

## CHAPTER 295

## NONMETALLIC MINING RECLAMATION; OIL AND GAS; FERROUS METALLIC MINING

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## SUBCHAPTER I

## NONMETALLIC MINING RECLAMATION

**Cross-reference:** See also ch. NR 135, Wis. adm. code.

**295.11 Definitions.** In this subchapter:

(1) “Department” means the department of natural resources.

(2) “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.

(3) “Nonmetallic mining” means all of the following:

(a) Operations or activities for the extraction from the earth for sale or use by the operator of mineral aggregates or nonmetallic minerals such as stone, sand, gravel, asbestos, beryl, clay, feldspar, peat, talc and topsoil, including such operations or activities as excavation, grading and dredging.

(b) On-site processes that are related to the extraction of mineral aggregates or nonmetallic minerals, such as stockpiling of materials, blending mineral aggregates or nonmetallic minerals with other mineral aggregates or nonmetallic minerals, crushing, screening, scalping and dewatering.

(4) “Nonmetallic mining reclamation” means the rehabilitation of a nonmetallic mining site to achieve a land use specified in an approved nonmetallic mining reclamation plan, including removal or reuse of nonmetallic mining refuse, grading of the nonmetallic mining site, removal, storage and replacement of topsoil, stabilization of soil conditions, reestablishment of vegetative cover, control of surface water and groundwater, prevention of environmental pollution and, if practical, restoration of plant, fish and wildlife habitat.

(5) “Nonmetallic mining refuse” means waste soil, rock, mineral and other natural material resulting from nonmetallic mining.

This term does not include marketable by-products resulting directly from or displaced by the nonmetallic mining.

(6) (a) “Nonmetallic mining site” means all of the following, except as provided in par. (b):

1. The location where nonmetallic mining is proposed or conducted.

2. Storage and processing areas that are in or contiguous to areas excavated for nonmetallic mining.

3. Areas where nonmetallic mining refuse is deposited.

4. Areas disturbed by activities such as the construction or improvement of private roads or haulageways for nonmetallic mining.

5. Areas where grading or regrading is necessary to conduct nonmetallic mining or to achieve a land use specified in an approved nonmetallic mining reclamation plan.

(b) “Nonmetallic mining site” does not include any area described in par. (a) 1. to 5. that is not used for nonmetallic mining or for purposes related to nonmetallic mining on or after October 14, 1997.

(7) “Operator” means any person who is engaged in, or who has applied for a permit to engage in, nonmetallic mining, whether individually, jointly or through subsidiaries, agents, employees, contractors or subcontractors.

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

(9) “Replacement of topsoil” means the replacement of the topsoil that was removed or disturbed by nonmetallic mining, or the provision of material to substitute for the topsoil that was removed or disturbed, for the purposes of providing adequate vegetative cover and stabilization of soil conditions to achieve a land use specified in an approved nonmetallic mining reclamation plan.

(10) “Solid waste” means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollu-

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tion control facility and other discarded or salvageable materials, including solid, liquid, semisolid, or contained gaseous materials resulting from industrial, commercial, mining and agricultural operations, and from community activities, but does not include solids or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under ch. 283, or source material, as defined in s. 254.31 (10), special nuclear material, as defined in s. 254.31 (11), or by-product material, as defined in s. 254.31 (1).

**History:** 1995 a. 227 s. 801, 995; 1997 a. 27; 1999 a. 9.

**Cross-reference:** See also s. NR 135.03, Wis. adm. code.

**295.12 Nonmetallic mining reclamation rules.**

**(1) RULES.** The department shall establish all of the following by rule:

(a) Uniform statewide standards for nonmetallic mining reclamation.

(b) Provisions for the administration of this subchapter by the department.

(c) Uniform statewide requirements and procedures for the administration of a nonmetallic mining reclamation program by any county, city, village or town.

**(2) STANDARDS.** (a) The department shall establish nonmetallic mining reclamation standards under sub. (1) (a) that are applicable to activities related to nonmetallic mining reclamation both during nonmetallic mining and after the termination of nonmetallic mining.

(d) Nonmetallic mining reclamation standards under sub. (1) (a) shall be designed to encourage the development and reclamation of nonmetallic mining sites in existence on October 14, 1997, and shall include requirements necessary to achieve a land use specified in an approved nonmetallic mining reclamation plan, including requirements related to the removal or reuse of nonmetallic mining refuse, removal of roads no longer in use, stabilization of soil conditions, grading the nonmetallic mining site, replacement of topsoil, establishment of vegetative cover, control of surface water flow and groundwater withdrawal, prevention of environmental pollution and, if practical, protection or restoration of plant, fish and wildlife habitat.

