## CHAPTER 107
### MINING AND METAL RECOVERY

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be entered from day to day, as nonferrous metallic 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 nonferrous metallic minerals were obtained, or if not known, the name of the diggings or some distinct description of the land. The bound book shall be kept at the furnace or at the usual place of business of such person or purchaser or his or her agent in this state, and shall be open to authorized representatives of the department of revenue at reasonable times for inspection and taking extracts.

**History:** 1977 c. 420; 2013 a. 1.

### 293.11 Penalties

If any person operating a metal recovery system or purchaser of nonferrous metallic minerals or the agent of any such person or purchaser doing business fails to keep such a book or to make such entries as required under s. 293.11 or unreasonably refuses to show the book for inspection or taking extracts or makes false entries in the book he or she shall forfeit $10 for each offense, one-half to the use of the prosecutor; and each day such failure or refusal continues shall be deemed a distinct and separate offense.

**History:** 1977 c. 420; 2013 a. 1.

### 293.15 Requirements for mineral exploration

#### 293.15(1) Legislative Purpose

The purpose of this section is to further the public interest in informed decision-making by appropriate state agencies, including the office of the state geologist, which are responsible for mineral, geologic and other earth-related sciences by ensuring that those agencies have as much geological information as possible where such information is relevant to their functions and at the same time protecting proprietary rights in such information.

#### 293.15(2) Definitions

In this section:

- (a) “Exploration” has the meaning designated in s. 293.01 (5).
- (b) “Licensee” means any person licensed to conduct exploration activities by the department of natural resources under s. 293.21. If the person is a corporation or limited liability company, “licensee” includes the parent and any subsidiary or affiliates of the corporation or limited liability company engaged in mining or activities related to mining in this state.
- (c) “Metalliferous minerals” means naturally occurring minerals which contain metal.
- (d) “Mining” or “mining operation” has the meaning designated in s. 293.01 (9).
- (e) “Prospecting” has the meaning designated in s. 293.01 (18).

#### 293.15(4) Release of Geologic Data

(a) The licensee shall submit to the state geologist a report containing the following information on or before July 1 of the year following each year in which soil, rock, core or drill cutting samples are obtained by the licensee:

1. The name and address of the person conducting exploration and, if the person is a corporation or limited liability company, the names and addresses of the parent and any subsidiaries or domestic affiliates of the corporation or limited liability company engaged in exploration activities in this state;
2. The names and addresses of the owners of the lands in this state on which exploration activities have been conducted;
3. The specific location, inclination and the collar azimuth of completed drill holes;
4. The date core samples and drill cuttings which have been collected or prepared, were obtained;
5. The approximate elevation of the collars of drill holes;
6. The percent core recovery log; and
7. A noninterpretive lithologic description of all portions of core samples and, of all drill cuttings if any noninterpretive lithologic descriptions of drill cuttings are prepared, excluding mention of metalliferous minerals found in the samples and cuttings.

(b) The state geologist may require that designated representative and reasonable quantities of soil, rock, core or drill cutting samples obtained by a licensee during exploration be retained by the licensee and released to the state geologist for purposes of geologic study. The state geologist shall designate the samples and the quantities to be retained by the licensee and shall notify the licensee by December 31 of the year in which a report under par. (a) is submitted. The licensee shall release the samples no later than July 1 of the year following the year in which an exploration lease for the site where the samples were obtained has expired, but release shall be no later than 10 years after the commencement of drilling at the site.

(c) The state geologist or his or her designee may visually examine, at reasonable hours mutually agreed upon by the licensee and the state geologist, core samples or drill cuttings which are reported on under par. (a), except for those core samples or drill cuttings or portions of core samples or drill cuttings which the licensee deems proprietary or confidential.

(d) No later than upon the termination of mining or the abandonment of a site subsequent to prospecting, or 10 years from the date core samples or drill cuttings were originally obtained, the licensee shall submit to the state geologist, if not previously submitted, the following noninterpretive geologic information and samples:

1. The name and address of the person conducting exploration and, if the person is a corporation or limited liability company, the names and addresses of the parent and any subsidiaries or domestic affiliates of the corporation or limited liability company engaged in exploration, prospecting or mining in this state;
2. The names and addresses of the owners of the lands in this state on which exploration activities have been conducted;
3. The specific location, inclination and the collar azimuth of completed drill holes;
4. A noninterpretive lithologic description of all portions of core samples and, of all drill cuttings if any noninterpretive lithologic descriptions of drill cuttings are prepared, excluding mention of the quantity of metalliferous minerals found in the samples and cuttings;
5. Geologic maps of a lithologic nature of a scale smaller than one inch equals 200 feet normally prepared as a permanent record of an exploration, prospecting or mining operation;
6. The date core samples and drill cuttings were obtained;
7. The approximate elevation of the collars of drill holes;
8. The percent core recovery log; and
9. Upon the request of the state geologist, a representative sample of any core samples or drill cuttings which have been collected.

