CHAPTER 293

NONFERROUS METALLIC MINING

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Cross−reference: See also ch. NR 130, Wis. adm. code.

SUBCHAPTER I

DEFINITIONS

293.01 Definitions. In this chapter, unless the context requires otherwise:

(1m) "Air pollution" means the presence in the atmosphere of one or more air contaminants in such quantities and of such duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property.

(2) "Applicant" means a person who has applied for a prospecting permit or a mining permit.

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

(4) "Environmental pollution" means 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.

(5) "Mineral exploration" or "exploration", unless the context requires otherwise, means the on−site geologic examination from the surface of an area by core, rotary, percussion or other drilling, where the diameter of the hole does not exceed 18 inches, for the purpose of searching for nonferrous metallic minerals or establishing the nature of a known nonferrous metallic mineral deposit, and includes associated activities such as clearing and preparing sites or constructing roads for drilling.

(6) "Exploration license" means the license required under s. 293.21 (2) as a condition of engaging in exploration.

(7) "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.

(9) "Mining" or "mining operation" means all or part of the process involved in the mining of nonferrous metallic minerals, other than for exploration or prospecting, including commercial extraction, agglomeration, beneficiation, construction of roads, removal of overburden and the production of refuse.

(10) "Mining plan" means the proposal for the mining of the mining site.

(11) "Mining permit" means the permit which is required of all operators as a condition precedent to commencing mining at a mining site.

(12) "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, and any surface areas in which structures, equipment, materials and any other things used in the mining operation are situated.

(12m) "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.

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

(16) "Person" means an individual, owner, operator, corporation, limited liability company, partnership, association, municipality, interstate agency, state agency or federal agency.

(17) "Principal shareholder" means any person who owns at least 10 percent of the beneficial ownership of an operator.

(18) "Prospecting" means engaging in the examination of an area for the purpose of determining the quality and quantity of nonferrous metallic minerals, other than for exploration but including the obtaining of a nonferrous metallic mineral sample, by such physical means as excavating, trenching, construction of shafts, ramps and tunnels and other means, other than for exploration, which the department, by rule, identifies, and the production of prospecting refuse and other associated activities. "Prospect-

ing" shall not include such activities when the activities are, by themselves, intended for and capable of commercial exploitation of the underlying nonferrous ore body. However, the fact that prospecting activities and construction may have use ultimately in mining, if approved, shall not mean that prospecting activities and construction constitute mining within the meaning of sub. (9), provided such activities and construction are reasonably related to prospecting requirements.

(19) "Prospecting permit" means the permit which is required of all persons as a condition precedent to commencing prospecting at a location.

(20) "Prospecting plan" means the proposal for prospecting of the prospecting site.

(21) "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.

(22) "Prospector" means any person engaged in prospecting.

(23) "Reclamation" means 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 economically 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).

(24) "Reclamation plan" means the proposal for the reclamation of the prospecting or mining site which must be approved by the department under s. 293.45 or 293.49 prior to the issuance of the prospecting or mining permit.

(25) "Refuse" means all waste soil, 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) "Related person" means any person that owns or operates a mining site in the United States and that is one of the following when an application for a mining permit is submitted to the department:

(a) The parent corporation of the applicant.

(b) A person that holds more than a 30 percent ownership interest in the applicant.

(c) A subsidiary or affiliate of the applicant in which the applicant holds more than a 30 percent ownership interest.

(27) "Solid waste" has the meaning given under s. 281.01 (15).

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

(a) Habitat required for survival of species of vegetation or wildlife designated as endangered through prior inclusion in rules adopted by the department, if such endangered species cannot be firmly reestablished elsewhere.

(b) Unique features of the land, as determined by state or federal designation and incorporated in rules adopted by the department, as any of the following, which cannot have their unique characteristic preserved by relocation or replacement elsewhere:

1. Wilderness areas.

2. Wild and scenic rivers.

3. National or state parks.

4. Wildlife refuges and areas.

5. Archaeological areas.

5m. Listed properties, as defined in s. 44.31 (4).

6. Other lands of a type designated as unique or unsuitable for prospecting or surface mining.

(29) "Waters of the state" includes those portions of Lake Michigan and Lake Superior within the boundaries of this state, and all lakes, bays, rivers, streams, springs, ponds, wells, impounding reservoirs, marshes, watercourses, drainage systems and other surface water or groundwater, natural or artificial, public or private, within this state or its jurisdiction.

(30) "Water supply" means the sources and their surroundings from which water is supplied for drinking or domestic purposes.

History: 1973 c. 318; 1977 c. 377 s. 29m; 1977 c. 421, 447; 1983 a. 27, 517; 1987 a. 395; 1991 a. 260; 1995 a. 227 ss. 721 to 742, 994; Stats. 1995 s. 293.01; 2013 a. 1.

SUBCHAPTER II

ADMINISTRATION

293.11 Mine effect responsibility. The department shall serve as the central unit of state government to ensure that the air, lands, waters, plants, fish and wildlife affected by prospecting or mining in this state will receive the greatest practicable degree of protection and reclamation. The administration of occupational health and safety laws and rules that apply to mining shall remain exclusively the responsibility of the department of safety and professional services. The powers and duties of the geological and natural history survey under s. 36.25 (6) shall remain exclusively the responsibility of the geological and natural history survey. Nothing in this section prevents the department of safety and professional services and the geological and natural history survey from cooperating with the department in the exercise of their respective powers and duties.

History: 1973 c. 318; 1975 c. 41 s. 52; 1995 a. 27, ss. 4332 and 9116 (5); 1995 a. 227 s. 744; Stats. 1995 s. 293.11; 2011 a. 32.

This section is a statement of purpose and does not grant authority to issue a ban on mining activity. Rusk County Citizen Action Group, Inc. v. DNR, 203 Wis. 2d 1, 552 N.W.2d 110 (Ct. App. 1996), 95−3125.

293.13 Department duties. (1) The department shall:

(a) Adopt rules, including rules for prehearing discovery, implementing and consistent with this chapter.

(b) Establish by rule after consulting with the metallic mining council minimum qualifications for applicants for prospecting and mining permits. Such minimum qualifications shall ensure that each operator in the state is competent to conduct mining and reclamation and each prospector in the state is competent to conduct prospecting in a fashion consistent with the purposes of this chapter. The department shall also consider such other relevant factors bearing upon minimum qualifications, including but not limited to, any past forfeitures of bonds posted pursuant to mining activities in any state.

(2) (a) The department by rule after consulting with the metallic mining council shall adopt minimum standards for exploration, prospecting, mining and reclamation to ensure that such activities in this state will be conducted in a manner consistent with the purposes and intent of this chapter. The minimum standards may classify exploration, prospecting and mining activities according to type of minerals involved and stage of progression in the operation.

(b) Minimum standards for exploration, prospecting and mining shall include the following:

1. Grading and stabilization of excavation, sides and benches.

2. Grading and stabilization of deposits of refuse.

3. Stabilization of merchantable by−products.

4. Adequate diversion and drainage of water from the exploration, prospecting or mining site.

5. Backfilling.

6. Adequate covering of all pollutant−bearing minerals or materials.

7. Removal and stockpiling, or other measures to protect topsoils prior to exploration, prospecting, or mining.

8. Adequate vegetative cover.

9. Water impoundment.

10. Adequate screening of the prospecting or mining site.

11. Identification and prevention of pollution as defined in s. 281.01 (10) resulting from leaching of waste materials.

12. Identification and prevention of significant environmental pollution.

(c) Minimum standards for reclamation of exploration sites, where appropriate, and for prospecting and mining sites shall conform to s. 293.01 (23) and include provision for the following:

1. Disposal of all toxic and hazardous wastes, refuse, tailings and other solid waste in solid or hazardous waste disposal facilities licensed under ch. 289 or 291 or otherwise in an environmentally sound manner.

2. Sealing off tunnels, shafts or other underground openings, and prevention of seepage in amounts which may be expected to create a safety, health or environmental hazard, unless the applicant can demonstrate alternative uses of tunnels, shafts or other openings which do not endanger public health and safety and which conform to applicable environmental protection laws and rules.

3. Management, impoundment or treatment of all underground or surface runoff waters from open pits or underground prospecting or mining sites so as to prevent soil erosion, flooding, damage to agricultural lands or livestock, wild animals, pollution of surface or subsurface waters or damage to public health or safety.

4. Removal of all surface structures, unless they are converted to an alternate use.

5. Prevention or reclamation of substantial surface subsidence.

6. Preservation of topsoil for purposes of future use in reclamation.

7. Revegetation to stabilize disturbed soils and prevent air and water pollution, with the objective of reestablishing a variety of populations of plants and animals indigenous to the area immediately prior to exploration, prospecting or mining.

8. Minimization of disturbance to wetlands.

(d) The minimum standards adopted under this subsection shall also provide that if any of the following situations may reasonably be expected to occur during or subsequent to prospecting or mining, the prospecting or mining permit shall be denied:

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

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

3. Hazards resulting in irreparable damage to any of the following, which 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.

d. Churches.

