

1977 Assembly Bill 1044

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CHAPTER 420, Laws of 1977

AN ACT to repeal 107.06; to amend chapter 107 (title), 107.11 and 107.12; and to repeal and recreate 107.05 of the statutes, relating to regulating water withdrawal for purposes of metallic mineral mining and providing a penalty.

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

SECTION 1. Chapter 107 (title) of the statutes is amended to read:

CHAPTER 107

MINING AND ~~SMELTING~~ METAL RECOVERY

SECTION 2. 107.05 of the statutes is repealed and recreated to read:

107.05 Regulation of water. (1) SCOPE. (a) This section shall govern the withdrawal or diversion of ground or surface waters by persons engaged in mining as defined in s. 144.81 (5). Discharges of waters are subject to ch. 147, construction of necessary dams or other structures is subject to chs. 30 and 31 and construction of wells is subject to ch. 162, to the extent applicable.

(b) In this section "department" means the department of natural resources.

(2) DIVERSION OF SURFACE WATER; PERMIT REQUIRED. (a) Any person intending to divert surface waters for mining shall apply to the department for a permit. The forms and procedures used under s. 30.18 shall apply to the extent practicable.

(b) The department, upon receipt of an application for a permit, shall determine the minimum stream flow or lake level necessary to protect public rights, the minimum flow or level necessary to protect the rights of affected riparians, the point downstream beyond which riparian rights are not likely to be injured by the proposed diversion and the amount of surplus water, as defined in s. 30.18 (2), if any, at the point of the proposed diversion.

(c) At the hearing on the permit application, the department shall take testimony on:

1. The public rights in the lake or stream and the related environment which may be injured by the proposed diversion;

2. The public benefits provided by increased employment, economic activity and tax revenues from the mining operation;

3. The direct and indirect social and economic costs and benefits of the proposed mining operation;

4. Whether the proposed withdrawal will consume nonsurplus water;

5. The rights of competing users of such water resources; and

6. Any other issues identified by the department as relevant to the decision of whether to issue or deny a permit.

(d) Within 30 days after hearing, the department shall issue or deny a permit. The following standards shall govern the decision of the department:

1. If injury to public rights exceeds the public benefits generated by the mining, the permit shall be denied.

2. If the proposed diversion will consume nonsurplus waters, and will unreasonably injure rights of riparians identified by par. (b) who are beneficially using such waters, the permit shall be denied unless a permit is granted under par. (e) or all such riparians consent to the proposed diversion.

3. In all other cases the permit shall be granted.

(e) The department may require modification of a proposed diversion so as to avoid injury to public or riparian rights, and as modified, may grant the permit.

(f) Water diverted in accordance with a permit issued under this subsection may be used on nonriparian property.

(g) The department shall maintain continuing jurisdiction over water withdrawal made according to permits issued under this subsection and may modify such permits to prevent undue injury to riparians who gave consent under par. (d) 2 at the time of issuance of the permit.

(3) WITHDRAWAL OF GROUND WATER. (a) No permit or approval may be required to withdraw ground water or to dewater mines, except as governed by s. 144.025 (2) (e), or to discharge pollutants resulting from the dewatering of mines, except as governed by ch. 147. No withdrawal of ground water or dewatering of mines, with or without a permit, may be made to the detriment of public or private water supplies.

(b) Persons claiming damage to their private water supplies as a result of mining-related water withdrawals may file a complaint with the department and, if there is a need for an immediate alternative source of water, with the municipality in which the private water supplies are located. The department shall conduct an investigation, and if the department concludes that there is reason to believe that the mining operation is interrelated to the condition giving rise to the complaint, it shall schedule a hearing. In this paragraph, "persons" does not include municipalities claiming damage to their water supplies as a result of mining-related or nonmining-related water withdrawals.

(c) The town, village or city within which is located the private water supply which is the subject of the complaint shall, upon request, supply necessary amounts of water to replace that water formerly obtained from the damaged private supply. Responsibility to supply water shall commence at the time the complaint is filed and shall end at the time the decision of the department made at the conclusion of the hearing is implemented.

(d) If, after hearing, the department concludes that the mining operation is the principal cause of such damage as is found to private water supplies, it shall issue an order to the operator requiring the provision of reasonable amounts of water to those persons found to be damaged, requiring reimbursement to the town, village or city for the cost of supplying water under par. (c), if any, and the payment of compensation for any damages unreasonably inflicted on such persons as a result of damage to their water supplies. Compensatory damages awarded may not exceed \$25,000 per claimant. Any judgment awarded in a subsequent action for damages occasioned by the disruption of private water supplies caused by metallic mining shall be reduced by any award of compensatory damages previously made under this section for the same injury and paid by the operator.

(e) If the department concludes after hearing that the mining operation is not the cause of any damage found, reimbursement to the town, village or city for the costs of supplying water under par. (c), if any, shall be the responsibility of the person who filed the complaint.

(f) Failure of an operator to comply with an order under par. (d) shall be grounds for suspension or revocation of a mining permit.

(4) COSTS REIMBURSED. (a) Costs incurred by municipalities in monitoring the effects of a mining operation on surface and ground water resources, in providing water to persons claiming damage to their private domestic water supplies under sub. (3), or in retaining legal counsel or technical consultants to represent and assist municipalities appearing at the hearing under sub. (3) shall be reimbursable through the investment and local impact fund under s. 15.435.

(b) Any costs paid through the investment and local impact fund under par. (a) shall be reimbursed to the fund by a municipality to which fund moneys have been paid under par. (a) if the municipality receives funds from any other source for the costs incurred under par. (a).

(5) **PROCEDURES.** Hearings on applications for diversion permits under this section shall be preceded by mailed notice to all parties or affected persons and by publication in the affected area of a class 2 notice, under ch. 985. Hearings may be conducted as part of a hearing on an application for a mining permit under s. 144.85.

SECTION 3. 107.06 of the statutes is repealed.

SECTION 4. 107.11 and 107.12 of the statutes are amended to read:

107.11 Account of ore received. Every ~~smelter~~ person operating a metal recovery system and every purchaser of ores and minerals shall keep a substantially bound book, ruled into suitable columns, in which shall be entered from day to day, as ores or minerals are received, the following items: the day, month and year when received; the name of the person from whom purchased; the name of the person by whom hauled and delivered; name of the owner of the land from which the ores or minerals were obtained, or if not known, the name of the diggings or some distinct description of the land. ~~Said~~ The bound book shall be kept at the furnace or at the usual place of business of such ~~smelter person~~ or purchaser or his or her agent in this state, and shall be open to ~~all persons~~ authorized representatives of the department of revenue at reasonable times for inspection and taking extracts.

107.12 Penalty. If any such ~~smelter person operating a metal recovery system~~ or purchaser of ores and minerals or the agent of any such ~~smelter person~~ or purchaser doing his business ~~shall fail~~ fails to keep such a book or to make such entries as required under s. 107.11 or ~~shall~~ unreasonably refuse ~~refuses~~ to show the ~~same book~~ same book for inspection or taking extracts or ~~shall make~~ makes false entries ~~therein in the book~~ therein in the book he or she shall forfeit ~~ten dollars~~ \$10 for each offense, one-half to the use of the prosecutor; and each day such failure or refusal ~~shall continue~~ continues shall be deemed a distinct and separate offense.

SECTION 5. **Program responsibility citations.** In the list of program responsibility citations enumerated for the department of natural resources under section 15.341 (intro.) of the statutes, reference to section "107.05" is inserted.