**(3) PROGRAM REQUIREMENTS.** The rules required by sub. (1) (c) shall include all of the following:

(c) A requirement for the operator to submit a nonmetallic mining reclamation plan including maps, information about the nonmetallic mining site, a proposed land use for which the nonmetallic mining site will be rehabilitated after the nonmetallic mining is completed, a description of the proposed nonmetallic mining reclamation including methods and procedures to be used and a proposed timetable for completion of various stages of the nonmetallic mining reclamation. The reclamation plan shall be designed to ensure successful nonmetallic mining reclamation consistent with the standards under sub. (1) (a), to minimize the costs of nonmetallic mining reclamation and, to the extent practicable, to minimize the area disturbed by nonmetallic mining at one time and provide for nonmetallic mining reclamation of portions of the nonmetallic mining site while nonmetallic mining continues on other portions of the nonmetallic mining site.

(d) A requirement for the operator to obtain a nonmetallic mining reclamation permit in order to engage in nonmetallic mining or in nonmetallic mining reclamation; a requirement for a permit term equal to the period during which nonmetallic mining is conducted; procedures for the issuance, modification, suspension or revocation of the reclamation permit; a requirement for public notice and an opportunity for a public informational hearing before issuance or modification of a reclamation permit for a nonmetallic mine that is not in operation before the date specified under par. (dm); notwithstanding ss. 68.001, 68.03 (8) and (9), 68.06 and 68.10 (1) (b), a right for any person who meets the requirements of s. 227.42 (1) to a contested case hearing under s. 68.11 on the issuance, modification or denial of a reclamation per-

mit and for a person holding a reclamation permit to a contested case hearing under s. 68.11 to contest an order issued under s. 295.19 (1); a requirement for cooperative issuance of a single reclamation permit if more than one county or municipality has jurisdiction over the nonmetallic mining site; and a requirement that action approving, denying or conditionally approving a reclamation permit be taken within 90 days after receipt of the reclamation plan or, if a public informational hearing is held, within 60 days after the close of the public hearing.

(de) Except as provided in par. (dm), a prohibition on issuance of a reclamation permit before approval of the nonmetallic mining reclamation plan under par. (c) by the county, city, village or town operating the program.

(dm) A requirement that, when an operator submits an application for a reclamation permit for a nonmetallic mine that is operating before a date specified by the department in the rule, the county, city, village or town issue the permit on the condition that the operator submit a nonmetallic mining reclamation plan under par. (c) that complies with the rules under par. (c) by a deadline established by the county, city, village or town. The deadline shall be from 1 to 3 years after the date of application.

(ds) A requirement that the county, city, village or town issue a reclamation permit on the condition that the operator submit proof of financial responsibility in accordance with par. (c) within a time specified by the rule.

(e) 1. A provision imposing annual fees as determined by the department for the administration of s. 295.18 and imposing annual fees as determined by the county, city, village or town that shall, as closely as possible, equal the cost of all of the following:

a. The examination and approval of nonmetallic mining reclamation plans.

b. The inspection of nonmetallic mining reclamation.

2. A prohibition on basing the fees under subd. 1. on any portion of a nonmetallic mining site that has been reclaimed when the fees are imposed.

(f) A requirement for an expedited review process if the applicant pays an additional fee as determined by the county, city, village or town under par. (e) or if the applicant requires a permit under this subchapter to perform services under contract with a city, village, town, county or other governmental unit.

(g) A requirement for the operator to provide a bond, deposit of funds, established escrow account, letter of credit, demonstration of financial responsibility by meeting net worth requirements or other form of financial assurance conditioned on the faithful performance of all of the requirements of rules promulgated under this section. The rules shall authorize a county, city, village or town to reduce the amount of financial assurance that an operator is required to provide based on nonmetallic mining reclamation that the operator performs while the nonmetallic mine continues to operate.

(h) Provisions to restrict, regulate or require certain activities in connection with nonmetallic mining reclamation in order to ensure compliance with nonmetallic mining reclamation standards, nonmetallic mining reclamation plans, financial assurance requirements and other requirements of the rules promulgated under this section.

(i) A prohibition on nonmetallic mining if a proposed nonmetallic mining site cannot be reclaimed in compliance with the nonmetallic mining reclamation standards under sub. (1) (a).

(k) A provision for orders and penalties consistent with s. 295.19.

(L) Criteria and procedures for approving alternatives to the requirements of the nonmetallic mining reclamation standards under sub. (1) (a).

**History:** 1995 a. 227 s. 802; 1997 a. 27.

**Cross-reference:** See also ch. NR 135, Wis. adm. code.

**295.13 Mandatory enactment and administration of ordinance by counties. (1) MANDATORY ENACTMENT AND**

ADMINISTRATION OF ORDINANCE. (a) *Requirement to enact and administer ordinance.* Within 6 months after the effective date of the rules under s. 295.12 (1), each county shall enact and begin to administer a nonmetallic mining reclamation ordinance that complies with those rules, except as provided in subs. (2) and (2m). This ordinance may be enacted separately from an ordinance enacted under s. 59.69.

(2) **PREEXISTING COUNTY ORDINANCES.** Any county with a nonmetallic mining reclamation ordinance in effect on June 1, 1993, may maintain and administer that ordinance if the department reviews the existing ordinance and determines that it is at least as restrictive as the rules under s. 295.12 (1). If the department determines that any part of the existing ordinance is not as restrictive as the rules under s. 295.12 (1), the county may amend the ordinance and submit the amended ordinance to the department for a determination of whether the amended ordinance is as restrictive as those rules. After obtaining the determination of the department that an ordinance is as restrictive as the rules under s. 295.12 (1), the county may not amend the ordinance to make it more restrictive. A county may not amend a nonmetallic mining reclamation ordinance to make it less restrictive than the requirements in the rules under s. 295.12 (1).