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 which the department has authorized pursuant to statute, except that the destruction or filling in of a lake bed shall not be authorized notwithstanding any other provision of law.

History: 1995 a. 227 s. 746, 747, 994; 1997 a. 35.

Cross−reference: See also ch. NR 182, Wis. adm. code.

The DNR is not authorized by this section to issue a rule banning all sulfide mining. The requirement to adopt standards for a mining permit application process is inconsistent with a ban. Rusk County Citizen Action Group, Inc. v. DNR, 203 Wis. 2d 1, 552 N.W.2d 110 (Ct. App. 1996), 95−3125.

293.15 Department powers. The department may:

(1) Hold hearings relating to any aspect of the administration of this chapter and, in connection therewith, compel the attendance of witnesses and production of evidence.

(2) Cooperate or contract with the geological and natural history survey to secure necessary scientific, technical, administrative and operations services, including research, projects and laboratory facilities.

(3) Issue orders directing particular prospectors or operators to comply with the provisions and purposes of this chapter.

(4) Supervise and provide for such educational programs as appear necessary to carry out the purposes of this chapter.

(5) At its own expense, with the staff, equipment and material under its control, or by contract with others, take such actions as are necessary for the reclamation of abandoned project sites.

(6) Issue prospecting and mining permits.

(7) Issue exploration licenses.

(8) Promulgate rules regulating the production, storage and disposal of radioactive waste from exploration, prospecting or mining after seeking comments from the department of health services. At a minimum, rules promulgated under this subsection shall achieve the margin of safety provided in applicable federal statutes and regulations. If the department promulgates rules under this subsection, the department shall investigate the need for standards more restrictive than the applicable federal statutes and regulations.

(9) Promulgate rules by which the department may grant an exemption, modification or variance, either making a requirement more or less restrictive, from any rule promulgated under chs. 289 to 292 and this chapter, if the exemption, modification or variance does not result in the violation of any federal or state environmental law or endanger public health, safety or welfare or the environment.

(10) Promulgate rules with respect to minimizing, segregating, backfilling and marketing of mining waste.

(11) Notwithstanding chs. 289 and 291, promulgate rules establishing groundwater quality standards or groundwater quantity standards, or both, for any prospecting or mining activity, including standards for any mining waste site.

(12) Require all persons under its jurisdiction to submit such informational reports as the department deems necessary for performing its duties under this chapter.

(13) Monitor environmental changes concurrently with the permit holder under s. 293.45 (3) or 293.49 (7), and for such additional period of time after the full bond is released under s. 293.63 (3) as is necessary for the site to return to a state of environmental stability. The department may conduct independent studies to monitor environmental changes.

History: 1995 a. 227 s. 748, 749, 754, 994; 2007 a. 20 s. 9121 (6) (a).

SUBCHAPTER III

EXPLORATION

293.21 Exploration. (1) DEFINITIONS. In this section:

(a) "Driller" means a person who performs core, rotary, percussion or other drilling involved in exploration for nonferrous metallic minerals.

(b) "Parcel" means an identified section, fractional section or government lot.

(c) "Termination" means filling of drillholes and reclamation and revegetation of drilling sites.

(2) LICENSE. All persons intending to engage in exploration, or who contract for the services of drillers for purposes of exploration, shall be licensed by the department. Exploration licenses shall be issued annually by the department, and shall be applied for on forms provided by the department. The department shall provide copies of the application form for an exploration license to the state geologist upon issuance of the license. The department shall, by rule, establish an annual license fee plus a schedule of additional fees based on the number of holes drilled. The level of fees shall reflect the department's actual cost in administering this section. The fees set under this subsection may be adjusted for persons to reflect the payment of fees for the same services to meet other requirements.

(3) BOND. (a) Applications for licenses shall be accompanied by a bond in the amount of $5,000 conditioned on faithful performance of the requirements of the department relating to termination.

(b) The department may require that the amount of the bond be increased at any time, if the department determines that a licensee's current level of activity makes it likely that the bond would be inadequate to fund the termination of all holes drilled for which the licensee is responsible.

(c) The department shall, by rule, establish a procedure for release of exploration sites from bond coverage.

(4) NOTICE PROCEDURE. (a) Commencement of drilling on a parcel shall be preceded by notice from the licensee to the department of intent to drill, given at least 10 days in advance of the commencement of drilling, and identifying the particular parcel. The department shall transmit a copy of the notice of intent to drill to the state geologist.

(b) The department shall, by rule, establish notification and inspection procedures applicable to the various stages of drilling and termination and procedures for the proper termination of drillholes.

(5) LICENSE REVOCATION. The department may revoke or suspend an exploration license issued under this section if it determines, after hearing, that:

(a) Statutes or rules of the department have not been complied with; or

(b) There has been a failure to increase bond amounts to adequate levels as specified by the department.

(6) EXEMPTION. This section does not apply to operators engaged in exploration activities on lands included in a mining and reclamation plan, if the plan contains provisions relating to termination of the exploration activities.

History: 1977 c. 421; 1995 a. 227 s. 755; Stats. 1995 s. 293.21; 2013 a. 1.
Cross−reference: See also ch. NR 130, Wis. adm. code.

293.25 Radioactive waste site exploration. (1) DEFINITIONS. In this section and for the purposes of determining the applicability of ss. 293.13, 293.15 (1) to (12), 293.21, 293.81, 293.87, 293.89, 293.93 and 293.95:

(a) "Person" includes any person operating under a contract or under the direction of a federal agency.

(b) "Radioactive waste" means any of the following:

1. Fuel that is withdrawn from a nuclear reactor after irradiation and which is packaged and prepared for disposal.

2. Highly radioactive waste resulting from reprocessing irradiated nuclear fuel including both the liquid waste which is produced directly in reprocessing and any solid material into which the liquid waste is transformed.

3. Waste material containing alpha−emitting radioactive elements having an atomic number greater than 92 in concentrations greater than 10 nanocuries per gram.

(c) "Radioactive waste site exploration" means the on−site geologic examination from the surface of an area by core, rotary, percussion or other drilling for the purpose of determining the subsurface and geologic characteristics of an area in order to establish whether the area is suitable for a radioactive waste disposal site and includes associated activities such as clearing and preparing sites or constructing roads for drilling.

(d) "Radioactive waste disposal site" means any site or facility for the long−term storage or disposal of radioactive waste including any underground storage area and related facilities.

(2) EXPLORATION LICENSE AND RELATED PROVISIONS. (a) *Applicability.* Except as provided under par. (b), ss. 293.21 and 293.81 and rules promulgated under those sections apply to radioactive waste site exploration, to activities related to radioactive waste site exploration and to persons engaging in or intending to engage in radioactive waste site exploration or related activities in the same manner as those sections and rules are applicable to nonferrous metallic mineral exploration, to activities related to nonferrous metallic mineral exploration and to persons engaging in or intending to engage in nonferrous metallic mineral exploration or related activities.

(b) *Exception.* Notwithstanding par. (a) and s. 293.21 (3), the department may waive the bond requirement for a person who is authorized to engage in radioactive waste site exploration by a federal agency if the federal agency provides sufficient guarantees that the person or the federal agency will comply with the requirements of the department relating to termination. Notwithstanding par. (a) and s. 293.21 (3), the department may require a bond in an amount in excess of the amount specified under s. 293.21 (3) (a) to ensure that sufficient funds are available to comply with termination requirements or to abate or remedy any environmental pollution or danger to public health, safety or welfare resulting from radioactive waste site exploration.

(c) *Hearing.* The department shall conduct a public hearing in the county where radioactive waste site exploration is to occur prior to exploration.

(3) APPROVAL REQUIRED PRIOR TO DRILLING. No person may engage in radioactive waste site exploration by drilling on a parcel unless notice is provided as required under sub. (2) and s. 293.21 (4) (a) and unless the department issues a written approval authorizing drilling on that parcel. If the person seeking this approval is the federal department of energy or an agent or employee of the federal department of energy, the department may not issue the approval unless the public service commission certifies that the federal department of energy and its agents or employees have complied with any requirement imposed by the public service commission under s. 196.497 or any agreement entered into under that section.

(4) REGULATION OF EXPLORATION AND RELATED PROVISIONS. Sections 293.13, 293.15 (1) to (12), 293.85, 293.87 and 293.89 and rules promulgated under those sections apply to radioactive waste site exploration, to activities related to radioactive waste site exploration and to persons engaging in or intending to engage in radioactive waste site exploration or related activities in the same manner as those sections and rules are applicable to nonferrous metallic mineral exploration, to activities related to nonferrous metallic mineral exploration and to persons engaging in or intending to engage in nonferrous metallic mineral exploration or related activities.

(5) GROUNDWATER REGULATIONS. A person engaging in radioactive waste site exploration shall comply with any restrictions or prohibitions concerning the pollution or contamination of groundwater under this chapter, subch. II of ch. 281 or ch. 283 or any rule or order promulgated under those chapters or that subchapter.

