following actions:

(a) Approve the notification, specifying the date upon which final reclamation is considered to have been completed and the scope of approved management, maintenance, and monitoring activities.

(b) Request additional information needed to complete the review of the notification.

(c) Deny approval of the notification, specifying the reasons for denial and steps to correct any identified deficiencies.

(3) Not less than 4 years after completion of final reclamation, as determined by the department under sub. (2) (a), the operator may petition the department to consider issuance of a certificate of completion of reclamation for any portion of the mining site in accordance with the approved reclamation plan and this chapter. The petition shall include information that demonstrates continued compliance with the applicable reclamation success criteria specified in the approved reclamation plan and that the site is stable and generally self-sustaining, requiring only routine maintenance and management.

(4) The department shall provide public notice of any request for certification of completion of reclamation under sub. (3) in the same manner as an original application for a mining permit under s. 293.43 (2m), Stats., and shall hold an informational hearing following the procedures under s. 293.43 (3m), Stats. The scope of a hearing conducted under this subsection shall be limited to issues related to whether the operator has complied with the approved reclamation plan and the need for and scope of continued monitoring, maintenance, and reporting related to reclamation. If the requested certification is for the entire mining site or covers the entire remaining portion of the mining site that has not been previously certified, the public notice and hearing shall also include consideration of the revised mining permit under sub. (7) (b).

(5) (a) If the department finds after conducting a hearing that the operator has completed final reclamation for any portion of the mining site in accordance with the reclamation plan and this chapter, and the minimum standards specified under s. 293.13 (2) (c), Stats., the department shall issue a certificate of completion setting forth a description of the area reclaimed and a statement that the operator has fulfilled its duties under the reclamation plan as to that area.

(b) In issuing a certificate of completion of reclamation the department may require the operator to continue regular maintenance of the reclaimed portion of the site and to continue regular reclamation monitoring and reporting. If needed to ensure long term environmental integrity of any portion of the site, the department, as part of a certificate of completion, may require an operator to develop a land use restriction to limit incompatible uses and development of specified portions of the mining site. Such land use restriction shall be recorded in the office of the register of deeds in each county in which the portion of the mining site affected by the restriction is located.

(c) Issuance of a certificate of completion under this subsection does not release an operator of any ongoing obligations or requirements imposed under other licenses, permits, or approvals issued by the department or other requirements of applicable laws and rules of the department.

(6) Upon issuance of any certificate of completion under sub. (5) for any portion of the mining site, but not for the entire mining site, the department shall allow the operator to reduce the amount of the bond to an amount which shall equal the estimated cost of reclamation of the portion of the mining site which is disturbed or for which reclamation has been completed but no certificate of completion has been issued. The bond may not be reduced to an amount that is less than the minimum amount specified in sub. (7)

(7) (a) Upon issuance of a certificate or certificates of completion of reclamation for the entire mining site, the department shall require the operator to maintain a bond equal to at least 10 percent of the cost to the state of reclamation of the entire mining site if mining of the site was wholly underground and at least 20 percent of the cost to the state of reclamation of the entire mining site if any surface mining was conducted. If a mining site covers less

than 10 acres, the department may release the full bond following certification of completion of reclamation for the entire mining site. In the event the operator fails to take appropriate and timely action as directed in an order issued by the department under s. 293.83 (1), Stats., the department may access the remaining bond to complete any necessary maintenance or stabilization activities that are needed to ensure stability of the mining site.

(b) Upon issuance of a certificate or certificates of completion of reclamation for the entire mining site, the department shall issue a revised mining permit to the operator that covers the period from issuance of the certificate of completion until the full reclamation bond is released. The revised mining permit shall specify acceptable uses of the reclaimed mining site consistent with the reclamation plan, approved maintenance activities, monitoring and reporting requirements, and other conditions necessary to ensure compliance with the applicable minimum standards of s. 293.13 (2) (c), Stats. Subsequent modifications to the mining permit shall be processed in accordance with the provisions of s. NR 132.120 and s. 293.55, Stats.

(8) Twenty years after the issuance of a certificate or certificates of completion for the entire mining site, the department shall terminate the mining permit and release the financial security required under s. NR 132.116 (1) and s. 293.51 (1), Stats., if the department finds that the operator has complied with the approved reclamation plan. If the remaining financial security is not released, the department shall specify the reasons for retaining the financial security and shall include a schedule for reconsidering release of the financial security.

**History:** CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22; correction in (3), (4) made under s. 35.17, Stats., Register December 2021 No. 792.

**NR 132.123 Enforcement.** (1) Any person who makes a statement known to the person to be false or misleading in any material respect or causes such a statement to be made in an application or report required under this chapter, who refuses to file any report required under this chapter, or who refuses to submit information required by the mining permit may be fined not less than \$1,000 nor more than \$5,000. If the false or misleading statement is material to the issuance of the permit, the permit may be revoked. If any violation under this section is repeated the permit may be revoked.

(2) The department shall process possible violations of ch. 293, Stats., this chapter, any order issued under ch. 293, Stats., or this chapter or unapproved deviations from the approved mining plan or reclamation plan in accordance with s. 293.83 (1), Stats.

(3) Penalties for violations may be imposed in accordance with s. 293.87, Stats. Penalties may include revocation of a permit as set forth in s. 293.87, Stats.

(4) Six or more citizens may file a complaint with the department relating to alleged or potential environmental pollution caused by a mining operation in accordance with s. 293.89, Stats. The department shall process verified complaints related to alleged or potential environmental pollution as provided under s. 299.91, Stats.

(5) (a) The department may issue a stop order to an operator requiring an immediate cessation of mining, in whole or in part, at any time that the department determines that there exists an immediate and substantial threat to public health and safety or the environment.

(b) The department shall schedule a hearing on the stop order under par. (a), to be held within 5 days of issuance of the order and shall incorporate notice of the hearing in the copy of the order served upon the operator. Notice shall also be given to any other persons who have previously requested notice of such proceedings.

(c) Within 72 hours after commencement of the hearing under par. (b), unless waived by agreement of the parties, the department shall issue a decision affirming, modifying, or setting aside the

stop order. The department may apply to the circuit court seeking an order to extend the time, for not more than 10 days, within which the stop order must be affirmed, modified, or set aside.

(d) The department shall set aside the stop order at any time, with adequate notice to the parties, upon a showing by the operator that the conditions upon which the order was based no longer exist.

**(6)** The department may, after hearing, cancel the mining permit as provided in ss. 293.83 (3) and 293.85, Stats.

**History:** CR 20-043: cr. Register December 2021 No. 792, eff. 1-1-22.