(e) The information submitted to the state geologist under par. (a) or (d) may not be used by anyone as the basis for any claim of civil liability which is unrelated to metalliferous mineral mining. Any person submitting information in good faith and in compliance with this section shall not be held responsible for any consequences of the use of or reliance upon such information.

(f) Exploration data and samples submitted under par. (a) or (b), or both, shall be kept confidential until December 31 of the 3rd year following the date of submission. The confidentiality of the data and samples obtained during prospecting or mining shall extend to the time of the abandonment of a site subsequent to prospecting, the termination of mining if mining occurs, or 10 years after the core samples or drill cuttings were obtained, whichever is earliest.

#### 293.15(5) Fees

The state geologist shall charge a reasonable fee to persons requesting copies of any written information collected or prepared under this section. A person employed by a state agency shall not be charged for such information if the information requested is necessary for the performance of the person’s duties.
MINING AND METAL RECOVERY

107.30

INJURIES TO PERSONS OR PROPERTY

NOTE: Chapter 353, laws of 1979, which created this subchapter, contains notes explaining the bill.

107.30 Definitions. In this subchapter:

(1) “Concentrates” means the mineral-rich, finished, primary products of a concentrator.

(2) “Concentrator” means a plant where ore is separated into concentrates and tailings.

(3) “Concentrator tailings” means waste material resulting from the washing, concentration or treatment of crushed ore.

(4) “Department” means the department of safety and professional services.

(5) “Environmental pollution” means the physical, chemical or biological alteration of quality of any air, water or land resources of the state which makes the same injurious to public health, harmful to agriculture, commercial or recreational use or deleterious to fish, birds, animals or plant or human life.

(6) “Materials in process” means those materials, other than salvageable by-products, which must be temporarily stored in a controlled manner. These materials include stockpiled development ore other than that in a mine or concentrator, mine backfill and reclaim water. The materials also include intermediate concentrates and intermediate refining and smelting products which require further processing, such as ore concentrates which must be agglomerated prior to marketing.

(7) “Mine excavations” means either shaft or pit excavations from which minerals have been extracted in prospecting or mining.

(8) “Mining” or “mining operation” means all or part of the process involved in the mining of metallic minerals, other than for exploration or prospecting, including commercial extraction, agglomeration, beneficiation, construction of roads, removal of overburden, and the production of refuse.
(9) “Mining company” means any person who, either directly or through subsidiaries, affiliates, contractors or other business arrangements, engages in prospecting, mining, refining or smelting.

(10) “Mining damage appropriation” means the appropriation under s. 20.165 (2) (a).

(11) “Mining site” means the surface or subsurface area disturbed by a mining operation, including the surface or subsurface area from which the minerals or refuse or both have been removed, the surface or subsurface area covered by the refuse, all lands disturbed by the construction or improvement of haulage-ways, and any surface or subsurface areas in which structures, equipment, materials and any other things used in the mining operation are situated.

(12) “Mining waste” means wastes directly resulting from or displaced by prospecting or mining and from the cleaning, preparation, separation or purification of minerals or metals during prospecting, mining, concentrating, refining or smelting operations and includes but is not limited to concentrator tailings, refinery and smelter residue, refining and smelting process emissions, mining overburden and waste treatment sludges, materials in process and salvageable by-products.

(13) “Mining-related injury” means death or injury to person or property caused by:

(a) Environmental pollution from emissions, seepages, leakages or other discharges from mine excavations in this state or of or from mining waste in this state; or

(b) Substantial surface subsidence from mine excavations in this state.

(14) “Ore” means a mineral which may be mined and processed for sale.

(15) “Prospecting” means engaging in the examination of an area for the purpose of determining the quality and quantity of minerals other than for exploration but including the obtaining of an ore sample, by such physical means as excavating, trenching, construction of shafts, ramps, and tunnels and other means, other than for exploration, which the department of natural resources, by rule, identifies, and the production of prospecting refuse and other associated activities. “Prospecting” does not include such activities when the activities are, by themselves, intended for and capable of commercial exploitation of the underlying ore body.