(6) ENVIRONMENTAL IMPACT. Radioactive waste site exploration may constitute a major action significantly affecting the quality of the human environment. No person may engage in radioactive waste site exploration unless the person complies with the requirements under s. 1.11. Notwithstanding s. 23.40, the state

may charge actual and reasonable costs associated with field investigation, verification, monitoring, preapplication services and preparation of an environmental impact statement.

(7) IMPACT ON PUBLIC SERVICE COMMISSION. Nothing in this section limits the power or authority of the public service commission to impose more stringent requirements for the negotiation and approval of agreements under s. 196.497.

(8) IMPACT ON OTHER REQUIREMENTS. In addition to the requirements under this section, a person engaged in radioactive waste site exploration shall comply with all other applicable statutory requirements, rules and municipal ordinances and regulations. If a conflict exists between this section and another statute, rule, ordinance or requirement, the stricter provision controls.

History: 1983 a. 27; 1989 a. 31; 1991 a. 25; 1995 a. 27; 1995 a. 227 s. 756; Stats. 1995 s. 293.25; 2013 a. 1.

Cross−reference: See also ch. NR 133, Wis. adm. code.

SUBCHAPTER IV

PROSPECTING; MINING; RECLAMATION

Cross−reference: See also chs. NR 130, 132, and 182, Wis. adm. code.

293.31 Data collection. (1) Any person intending to submit an application for a prospecting or mining permit shall notify the department prior to the collection of data or information intended to be used to support the permit application. Specific environmental data which would be pertinent to a specific prospecting or mining application, but which was obtained or collected or generated prior to the notice of intent to apply for a prospecting or mining permit, shall be submitted in writing to the department together with any substantiating background information which would assist the department in establishing the validity of the data. The department shall review the data and, if it concludes that the benefits of permitting the admission of the data outweigh the policy reasons for excluding it, and if the data is otherwise admissible, inform the person giving the notice of intent to prospect or mine that the data will be accepted by the department. Such exclusion shall not relate to 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. Such exclusion shall likewise not relate to data which is otherwise admissible that is collected prior to notification under this subsection for purposes of evaluating another site or sites and which is not collected with intent to evade the provisions of this section.

(2) Upon receipt of notification under sub. (1), the department shall give public notice of the notification in the same manner as provided under s. 293.43 (3) (b).

(3) The department shall also receive and consider any comments from interested persons received within 45 days after public notice is given under sub. (2) as to the information which they believe should be requested from the person giving notice of intent to apply for a prospecting or mining permit and the information which they believe the department should seek through independent studies.

(4) After the receipt and consideration of comments from interested persons, the department shall inform the person giving notice of intent to apply for a prospecting or mining permit of the type and quantity of information that it then believes to be needed to support an application, and where applicable, the methodology to be used in gathering information. The department shall specifically inform the person giving notice of intent to apply for a prospecting or mining permit of the type and quantity of information on the characteristics of groundwater resources in the area in which prospecting or mining is anticipated to occur which the department believes is needed to support an application. The department shall also begin informing the person giving notice of intent to apply for a prospecting or mining permit as to the timely application date for approvals, licenses and permits, so as to facilitate the consideration of all other matters at the hearing on the prospecting or mining permit.

(5) The department may conduct studies necessary to verify information which may be submitted at the time of a permit application.

(6) All information gathered by a person giving notice under sub. (1) shall be submitted to the department as soon as it is in final form. The department may at any time after consultation with the person giving notice of intent to apply for a prospecting or mining permit revise or modify its requirements regarding information which must be gathered and submitted.

History: 1977 c. 421; 1995 a. 227 s. 751, 752.

293.32 Prospecting and mining fees. (1) When a person gives notice under s. 293.31 (1), the person shall pay a fee established by the department by rule designed to cover the costs incurred by the department in connection with the proposed prospecting or mining during the year following receipt of the notice, other than any costs related to the environmental impact statement for the proposed prospecting or mining.

(2) The department shall annually compare the fees paid under this section and under chs. 30, 280 to 292 and 295 to 299 in connection with proposed prospecting or mining for which notice has been given under s. 293.31 (1) with the costs incurred by the department in connection with that proposed prospecting or mining, including the costs incurred under chs. 30, 280 to 292 and 295 to 299 but excluding costs related to the environmental impact statement. If the costs incurred exceed the fees paid, the person who notified the department 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 prospecting or mining permit or when a person who gave notice under s. 293.31 (1) ceases to seek approval of the proposed prospecting or mining project, the department shall compare the fees paid under this section and under chs. 30, 280 to 292 and 295 to 299 in connection with the proposed prospecting or mining with the costs incurred by the department in connection with the proposed prospecting or mining, including the costs incurred under chs. 30, 280 to 292 and 295 to 299 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 the amount by which the fees exceed the costs. If the costs incurred exceed the fees paid, the person who notified the department shall pay a final fee equal to the amount by which the costs exceed the fees previously paid.

History: 1997 a. 169.

293.33 Local impact committee. (1) A county, town, village, city or tribal government likely to be substantially affected by potential or proposed mining may designate an existing committee, or establish a committee, for purposes of:

(a) Facilitating communications between operators and itself.

(b) Analyzing implications of mining.

(c) Reviewing and commenting on reclamation plans.

(d) Developing solutions to mining−induced growth problems.

(e) Recommending priorities for local action.

(f) Formulating recommendations to the investment and local impact fund board regarding distribution of funds under s. 70.395 (2) (g).

(g) Negotiating a local agreement under s. 293.41 (3).

(2) A county, town, village, city or tribal government affected in common with another county, town, village, city or tribal government by a proposed or existing mine may cooperatively designate or establish a joint committee, but may also maintain a separate committee under sub. (1). Committees under this section may include representatives of affected units of government, business and industry, manpower, health, protective or service agencies,

school districts, or environmental and other interest groups or other interested parties.

(3) Persons giving notice under s. 293.31 (1) shall thereafter appoint a liaison person to any committee established under sub. (1) or (2), and shall provide such reasonable information as is requested by the committee. Operators and persons giving notice under s. 293.31 shall thereafter make reasonable efforts to design and operate mining operations in harmony with community development objectives.

(4) Committees established under sub. (1) or (2) may be funded by their appointing authority, and may, through their appointing authority, submit a request for operating funds to the investment and local impact fund board under s. 70.395. Committees established under sub. (1) shall be eligible for funds only if the county, town, village or city is also a participant in a joint committee, if any, established under sub. (2). The investment and local impact fund board may not grant funds for the use of more than one committee established under sub. (1) in relation to a particular mining proposal unless a joint committee has been established under sub. (2). The investment and local impact fund board shall grant operating funds to any committee that submits a request and is eligible under this subsection and s. 70.395 (2) (fm). Committees may hire staff, enter into contracts with private firms or consultants or contract with a regional planning commission or other agency for staff services for mining−related purposes or the purposes under s. 70.395 (2) (fm).

History: 1995 a. 227 s. 761.

Cross−reference: See also ch. NR 134, Wis. adm. code.

293.35 Application for prospecting permit. (1) No person may engage in prospecting without securing a prospecting permit issued under s. 293.45. Application for prospecting permits shall be made in writing to the department upon forms prepared and furnished by the department. An application must be made, and a prospecting permit obtained for each separate prospecting site. Applications shall be submitted in reproducible form in such multiples as required by rules of the department. As a part of each application for a prospecting permit, the applicant shall furnish a description of the proposed prospecting site, the number of acres in the proposed prospecting site, a prospecting plan, a reclamation plan meeting the requirements of subs. (2) and (3) and a timetable for reclamation, information relating to whether the area may be unsuitable for prospecting or surface mining, unless the applicant conclusively certifies that he or she will not subsequently make application for a permit to conduct surface mining at the site and such other relevant information as the department may require, including information as to whether the applicant, its parent corporation, any of its principal shareholders or members, or any of the applicant's subsidiaries or affiliates in which the applicant owns more than a 40 percent interest, has forfeited any mining bonds in other states within the last 20 years, and the dates and locations, if any.

(2) A reclamation plan shall accompany all applications for prospecting permits. If it is physically or economically impracticable or environmentally or socially undesirable for the reclamation process to return the affected area to its original state, the plan shall set forth the reasons therefor and shall discuss alternative conditions and uses to which the affected area can be put.

(3) The reclamation plan shall specify how the applicant intends to accomplish, to the fullest extent possible, compliance with the minimum standards under s. 293.13 (2) (c).

(5) If the department determines that a statement under s. 1.11 is required for consideration of an application for a prospecting permit, the statement need not consider impacts unrelated to the proposed prospecting activity, other than the issue of unsuitability for surface mining, absent a certification under sub. (1).

History: 1977 c. 421; 1995 a. 227 ss. 758, 765, 768, 994; 1997 a. 169.

Cross−reference: See also ch. NR 134, Wis. adm. code.

