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State of Misconsin 2013 - 2014 LEGISLATURE



SENATE AMENDMENT 17, TO SENATE SUBSTITUTE AMENDMENT 2, TO SENATE BILL 1

February 27, 2013 - Offered by Senators Lehman, Shilling, Vinehout, Carpenter, Hansen, Jauch, Lassa, C. Larson, Risser, Wirch, T. Cullen, Miller and Erpenbach.

At the locations indicated, amend the substitute amendment as follows:

- Page 180, line 22: after that line insert:
 "295.81 Citizen suits. (1) Except as provided in sub. (2), any citizen may
 commence a civil action on his or her own behalf:
 - (a) Against any person who is alleged to be in violation of this subchapter.
 - (b) Against the department where there is alleged to be a failure of the department to perform any act or duty under this subchapter that is not discretionary with the department.
 - **(2)** No action may be commenced:
 - (a) Under sub. (1) (a):
- 1. Prior to 30 days after the plaintiff has given notice of the alleged violation to the department and to the alleged violator; or

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- 2. If the department has commenced and is diligently prosecuting a civil or criminal action, but any citizen may intervene as a matter of right in the action.
- (b) Under sub. (1) (b) prior to 30 days after the plaintiff has given notice of the action to the department.
- (3) The court, in issuing any final order in any action brought under this section, shall award costs of litigation including reasonable attorney and expert witness fees to the plaintiff if he or she prevails, and the court may do so if it determines that the outcome of the controversy is consistent with the relief sought by the plaintiff irrespective of the formal disposition of the civil action. In addition, the court shall award treble damages to any plaintiff proving damages caused by a person mining without a permit or willfully violating this subchapter or any permits or orders issued under this subchapter.
- (4) Nothing in this section restricts any right which any person or class of persons may have under any other statute or common law.".

15 (END)