The fact that prospecting activities and construction may have use ultimately in mining, if approved, does not mean that prospecting activities and construction constitute mining within the meaning of sub. (8), provided such activities and construction are reasonably related to prospecting requirements.

(16) “Prospecting site” means the lands on which prospecting is actually conducted as well as those lands on which physical disturbance will occur as a result of such activity.

(17) “Refinery and smelter residue” means waste material resulting from the refining or smelting of concentrates.

(18) “Refining” means the process by which metal or valuable mineral is extracted and purified from an ore or concentrate and includes but is not limited to hydrometallurgical operations such as leaching and pyrometallurgical operations such as fire refining, roasting and cinderling.

(19) “Salvageable by-products” includes but is not limited to coarse tailings and other materials, other than concentrates, resulting from the mining operation which are useful and for which a market or use exists or is anticipated to exist.

(20) “Smelting” means any metallurgical operation in which metal is separated by fusion from those impurities with which it may be chemically combined or physically mixed such as in ores.

(21) “Subsidence” means the sinking down of a part of the earth’s crust, including the surface, due to underground excavations or workings.

History: 1979 c. 353; 1995 a. 27; ss. 3776 and 9116 (5); 1995 a. 227; 2003 a. 33; 2011 a. 32; 2013 a. 1.

107.31 Claims against mining damage appropriation.

(1) ADMINISTRATION. The department shall establish by rule procedures for the submission, review, settlement and determination of claims against the mining damage appropriation under this section. The rules shall include procedures for the proration of awards made under this section when the awards exceed the balance in the mining damage appropriation.

(2) WHO MAY FILE CLAIM. NOTICE. (a) Any person may make a claim against the mining damage appropriation to recover damages for mining-related injuries.

(b) Within 10 days of receiving a claim submitted under par. (a), the department shall notify the mining company alleged to have caused the claimant’s damages that the claim has been made. Any company alleged to have caused the claimant’s damages may, at its sole discretion, become a party to the proceeding.

(3) RECOVERY OF DAMAGES UNDER STRICT LIABILITY. (a) When a claim under this section is not settled, an adjudicatory hearing shall be held. If after the hearing the department finds that the claimant has demonstrated by a preponderance of the evidence that claimant incurred damages from mining-related injuries, it shall make an award from the mining damage appropriation in an amount equal to the damages incurred, except as provided in sub. (b).

(4) Payment of the award shall not be delayed or limited in anticipation of any other recovery the claimant may receive by pursuing other remedies.

(b) Damages under this section shall be awarded without regard to fault, except as provided in par. (c).

(c) Contributory negligent causation shall not bar recovery for a claim filed under this section by any person or his or her legal representative if such negligent causation was not greater than the causation of the mining company, but any award shall be diminished in proportion to the amount of negligent causation attributable to the person recovering.

(d) No award of nonpecuniary damages may be made for a claim under this section unless the claimant demonstrates by a preponderance of the evidence that the claimant is entitled to nonpecuniary damages and that there is a causal relationship between the injury for which pecuniary damages have been awarded and the injury for which nonpecuniary damages are claimed.

(4) LIMITATIONS ON AWARD. (a) Any amount otherwise recovered for the mining-related injury for which a claim is filed under this section shall reduce the amount awarded under this section by the amount otherwise recovered.

(b) No award for a claim under this section may exceed $150,000 for all injuries less any amount subtracted under par. (a) or sub. (3) (c).

(c) No award for loss of society and companionship, pain and suffering or mental anguish may exceed a total of $20,000 and, in any event, no award for nonpecuniary damages may exceed 50 percent of the amount awarded for pecuniary damages.

(d) No award may be made for punitive purposes.

(e) No award for a claim under this section may exceed an amount equal to the balance in the mining damage reserve accumulation.

(5) MINING DAMAGE RESERVE ACCUMULATION. (a) Calculation. The mining damage reserve accumulation is calculated by subtracting the total amount of all mining damages awards paid from the appropriation under s. 20.445 (4) (a), 2001 stats., beginning on May 22, 1980 or paid from the appropriation under s. 20.165 (2) (a) from the sum of:

1. Four percent of all moneys distributed under s. 70.395 (1), 1995 stats., and under s. 70.395 (1e) beginning on May 22, 1980; and

2. Prior to 10 years after May 22, 1980, $500,000.

(b) Proration. If the balance of the mining damage reserve accumulation is less than $500,000 at the beginning of a fiscal year or falls below that amount at any time, the department shall delay the payment of all mining damage awards during that fiscal...
year until after the close of the fiscal year to determine the sufficiency of the mining damage reserve accumulation.