293.37 Application for mining permit. (1) (a) No operator may engage in mining or reclamation at any mining site that is not covered by a mining permit and by written authorization to mine under s. 293.51 (3). Applications for mining permits shall be made in writing and in reproducible form to the department upon forms prepared and furnished by it and in such multiples as required by rule of the department. An application shall be made, and a mining permit obtained for each separate mining site. No application for surface mining at a site may be entertained by the department if within the previous 5 years the applicant, or a different person who had received a prospecting permit for the site had certified under s. 293.35 (1) that he or she would not subsequently make application for a permit to conduct surface mining at the site.

(b) If a person commences mining at a mining site which includes an abandoned site, plans for reclamation of the abandoned site, or the portion of the abandoned site which is included in the mining site, shall be included in its mining plan and reclamation plan.

(2) As a part of each application for a mining permit, the applicant shall furnish:

(a) A mining plan, including a description and a detailed map of the proposed mining site drawn to a scale approved by the department. Aerial photographs may be accepted if the photographs show the details to the satisfaction of the department. The map, plan, or photograph shall be prepared and certified by a competent engineer, licensed professional surveyor, or other person approved by the department, and shall show the boundaries of the area of land which will be affected; the drainage area above and below the area; the location and names of all streams, roads, railroads, pipelines, and utility lines on or within 1,000 feet of the site; the name of the owner or owners of the site; the name of the city, village, or town in which the site is located; and the name of any other city, village, or town if within 3 miles of the site. The map or photograph shall be accompanied by descriptive data as required by the department, including but not limited to the soil conservation service soil capabilities classifications of the affected area, the anticipated geometry of the excavation, the estimated total production of tailings produced, the nature and depth of the overburden, the elevation of the water table, and such other information about the geology of the deposit as the department, after consultation with the geological and natural history survey, finds is necessary to evaluate the applicant's mining plan and reclamation plan.

(b) In addition to the information and maps otherwise required by this subsection, a detailed reclamation plan showing the manner, location and time for reclamation, including ongoing reclamation during mining, of the proposed mining site. The reclamation plan shall be accompanied by a map subject to the requirements in par. (a) which shall show the specific reclamation proposal for each area of the site. The reclamation plan shall conform to any applicable comprehensive plan created under sub. (4) (b), and to any applicable minimum standard created under ss. 293.13 (2) and 293.35 (2) and (3).

(c) The name and address 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.

(d) Evidence satisfactory to the department that the applicant has applied for necessary approvals and permits under all applicable zoning ordinances and that the operator has applied for the necessary approval, licenses or permits required by the department including, but not limited to, those under chs. 30, 31, 107, 280 to 285, 289 to 292, 295 and 299 and this chapter.

(e) 1. The information specified in subd. 2. concerning the occurrence of any of the following within 10 years before the application is submitted:

a. A forfeiture by the applicant, principal shareholder of the applicant or a related person of a mining reclamation bond that was sufficient to cover all costs of reclamation and 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 entity for whose benefit the bond was posted.

b. A felony conviction of the applicant, a related person or an officer or director of the applicant for a violation of a law for the protection of the natural environment arising out of the operation of a mining site in the United States.

c. The bankruptcy or dissolution of the applicant or a related person that resulted in the failure to reclaim a mining site in the United States in violation of a state or federal law.

d. The permanent revocation of a mining permit or other mining approval issued to the applicant or a related person if the permit or other mining approval was revoked because of a failure to reclaim a mining site in the United States in violation of state or federal law.

2. The applicant shall specify the name and address of the person involved in and the date and location of each occurrence described in subd. 1.

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

(g) A description of any land contiguous to the proposed mining site which he or she owns, leases or has an option to purchase or lease.

(h) Such other pertinent information as the department requires.

(3) (a) A reclamation plan shall accompany all applications for mining permits. If it is physically or economically impracticable or environmentally or socially undesirable for the reclamation process to return the affected area to its original state, the plan shall set forth the reasons therefor and shall discuss alternative conditions and uses to which the affected area can be put.

(b) The reclamation plan shall specify how the applicant intends to accomplish, to the fullest extent possible, compliance with the minimum standards under s. 293.13 (2) (c).

(4) (a) The department shall require an applicant for a mining permit, amended mining permit or change in either the mining or reclamation plan to furnish, as part of the mining permit application, an itemized statement showing the applicant's estimation of the cost to the state of reclamation. The department may, at the applicant's expense, contract with an independent person to estimate the cost to the state of reclamation if it has reason to believe that the applicant's estimated cost of reclamation may not be accurate.

(b) If the department finds that the anticipated life and total area of a nonferrous metallic mineral deposit are of sufficient magnitude that reclamation of the mining site consistent with this chapter requires a comprehensive plan for the entire affected area, it shall require an operator to submit with the application for a mining permit, amended mining site or change in mining or reclamation plan, a comprehensive long−term plan showing, in detail satisfactory to the department, the manner, location and time for reclamation of the entire area of contiguous land which will be affected by mining and which is owned, leased or under option for purchase or lease by the operator at the time of application. Where a nonferrous metallic mineral deposit lies on or under the lands of more than one operator, the department shall require the operators to submit mutually consistent comprehensive plans.

History: 1995 a. 227 s. 770, 772, 774, 775, 776, 994; 1997 a. 169; 2013 a. 1, 358.
Cross−reference: See also s. NR 182.17, Wis. adm. code.

293.39 Environmental impact statement. (1) The department shall prepare an environmental impact statement for every mining permit under s. 293.49. In preparing the environmental impact statement, the department shall comply with sub. (2) and s. 1.11 (2).

(2) A statement prepared under sub. (1) shall include a description of the significant long−term and short−term impacts, including impacts after the mining has ended, on all of the following:

(a) Tourism.

(b) Employment.

(c) Schools and medical care facilities.

(d) Private and public social services.

(e) The tax base.

(f) The local economy.

(g) Other significant factors.

(3) To the extent that an environmental impact statement on a prospecting permit application under s. 293.35, if prepared, fully considered unsuitability of the prospecting site for surface mining by virtue of unique features of the land as enumerated in s. 293.01 (28), that portion of the previous impact statement may be adopted in the impact statement on the mining permit application.

History: 1991 a. 259; 1995 a. 227 s. 780, 782; Stats. 1995 s. 293.39.

293.41 Local agreements. (1) A county, town, village, city or tribal government that requires an operator to obtain an approval or permit under a zoning or land use ordinance and a county, town, village or city in which any portion of a proposed mining site is located may, individually or in conjunction with other counties, towns, villages, cities, or tribal governments, enter into one or more agreements with an operator for the development of a mining operation.

(2) An agreement under sub. (1) shall include all of the following:

(a) A legal description of the land subject to the agreement and the names of its legal and equitable owners.

(b) The duration of the agreement.

(c) The uses permitted on the land.

(d) A description of any conditions, terms, restrictions or other requirements determined to be necessary by the county, town, village, city or tribal government for the public health, safety or welfare of its residents.

(e) A description of any obligation undertaken by the county, town, village, city or tribal government to enable the development to proceed.

(f) The applicability or nonapplicability of county, town, village, city or tribal ordinances, approvals or resolutions.

(g) A provision for the amendment of the agreement.

(h) Other provisions deemed reasonable and necessary by the parties to the agreement.

(3) A county, town, village, city or tribal government may authorize the local impact committee appointed under s. 293.33 to negotiate an agreement under this section, but the agreement may not take effect until approved by the county, town, village, city or tribal government in accordance with sub. (4).

(4) The county, town, village, city or tribal government shall hold a public hearing on an agreement under sub. (1) before its adoption. Notice of the hearing shall be provided as a class 2 notice, under ch. 985. After the public hearing, the governing body of each county, town, village, city or tribal government which is to be a party to the agreement must approve the agreement in a public meeting of the governing body.

(5) A state agency shall assist a county, town, village, city or tribal government in enforcing those provisions of a local agreement that are within the expertise of the state agency.

History: 1987 a. 399; 1991 a. 259; 1995 a. 227 s. 763; Stats. 1995 s. 293.41.

This section is an express delegation to towns of the power to enter into local agreements with mining companies, creating an exemption to general zoning statutes. When a town negotiates under this section, it has only local zoning permits and approvals to give the mining company in exchange for the mining company addressing its land−use concerns. Nicolet Minerals Company v. Town of Nashville, 2002 WI App 50, 250 Wis. 2d 831, 641 N.W.2d 497, 01−1339.

293.43 Hearings on permit applications. (1) APPLICABILITY. This section, and ch. 227 where it is not inconsistent, shall govern all hearings on applications for prospecting or mining permits.

(1m) SCOPE. (a) The hearing on the prospecting or mining permit shall cover the application and any statements prepared under s. 1.11 and, to the fullest extent possible, all other applica-

tions for approvals, licenses and permits issued by the department. The department shall inform the applicant as to the timely application date for all approvals, licenses and permits issued by the department, so as to facilitate the consideration of all other matters at the hearing on the prospecting or mining permits.

(b) Except as provided in this paragraph, for all department issued approvals, licenses and permits relating to prospecting or mining including solid waste feasibility report approvals and permits related to air and water, to be issued after April 30, 1980, the notice, hearing and comment provisions, if any, and the time for issuance of decisions, shall be controlled by this section and ss. 293.45 and 293.49. If an applicant fails to make application for an approval, license or permit for an activity incidental to prospecting or mining in time for notice under this section to be provided, the notice and comment requirements, if any, shall be controlled by the specific statutory provisions with respect to that application. If notice under those specific statutory notice requirements can be given for consideration of the approval, license or permit at the hearing under this section, the application shall be considered at that hearing; otherwise, the specific statutory hearing provisions, if any, with respect to that application shall control. The substantive requirements for the issuance of any approval, permit or license incidental to prospecting or mining are not affected by the fact that a hearing on the approval, permit or license is conducted as part of a hearing under this section.

(2) LOCATION. The hearing shall be held in the county where the prospecting or mining site, or the largest portion of the prospecting or mining site, is located, but may subsequently be adjourned to other locations.

(3) TIMING OF NOTICE AND OF HEARING; GIVING OF NOTICE. (a) If it is determined that a statement under s. 1.11 is not required, the hearing shall be scheduled for a date not less than 60 days nor more than 90 days after the announcement of that determination, and the scheduling and providing of notice shall be completed not later than 10 days following the announcement. Notice of the hearing shall be given by mailing a copy of the notice to any known state agency required to issue a permit for the proposed operation, to the regional planning commission for the affected area, to the county, city, village and town within which any part of the affected area lies, to all persons who have requested this notification and, if applicable, to all persons specified under par. (b) 3. and s. 281.35 (5) (b) and (6) (f). Written comments may be submitted to the department within 30 days of the date of notice.

(b) If it is determined that a statement under s. 1.11 is required, or if an environmental impact statement is required under s. 293.39, the department shall hold at least one informational meeting regarding the preliminary environmental report within 60 days of its issuance. The meeting shall be held not sooner than 30 days nor later than 60 days after the issuance of the report. The scheduling and providing of notice of the meeting shall be completed not later than 10 days following the issuance of the preliminary environmental report. A hearing referred to under sub. (1m) shall be scheduled for a date not less than 120 days nor more than 180 days after the issuance of the environmental impact statement. The scheduling and providing of notice of the hearing shall be completed within 30 days from the date of issuance of the environmental impact statement. The providing of notice shall be accomplished by:

1. Mailing a copy of the notice to all known departments and agencies required to grant any permit necessary for the proposed operation, to any regional planning commission within which the affected area lies, to the governing bodies of all towns, villages, cities and counties within which any part of the proposed prospecting or mining site lies, to the governing bodies of any towns, villages or cities contiguous to any town, village or city within which any part of the proposed prospecting or mining site lies and to any interested persons who have requested such notification.

2. Publication of a class 2 notice, under ch. 985, utilizing a display advertising format, in the weekly newspaper published in the closest geographic proximity to the proposed prospecting or mining site, in the newspaper having the largest circulation in the county within which the proposed site lies and in those newspapers published in counties contiguous to the county within which the proposed site lies which have a substantial circulation in the area of, or adjacent to, the proposed prospecting or mining site.

3. Mailing a copy of the notice to the U.S. environmental protection agency, U.S. army corps of engineers and other states potentially affected by the proposed discharge if a water discharge permit under ch. 283 is to be considered at the hearing under this section and to the U.S. environmental protection agency and appropriate agencies in other states which may be affected if an air pollution control permit under ch. 285 is to be considered at the hearing under this section.

(c) Written comments may be submitted by any governmental agency within 80 days of the date of issuance of the statement under par. (b). Individual persons may submit written comments within 120 days of the date of issuance of the statement. The last day for receipt of comments shall be specified by the department in all notices.

(4) PARTICIPATION BY LOCAL GOVERNMENTS. Any county, town, village or city receiving notice of the filing of an application in the manner provided under sub. (3) (a) or (b) shall refer the application and reclamation plan to a committee established under s. 293.33 (1) or (2), if any, for review and comment. Such counties, towns, villages or cities may participate as a party in the hearing on the application and may make recommendations on the reclamation plan and future use of the project site.

(5) HEARING PROCEDURE. (a) At the opening of the hearing, the hearing examiner shall advise all persons present of their right to express their views either orally or in writing, under oath or otherwise, and of the legal effect of each form of testimony. All interested persons, at the hearing or at a time set prior to the hearing, shall be given an opportunity, subject to reasonable limitations on the presentation of repetitious or irrelevant material, to express their views on any aspect of the matters under consideration. The presentation of these views need not be under oath nor subject to cross−examination. A written record of unsworn testimony shall be made.

(b) Persons who wish to participate as parties shall file a written notice with the hearing examiner setting forth their interest at least 30 days prior to the scheduled time of the hearing or prior to the scheduled time of any prehearing conference, whichever is earlier, unless good cause is shown.

(c) The record shall consist of the contested case portion of the proceeding. Views given under par. (a) and all written comments submitted from any source shall be placed in the file of the proceeding and shall be given appropriate probative value by the hearing examiner or decisionmaker.

(d) Hearings conducted under this section may be continued for just cause.

(e) If evidence of conformance with applicable zoning ordinances as required by s. 293.49 (1) (a) 6. is not presented by the time testimony is completed, the department shall close the record and continue the hearing. The duration of the continuance of the hearing shall be specified by the department at the time the continuance begins, after first requesting the applicant to state the anticipated time at which the evidence will be provided. The continuance may be extended by the department prior to its expiration upon notice to all parties if good cause is shown.

(f) Each approval or denial of a license or permit considered at the hearing under this section shall be made in findings of fact, conclusions of law and an order setting forth reasons with clarity and in detail.

History: 1977 c. 421; 1979 c. 221, 355; 1985 a. 60; 1991 a. 259; 1995 a. 227 ss. 759, 760, 762, 994; Stats. 1995 s. 293.43.

Cross−reference: See also ch. NR 182, Wis. adm. code.

293.45 Prospecting; department grant or denial of permit. (1) The department shall issue a prospecting permit under this section to an applicant within 60 days following the date of the

completion of the hearing record if, on the basis of the application, the department's investigation and hearing and any written comments, it finds that the site is not unsuitable for prospecting or, absent a certification under s. 293.35 (1), surface mining, the department has approved the prospecting plan and the reclamation plan complies with ss. 293.13 (2) and 293.35 (2) and (3) and rules promulgated under ss. 293.13 (2) and 293.35 (2) and (3). The department may modify any part of the application or reclamation plan and approve it as modified. Except as otherwise provided in this chapter, prospecting permits shall be valid for the life of the project, unless canceled under s. 293.83 (1) or (3) or 293.85 or revoked under s. 293.87 (2) or (3).

(2) The department shall deny a prospecting permit within 60 days following the date of the completion of the hearing record if it finds that the site is unsuitable for prospecting or, absent certification under s. 293.35 (1), surface mining, or the reclamation plan, including the bond, does not comply with ss. 293.13 (2) and 293.35 (2) and (3) and rules promulgated under ss. 293.13 (2) and 293.35 (2) and (3) or that the applicant is in violation of this chapter or any rules adopted under this chapter. If the applicant has previously failed and continues to fail to comply with this chapter, or if the applicant has within the previous 20 years forfeited any bond posted in accordance with prospecting or mining activities in this state, unless by mutual agreement with the state, the department may not issue a prospecting permit. The department may not issue a prospecting permit if it finds that any officer, director or manager of the applicant has, while employed by the applicant, the applicant's parent corporation, any of the applicant's principal shareholders or members, or any of the applicant's subsidiaries or affiliates, in which the applicant owns more than a 40 percent interest, within the previous 20 years forfeited any bond posted in accordance with prospecting or mining activities in this state unless by mutual agreement with the state. In this subsection, "forfeited any bond" means the forfeiture of any performance security occasioned by noncompliance with any prospecting or mining laws or implementing rules. If an application for a prospecting permit is denied, the department, within 30 days from the date of application denial, shall furnish to the applicant in writing the reasons for the denial.

(3) The department, in granting a permit under this section, shall require the permit holder to perform adequate monitoring of 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 any bonds required.

History: 1977 c. 421; 1981 c. 87; 1995 a. 227 ss. 753, 766, 994; 1999 a. 186.
Cross−reference: See also ch. NR 182, Wis. adm. code.

293.47 Prospecting data. (1) DEFINITIONS. In this section:

(a) "Economic information" means financial and economic projections for any potential mining of an ore body including estimates of capital costs, predicted expenses, price forecasts and metallurgical recovery estimates.

(b) "Geologic information" means information concerning descriptions of a nonferrous ore body, descriptions of reserves, tonnages and grades of nonferrous ore, descriptions of a drill core or bulk sample including analysis, descriptions of drill hole depths, distances and similar information related to the nonferrous ore body.

(c) "Prospecting data" means data, records and other information furnished to or obtained by the department in connection with the application for a prospecting permit.

(2) PROSPECTING DATA IN GENERAL. Except as provided under sub. (3), prospecting data are public records subject to subch. II of ch. 19.

(3) CONFIDENTIAL PROSPECTING DATA. (a) *Request for confidential status.* An applicant for a prospecting permit may request confidential status for any prospecting data.