(6) **STATE SUBROGATED TO CLAIMANT’S RIGHTS.** The state is subrogated to the rights of a claimant who obtains an award under this section in an amount equal to the award and may bring an action under s. 107.32 against a mining company or join in an action brought by a claimant under s. 107.32 to recover the amount awarded the claimant. A claimant who receives an award under this section shall cooperate with the state in any action under this subsection. The department may withhold 5 percent of the total award to which a claimant is entitled under this section until the state decides whether to commence an action under this subsection or, if commenced, until the action is resolved.

(7) **ADMISSIBILITY OF FINDINGS AND CONCLUSIONS.** The findings and conclusions under this section are not admissible in any civil action brought against a mining company.

(8) **APEAL.** Any party to a claim under this section may appeal a decision of the department to circuit court which shall conduct a full evidentiary hearing on the claim.

**History:** 1979 c. 353; 1981 c. 86; 1997 a. 27; 2003 a. 33; 2011 a. 32.

**107.32 Liability of mining companies.** A mining company is liable for damages for mining–related injuries resulting from its prospecting, mining, refining or smelting in this state if, and to the degree that, the elements of liability are established in accordance with law, regardless of any change in the nature of the ownership of the interests in the prospecting or mining site, refinery or smelter held by the mining company and regardless of any reorganization, merger, consolidation or liquidation affecting the mining company.

**History:** 1979 c. 353.

**107.33 Limitations on claims and actions for mining–related injuries.** The periods of limitation under s. 893.925 apply to all claims and actions for damages arising under or governed by this subchapter.

**History:** 1979 c. 353; 1979 c. 355 s. 241.

**107.34 Application to sites where activities have ceased.** This subchapter does not apply to any prospecting or mining site on which prospecting or mining has ceased prior to May 22, 1980 unless prospecting or mining activities are commenced at the site after May 22, 1980, in which case any mining–related injury is within the scope of this subchapter.

**History:** 1979 c. 353.

**107.35 Application to current mining operations.**

(1) If a person incurs a mining–related injury and the mining waste or mine excavation was present, in whole or in part, prior to May 22, 1980 and the waste or excavation was from the prospecting, mining or other practice of a mining company that is actively engaged in mining or prospecting in this state on May 22, 1980, then s. 107.31 applies only if:

(a) The person has fully pursued all other judicial or administrative remedies against the mining company to recover damages for the mining–related injury and the person or any party subrogated to the person’s rights has not received compensation for the mining–related injury as a result of pursuing the other judicial or administrative remedies; or

(b) The person chooses to pursue, as his or her sole remedy, compensation from the mining damage appropriation. If a person chooses to pursue a claim under this paragraph, he or she may not pursue any other remedy for the mining–related injury.

(2) If a person makes a claim against the mining damage appropriation under the circumstances described in sub. (1) (a):

(a) The claimant may introduce into evidence any relevant findings of fact made in any prior administrative or judicial proceeding.

(b) The state is not subrogated under s. 107.31 (6) to the rights of the claimant and, in any case, shall be bound by any decision regarding elements of liability other than causation and injury-in-fact made in any prior administrative or judicial proceeding involving the claimant.

(3) If a person makes a claim against the mining damage appropriation under sub. (1) (b), the state may recover under s. 107.31 (6) any payment received by the claimant from the mining damage appropriation only if, in addition to other elements of liability, the state proves that the mining–related injury was from mine excavations or mining wastes created after May 22, 1980. The state’s burden of persuasion with regard to the latter element of liability may not be shifted to the mining company.

**History:** 1979 c. 353.

Legislative Council Note, 1979: This section addresses the application of the mining damage award procedure to a mining–related injury that results from mining waste or a mine excavation which was present, wholly or partially, prior to the effective date of the bill and which resulted from the practices of a mining company actively engaged in prospecting or mining in this state on the effective date of the bill. A person who incurs a mining–related injury under these circumstances may make a claim against the mining damage appropriation only if he or she does not pursue any other remedy or, if other remedies are pursued, only if all other remedies have been exhausted and no compensation for the injury has been received as a result of pursuing other remedies. The state’s subrogation rights are limited with respect to awards for mining–related injuries covered by this section. [Bill 570–8]