(b) *Confidential status.* The department shall grant confidential status to prospecting data if the applicant makes a request and if the prospecting data relates to economic information or geologic information or is entitled to confidential status under rules promulgated by the department.

History: 1973 c. 318; 1979 c. 221; 1981 c. 86; 1981 c. 335 s. 26; 1995 a. 227 s. 795; Stats. 1995 s. 293.47; 2013 a. 1.

293.49 Mining; department grant or denial of permit. (1) (a) Except as provided in sub. (2) and s. 293.50 and except with respect to property specified in s. 41.41 (11), within 90 days of the completion of the public hearing record, the department shall issue the mining permit if it finds:

1. The mining plan and reclamation plan are reasonably certain to result in reclamation of the mining site consistent with this chapter and any rules adopted under this chapter and the department has approved the mining plan.

2. The proposed operation will comply with all applicable air, groundwater, surface water and solid and hazardous waste management laws and rules of the department.

3. In the case of a surface mine, the site is not unsuitable for mining. The preliminary determination that a site was not unsuitable for mining under s. 293.45 may not be conclusive in the determination of the site's suitability for mining under this section. However, at the hearing held under this section and s. 293.43, testimony and evidence submitted at the prospecting permit proceeding relevant to the issue of suitability of the proposed mining site for surface mining may be adopted, subject to the opportunity for cross−examination and rebuttal, if not unduly repetitious.

4. The proposed mine will not endanger public health, safety or welfare.

5. The proposed mine will result in a net positive economic impact in the area reasonably expected to be most impacted by the activity.

6. The proposed mining operation conforms with all applicable zoning ordinances.

(b) Each approval or denial shall be made in findings of fact, conclusions of law and an order setting forth reasons with clarity and in detail. The department may modify the operator's proposed mining or reclamation plans in order to meet the requirements of this chapter, and, as modified, grant its approval.

(2) Within 90 days of the completion of the public hearing record, 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 or any rule adopted under this chapter.

(c) 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 entity for whose benefit the bond was posted and the amount of the bond was sufficient to cover all costs of reclamation.

(d) 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 one 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. 293.37 (1) a plan to prevent the occurrence in this state of events similar to the events that directly resulted in the convictions.

(e) That the applicant or a related person has, within 10 years before the application is submitted, declared bankruptcy or under-

gone 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.

(f) 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.

(3) The department may not deny a mining permit under sub. (2) (c) to (f) 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.

(4) The prior issuance of a prospecting permit under s. 293.45 for all or part of a site shall, in and of itself, be given no weight in the decision to grant or deny a mining permit under this section, and the department must find, in any order granting, or granting with conditions, a mining permit that no weight was given in the decision to the prior issuance of a prospecting permit. However, to the extent that testimony and evidence submitted at the prospecting permit proceedings is relevant to the issue of whether to grant or deny a mining permit, the testimony and evidence may be adopted in the mining permit proceedings, subject to the opportunity for cross−examination and rebuttal to the extent that the testimony and evidence are not unduly repetitious.

(5) The department shall send its statement, together with a copy of its rules and finding as to whether the applicant has otherwise satisfied the requirements of this chapter, to the applicant and to the other parties.

(6) Except as otherwise provided in ss. 293.53 (2), 293.55 to 293.59, 293.63, 293.81 and 293.83, mining permits shall be valid for the life of the project unless canceled under s. 293.83 (1) or (3) or 293.85 or revoked under s. 293.87 (2) or (3).

(7) The department, in granting a permit under this section, shall require the permit holder to perform adequate monitoring of 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 any bonds required.

(8) No operator may engage a general contractor or affiliate to operate a mining site if the general contractor or affiliate has been convicted of more than one felony for violation of a law for the protection of the natural environment arising out of the operation of a mining site in the United States within 10 years before the issuance of the operator's permit, unless the general contractor or affiliate receives the department's approval of a plan to prevent the occurrence in this state of events similar to the events that directly resulted in the convictions.

History: 1995 a. 227 s. 771, 773, 777, 778, 779, 994; 1997 a. 171.

Cross−reference: See also ch. NR 182, Wis. adm. code.

293.50 Moratorium on issuance of permits for mining of sulfide ore bodies. (1) In this section:

(a) "Pollution" means degradation that results in any violation of any environmental law as determined by an administrative proceeding, civil action, criminal action or other legal proceeding. For the purpose of this paragraph, issuance of an order or acceptance of an agreement requiring corrective action or a stipulated fine, forfeiture or other penalty is considered a determination of a violation, regardless of whether there is a finding or admission of liability.

(b) "Sulfide ore body" means a mineral deposit in which nonferrous metals are mixed with sulfide minerals.

(2) Beginning on May 7, 1998, the department may not issue a permit under s. 293.49 for the purpose of the mining of a sulfide ore body until all of the following conditions are satisfied:

(a) The department determines, based on information provided by an applicant for a permit under s. 293.49 and verified by the department, that a mining operation has operated in a sulfide ore body which, together with the host nonferrous rock, has a net acid generating potential in the United States or Canada for at least 10 years without the pollution of groundwater or surface water from acid drainage at the tailings site or at the mine site or from the release of heavy metals.

(b) The department determines, based on information provided by an applicant for a permit under s. 293.49 and verified by the department, that a mining operation that operated in a sulfide ore body which, together with the host nonferrous rock, has a net acid generating potential in the United States or Canada has been closed for at least 10 years without the pollution of groundwater or surface water from acid drainage at the tailings site or at the mine site or from the release of heavy metals.

(2m) (a) The department may not base its determination under sub. (2) (a) or (b) on any mining operation that has been listed on the national priorities list under 42 USC 9605 (a) (8) (B) or any mining operation for which the operator is no longer in business and has no successor that may be liable for any contamination from the mining operation and for which there are no other persons that may be liable for any contamination from the mining operation.

(b) The department may not base its determination under sub. (2) (a) or (b) on a mining operation unless the department determines, based on relevant data from groundwater or surface water monitoring, that the mining operation has not caused significant environmental pollution, as defined in s. 293.01 (4), from acid drainage at the tailings site or at the mine site or from the release of heavy metals.

(3) This section applies without regard to the date of submission of the permit application.

History: 1997 a. 171; 2013 a. 1.

293.51 Bonds. (1) Upon notification that an application for a prospecting or mining permit has been approved by the department but prior to commencing prospecting or mining, the operator shall file with the department a bond conditioned on faithful performance of all of the requirements of this chapter and all rules adopted by the department under this chapter. The bond shall be furnished by a surety company licensed to do business in this state. 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 estimated cost of reclamation of each prospecting or mining site shall be determined by the department on the basis of relevant factors including, but not limited to, 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.

(2) 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.

(3) Upon approval of the operator's bond, mining application and certificate of insurance, the department shall issue written

authorization to commence mining at the permitted mining site in accordance with the approved mining and reclamation plans.

(4) Any operator who obtains mining permits from the department for 2 or more mining sites may elect, at the time the 2nd or any subsequent site is approved, to post a single bond in lieu of separate bonds on each site. Any single bond so posted shall be in an amount equal to the estimated cost to the state determined under sub. (1) of reclaiming all sites the operator has under mining permits. When an operator elects to post a single bond in lieu of separate bonds previously posted on individual sites, the separate bonds may not be released until the new bond has been accepted by the department.

(6) Any person who is engaged in mining on July 3, 1974 need not file a bond or deposit cash, certificates of deposits or government securities with the department under this section to obtain the written authorization to commence mining under sub. (3).

History: 1973 c. 318; 1977 c. 421; 1979 c. 102 s. 236 (3); 1979 c. 176; 1995 a. 227 ss. 784, 994; Stats. 1995 s. 293.51; 2013 a. 1.

293.53 Review of permits; periodic reports. (1) (a) Eighteen months after the issuance of a prospecting permit, and annually thereafter until prospecting ceases, the department shall review the permit, reclamation plan and bond to ascertain adequacy, compliance with state or federal laws enacted after the issuance of the permit and technological currency. If the department after review determines that the plan should be modified or the bond amount changed, it shall notify the permit holder of the necessary modifications or changes. If the permit holder does not request a hearing within 30 days, the modifications or changes shall be deemed accepted.

(b) If the permit holder desires to modify the permit, an amended application shall be submitted to the department, which shall process the amendment as if it were an original application if the proposed modification substantially broadens or changes the scope of the original prospecting proposal.

(c) To the extent that testimony and evidence submitted at the original prospecting permit proceedings or from previous modification hearings is relevant to the issues of modification or granting or denial of the amendment, it may be adopted in the subsequent proceedings, subject to the opportunity for cross−examination and rebuttal, if not unduly repetitious.

(2) (a) The operator shall furnish the department with a report for each mining site every 12 months after issuance of the permit, within 30 days after completion of all mining at the mining site and within 30 days after completion of the mining plan and of the reclamation plan. The reports shall include, in addition to such other information as the department requires, such information and maps as the department deems necessary to evaluate the extent of mining and the reclamation accomplished during the previous calendar year.

(b) Annually, the department shall review the mining and reclamation plans and bonds, using the procedure specified under sub. (1).

(c) The department shall cancel the mining permit held by any operator who fails and refuses to submit reports required under this subsection.

History: 1995 a. 227 s. 767; 1995 a. 227 ss. 791, 994.

293.55 Modifications. (1) (a) *Application.* An operator at any time may apply for amendment or cancellation of a mining permit or for a change in the mining or reclamation plans for any mining operation which the operator owns or leases. The operator shall submit any application for the amendment, cancellation or change on a form provided by the department and 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.

(b) *Procedure.* 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 or reclamation plans in the same manner as an original application for a mining permit except as provided under par. (d).

(c) *Substantial changes.* The department shall determine if any change in the mining or reclamation plans is substantial and provide notice of its determination in the same manner as specified under s. 293.43 (3) (b) 1. to 3.

(d) *Notice.* The department shall provide notice of any modification which involves an increase or decrease in the area of a mining site or a substantial change in the mining or reclamation plan in the same manner as an original application for a mining permit under s. 293.43 (3). If 5 or more interested persons do not request a hearing in writing within 30 days of notice, no hearing is required on the modification. The notice shall include a statement to this effect.

(e) *Hearing.* If a hearing is held, testimony and exhibits from the hearing on either the original applications for a mining permit or from previous modification hearings which are relevant to the instant modification may be adopted, subject to cross−examination and rebuttal if not unduly repetitious.

(f) *Removal.* If the application is to cancel any or all of the unmined part of a mining site, the department shall ascertain, by inspection, if mining has occurred on the land. If the department finds that no mining has occurred, the department shall order release of the bond or the security posted on the land being removed from the permitted mining site and cancel or amend the operator's written authorization to conduct mining on the mining site. No land where mining has occurred may be removed from a permitted mining site or released from bond or security under this subsection, unless reclamation has been completed to the satisfaction of the department.

(2) If the department finds that because of changing conditions, including but not limited to changes in reclamation costs, reclamation technology, minimum standards under ss. 293.13 and 293.15 (1) to (12) or governmental land use plans, the reclamation plan for a mining site is no longer sufficient to reasonably provide for reclamation of the project site consistent with this chapter and any rules adopted under this chapter, it shall require the applicant to submit amended mining and reclamation plans which shall be processed in the same manner as an application for an original mining permit. The applicant shall be deemed to hold a temporary mining permit which shall be effective until the amended mining permit is issued or denied. The department shall review the mining and reclamation plans annually after the date of the mining permit issuance or previous review under this section.

History: 1995 a. 227 ss. 785, 787.

293.57 Successors. When one operator succeeds to the interest of another in an uncompleted mining operation by sale, assignment, lease or otherwise, the department shall release the first operator from the duties imposed upon the first operator by this chapter as to such operation if:

(1) Both operators have complied with the requirements of this chapter; and

(2) The successor operator discloses whether it has forfeited any performance security because of noncompliance with any prospecting or mining laws within the previous 20 years, posts any bond required under s. 293.51 and assumes all responsibilities of all applicable permits, licenses and approvals granted to the predecessor operator.

History: 1995 a. 227 s. 786.

293.59 Cessation of mining or reclamation. If there is a cessation of mining or reclamation which is not set forth in either the mining plan or the reclamation plan, the operator shall so notify the department within 48 hours and shall commence stabilization of the mining site according to rules established by the department. If the department determines after hearing that stabilization of the mining site is inadequate to protect the environment, the department shall order the operator to commence additional measures to protect the environment, including, if the

cessation is reasonably anticipated to extend for a protracted period of time, reclamation according to the reclamation plan or part of the reclamation plan. Usual and regular shutdown of operations on weekends, for maintenance or repair of equipment or facilities or for other customary reasons shall not constitute a cessation of mining.

History: 1977 c. 421; 1995 a. 227 s. 788; Stats. 1995 s. 293.59.

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

(2) Abandonment of mining does not occur:

(a) If 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) If the cessation of mining does not continue beyond the time period specified by the department. The time limit specified by the department may not exceed 5 years for a mining operation for which a permit is issued under s. 293.49 on or after May 19, 1984. The time limit specified by the department may not exceed 10 years for a mining operation for which a permit is issued under s. 293.49 before May 19, 1984;

(c) If the site is maintained in an environmentally stable manner, as determined by the department, during the cessation of mining; and

(d) If the reclamation of the site continues according to the reclamation plan during the cessation of mining to the extent possible.

History: 1983 a. 517 s. 1, 2; 1995 a. 227 s. 743; Stats. 1995 s. 293.61.

293.63 Certificate of completion, partial completion and bond release. (1) Upon the petition of the operator, but not less than 4 years after notification to the department by the operator of the completion of the reclamation plan, if the department finds after conducting a hearing that the operator has completed reclamation for any portion of the mining site in accordance with the reclamation plan and this chapter, 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.

(2) Upon the issuance of any certificate of completion under sub. (1) 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.

(3) Upon issuance of a certificate or certificates of completion of reclamation for the entire mining site, the department shall require that the operator 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. Where the mining site in the mining plan is less than 10 acres, the department may release the bond after issuance of the certificate under sub. (1).

(4) After 20 years after the issuance of a certificate or certificates of completion for the entire mining site, the department shall release the bond if the department finds that the reclamation plan has been complied with.

(5) The department shall, by rule, establish a procedure for release of reclamation bonds for prospecting sites similar to subs. (1) to (4), but with shorter time periods.

History: 1973 c. 318; 1977 c. 421; 1995 a. 227 s. 792; Stats. 1995 s. 293.63.

293.65 Withdrawal of surface waters; withdrawal of groundwater; damage claims. (1) SCOPE. This section governs the withdrawal of groundwaters or surface waters by persons engaged in prospecting or mining. Discharges of waters are subject to ch. 283, construction of necessary dams or other structures is subject to chs. 30 and 31 and construction of wells is subject to ch. 280, to the extent applicable.

(2) WITHDRAWAL OF SURFACE WATER; PERMIT REQUIRED. (a) Any person intending to withdraw surface waters for prospecting or mining shall apply to the department for a permit. The forms and procedures used under s. 30.18 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 withdrawal and the amount of surplus water, as defined in s. 30.01 (6d), if any, at the point of the proposed withdrawal.

(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 withdrawal;

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 withdrawal 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 withdrawal.

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

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

(f) Water withdrawn 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.

(h) Hearings on applications for withdrawal permits under this subsection 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. 293.37.

(i) If a hearing on the application for a permit is conducted as a part of a hearing under s. 293.43, the notice and hearing provisions in that section supersede the notice and hearing provisions of this subsection.

(3) WITHDRAWAL OF GROUNDWATER; DEWATERING; PERMIT REQUIREMENTS. (a) An approval under s. 281.34 is required to withdraw groundwater for prospecting or mining or to dewater mines if the capacity and rate of withdrawal of all wells involved in the withdrawal of groundwater or the dewatering of mines exceeds 100,000 gallons each day. A permit under s. 283.31 is required to discharge pollutants resulting from the dewatering of mines.

(b) The department may not issue an approval under s. 281.34 if the withdrawal of groundwater for prospecting or mining purposes or the dewatering of mines will result in the unreasonable detriment of public or private water supplies or the unreasonable detriment of public rights in the waters of the state. No withdrawal of groundwater for prospecting or mining purposes or the dewatering of mines may be made to the unreasonable detriment of public or private water supplies or the unreasonable detriment of public rights in the waters of the state.

(4) DAMAGE CLAIMS. (a) As used in this subsection, "person" does not include a town, village or city.

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

(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 the department concludes after the hearing that prospecting or mining is the principal cause of the damage to the private water supply, it shall issue an order to the operator requiring the provision of water to the person found to be damaged in a like quantity and quality to that previously obtained by the person and for a period of time that the water supply, if undamaged, would be expected to provide a beneficial use, requiring reimbursement to the town, village or city for the cost of supplying water under par. (c), if any, and requiring the payment of compensation for any damages unreasonably inflicted on the person as a result of damage to his or her water supply. The department shall order the payment of full compensatory damages up to $75,000 per claimant. The department shall issue its written findings and order within 60 days after the close of the hearing. Any judgment awarded in a subsequent action for damages to a private water supply caused by prospecting or mining shall be reduced by any award of compensatory damages previously made under this subsection for the same injury and paid by the operator. The dollar amount under this paragraph shall be changed annually according to the method under s. 70.375 (6). Pending the final decision on any appeal from an order issued under this paragraph, the operator shall provide water as ordered by the department. The existence of the relief under this section is not a bar to any other statutory or common law remedy for damages.

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

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

(g) This subsection applies to any claim for damages to a private water supply occurring after June 3, 1978.

(5) COSTS REIMBURSED. (a) Costs incurred by a town, village or city in monitoring the effects of prospecting or mining on surface water and groundwater resources, in providing water to persons claiming damage to private water supplies under sub. (4) (c), or in retaining legal counsel or technical consultants to represent and assist the town, village or city appearing at the hearing under sub. (4) (b) are reimbursable through the investment and local impact fund under s. 15.435.

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

(c) If an order under sub. (4) (d) requiring the operator to provide water or to reimburse the town, village or city for the cost of supplying water is appealed and is not upheld, the court shall order the cost incurred by the operator in providing water or in reimbursing the town, village or city pending the final decision to be reimbursed from the investment and local impact fund under s. 15.435.

History: 1977 c. 420; 1979 c. 221; 1981 c. 86 ss. 38 to 54, 64; Stats. 1981 s. 144.855; 1985 a. 60 s. 24; 1987 a. 374; 1993 a. 16; 1995 a. 227 s. 783; Stats. 1995 s. 293.65; 2003 a. 310; 2007 a. 227; 2013 a. 1.

SUBCHAPTER V

GENERAL PROVISIONS; ENFORCEMENT

293.81 Exploring, prospecting and mining without authorization. Any person who engages in exploration without a license shall forfeit not less than $100 nor more than $1,000 for each parcel as defined under s. 293.21 (1) (b) on which unlicensed exploration took place. Any person who authorizes or engages in prospecting without a prospecting permit or any operator who authorizes or engages in mining without a mining permit and written authorization to mine under s. 293.51 (3) shall forfeit all profits obtained from such illegal activities and not more than $10,000 for each day during which the mine was in operation. The operator shall be liable to the department for the full cost of reclaiming the affected area of land and any damages caused by the mining operation. Each day's violation of this section shall be deemed a separate offense. If the violator is a corporation, limited liability company, partnership or association, any officer, director, member, manager or partner who knowingly authorizes, supervises or contracts for exploration, prospecting or mining shall also be subject to the penalties of this section.

History: 1973 c. 318; 1977 c. 421; 1993 a. 112; 1995 a. 227 s. 789; Stats. 1995 s. 293.81.

293.83 Mining and reclamation; orders. (1) (a) *Violations; order or other action required.* If the department finds a violation of law or any unapproved deviation from the mining or reclamation plan at a mining site under a mining permit:

1. The department shall issue an order requiring the operator to comply with the statute, rule or plan within a specified time;

2. The department shall require the alleged violator to appear before the department for a hearing and answer the charges complained of; or

3. The department shall request the department of justice to initiate action under s. 293.87.

(b) *Effective dates of orders.* Any order issued under par. (a) 1. following a hearing takes effect immediately. Any other order takes effect 10 days after the date the order is served unless the person named in the order requests in writing a hearing before the department within the 10−day period.

(c) *Hearing on orders.* If no hearing on an order issued under par. (a) 1. was held and if the department receives a request for a hearing within 10 days after the date the order is served, the department shall provide due notice and hold a hearing.

(d) *Enforcement of orders.* The department shall cancel the mining permit for a mining site held by an operator who fails to comply with an order issued under par. (a) 1. The department shall inform the department of justice of the cancellation within 14 days. After receiving notice of the cancellation, the department of justice shall commence an action under s. 293.87.

(2) If reclamation of a mining site is not proceeding in accordance with the reclamation plan and the operator has not commenced to rectify deficiencies within the time specified in the order, or if the reclamation is not properly completed in confor-

mance with the reclamation plan within one year after completion or abandonment of mining on any segment of the mining site, or if the exploration license or prospecting or mining permit is revoked under s. 293.87 (2) and (3), excepting acts of God, such as adverse weather affecting grading, planting and growing conditions, the department, with the staff, equipment and material under its control, or by contract with others, shall take such actions as are necessary for the reclamation of mined areas. The operator shall be liable for the cost to the state of reclamation conducted under this section. Any operator who is exempted from filing a bond or depositing cash, certificates of deposits or government securities by s. 293.51 (6) shall not be liable for an amount greater than an amount specified by the department. The specified amount shall be equal to and determined in the same manner as the amount of the bond or other security otherwise required under s. 293.51 (1), assuming the operator had not been exempt from such filing or depositing.

(3) All other prospecting and mining permits held by an operator who refuses to reclaim a mining site in compliance with the reclamation plan after the completion of mining or after the cancellation of a mining permit shall be canceled. The department may not issue any prospecting or mining permits for that site or any other site in this state to an operator who refused to reclaim a mining site in compliance with the reclamation plan.

(4) (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 the continuance of mining constitutes an immediate and substantial threat to public health and safety or the environment.

(b) If no hearing on the stop order was held, the department shall schedule a hearing on the stop order, to be held within 5 days after issuance of the order and shall incorporate notice of the hearing in the copy of the order served upon the operator. The department also shall give notice to any other persons who previously requested notice of such proceedings.

(c) Within 72 hours after commencement of any 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 for an order extending the time, for not more than 10 days, within which the stop order shall 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.

History: 1973 c. 318; 1977 c. 421; 1981 c. 86; 1995 a. 227 s. 793; Stats. 1995 s. 293.83; 1997 a. 193, 252.

293.85 Cancellation of permit. The department may, after hearing, cancel:

(1) The prospecting permit for a prospecting site that is the site of a violation of this chapter.

(2) The mining permit for a mining site that is the site of a violation of this chapter.

(3) A mining or prospecting permit, if the permit holder intentionally made a false statement in the permit application or intentionally omitted information from the permit application which was material to permit issuance.

History: 1995 a. 227 s. 750, 994.

293.86 Visitorial powers of department. Any duly authorized officer, employee or representative of the department may enter and inspect any property, premises or place on or at which any prospecting or 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. 281, 285, 289 to 292, and 299, subchs. I and II of ch. 295, and rules adopted pursuant thereto. No person may refuse entry or access to any such 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. The department shall furnish to the prospector or operator, as indicated in the prospecting or mining permit, a written report setting forth all observations, relevant information and data which relate to compliance status.

History: 1995 a. 227 s. 404; 2013 a. 1.

293.87 Enforcement; penalties. (1) All orders issued, fines incurred, bond liabilities incurred or other violations committed under this chapter shall be enforced by the department of justice. The circuit court of Dane County or any other county where the violation occurred shall have jurisdiction to enforce this chapter or any orders issued or rules adopted thereunder, by injunctional or other appropriate relief.

(2) Any person who makes or causes to be made in an application or report required by this chapter a statement known to the person to be false or misleading in any material respect or who refuses to file an annual report under s. 293.53 (2) (a) or who refuses to submit information required by the prospecting or 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 subsection is repeated the permit may be revoked.

(3) Any person holding a prospecting or mining permit who violates this chapter or any order issued or rule adopted under this chapter shall forfeit not less than $10 nor more than $10,000 for each violation. Each day of violation is a separate offense. If the violations continue after an order to cease has been issued, the permit shall be revoked.

(4) (a) Except for the violations enumerated in subs. (2) and (3), any person who violates this chapter or any rule promulgated or any plan approval, license or special order issued under this chapter shall forfeit not less than $10 nor more than $5,000 for each violation. Each day of continued violation is a separate offense. While an order is suspended, stayed or enjoined, this penalty does not accrue.

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

History: 1973 c. 318; 1977 c. 421; 1995 a. 227 s. 796, 994; Stats. 1995 s. 293.87; 2001 a. 109; 2003 a. 309.

293.89 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 chapter.

(b) Against the department where there is alleged to be a failure of the department to perform any act or duty under this chapter which 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

2. If the department has commenced and is diligently prosecuting a civil or criminal action, but in any such action any citizen may intervene as a matter of right.

(b) Under sub. (1) (b) prior to 30 days after the plaintiff has given notice of such 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 chapter or any permits or orders issued under this chapter.

(4) Nothing in this section restricts any right which any person or class of persons may have under any other statute or common law.

History: 1977 c. 421; 1995 a. 227 s. 797; Stats. 1995 s. 293.89.

293.91 Nonconforming sites. (1) All prospectors and operators conducting mining operations in this state on July 3, 1974 shall submit to the department, within 90 days after that date, applications for prospecting permits or mining permits as provided in ss. 293.35 and 293.37. Sections 293.13 (1) (b) and 293.49 (2) shall not apply to such operators.

(2) Modification of existing prospecting and mining sites and of operating procedures to conform with this chapter and rules adopted under this chapter shall be accomplished as promptly as possible, but the department shall give special consideration to a site where it finds that the degree of necessary improvement is of such extent and expense that compliance cannot be accomplished.

History: 1973 c. 318; 1977 c. 421; 1995 a. 227 s. 794; Stats. 1995 s. 293.91.

293.93 Effect of other statutes. If there is a standard under other state or federal statutes or rules which specifically regulates in whole an activity also regulated under this chapter the other state or federal statutes or rules shall be the controlling standard. If the other state or federal statute or rule only specifically regulates the activity in part, it shall only be controlling as to that part.

History: 1977 c. 421; 1995 a. 227 s. 798; Stats. 1995 s. 293.93.

293.95 Review. Any person aggrieved by any decision of the department under this chapter may obtain its review under ch. 227.

History: 1973 c. 318; 1977 c. 421; 1995 a. 227 s. 799; Stats. 1995 s. 293.95.