(2m) **OPTION FOR CERTAIN COUNTIES.** In a county with a population of 700,000 or more, if every city, village and town that contains a nonmetallic mining site has enacted an ordinance under s. 295.14 by the first day of the 4th month beginning after the effective date of the rules promulgated under s. 295.12 (1), the county is not required to enact an ordinance under this section.

(3) **APPLICABILITY OF COUNTY ORDINANCE.** An ordinance under sub. (1) or (2) applies to the entire area of the county, except for cities, villages and towns that enact and administer a nonmetallic mining reclamation ordinance under s. 295.14.

(4) **CREDITING OF FINANCIAL ASSURANCE.** If a nonmetallic mining site is subject to a county ordinance under sub. (1) or (2) and the city, village, or town in which a nonmetallic mining site is located required the operator of the mining site to provide financial assurance for nonmetallic mining reclamation of the nonmetallic mining site, the county shall credit the value of the financial assurance provided to the city, village, or town against the amount of financial assurance that the operator is required to provide under the county ordinance.

**History:** 1995 a. 227 s. 803; 1997 a. 27, 35; 2003 a. 308.

#### 295.14 Authority to enact and administer ordinance.

(1) **AUTHORITY TO ENACT AND ADMINISTER ORDINANCE.** A city, village or town may enact and administer a nonmetallic mining reclamation ordinance, that complies with the rules under s. 295.12 (1). Except as provided in sub. (2), a city, village or town may not administer a nonmetallic mining reclamation ordinance that does not comply with the rules under s. 295.12 (1).

(2) **PREEXISTING MUNICIPAL ORDINANCES.** A city, village or town with a nonmetallic mining reclamation ordinance in effect on June 1, 1993, may maintain and administer that ordinance if the department reviews the existing ordinance and determines that it is at least as restrictive as the rules under s. 295.12 (1). If the department determines that any part of the existing ordinance is not as restrictive as the rules under s. 295.12 (1), the city, village or town may amend the ordinance and submit the amended ordinance to the department for a determination of whether the amended ordinance is as restrictive as those rules. After obtaining the determination of the department that an ordinance is as restrictive as the rules under s. 295.12 (1), the city, village or town may not amend the ordinance to make it more restrictive. A city, village or town may not amend a nonmetallic mining reclamation ordinance to make it less restrictive than the rules under s. 295.12 (1).

**History:** 1995 a. 227 s. 804; 1997 a. 27.

**295.15 Fees.** A county or a city, village or town with a nonmetallic mining reclamation ordinance shall collect the fee estab-

lished under s. 295.12 (3) (e) and shall forward the state's portion of the fee to the department within 90 days after collecting the fee. A county or a city, village or town with a nonmetallic mining reclamation ordinance shall use the revenues from its portion of the fees only for the administration of the nonmetallic mining reclamation ordinance.

**History:** 1995 a. 227 s. 805.

#### 295.16 Applicability of nonmetallic mining reclamation requirements.

(1) **NONMETALLIC MINING FOR TRANSPORTATION PURPOSES.** (a) Notwithstanding par. (b), any requirements of the department of transportation concerning the restoration of a nonmetallic mining site shall be consistent with the nonmetallic mining reclamation standards established under s. 295.12 (1) (a).

(b) A nonmetallic mining ordinance and the rules promulgated under s. 295.12 (1) do not apply to nonmetallic mining to obtain stone, soil, sand or gravel for the construction, maintenance or repair of a highway, railroad, airport facility or any other transportation facility, if the nonmetallic mining is subject to the requirements of the department of transportation concerning the restoration of the nonmetallic mining site.

(c) The requirements for a nonmetallic mining reclamation plan under s. 295.12 (3) (c), for public notice and an opportunity for a public informational hearing under s. 295.12 (3) (d) and for proof of financial responsibility under s. 295.12 (3) (ds) do not apply to nonmetallic mining to obtain stone, soil, sand or gravel for the construction, maintenance or repair of a highway, railroad, airport facility, or any other transportation facility, conducted under contract with a municipality, as defined in s. 299.01 (8), if the contract requires the nonmetallic mining site to be reclaimed in accordance with the requirements of the department of transportation concerning the restoration of nonmetallic mining sites.

(2) **NONMETALLIC MINING IN OR NEAR NAVIGABLE WATERWAYS.** A nonmetallic mining reclamation ordinance, and requirements of this subchapter other than the standards established under s. 295.12 (1) (a), do not apply to any nonmetallic mining site or portion of a nonmetallic mining site that is subject to permit and reclamation requirements of the department under ss. 30.19, 30.195, 30.20, 30.30 and 30.31. The nonmetallic mining standards established under s. 295.12 (1) (a) do apply to a nonmetallic mining site that is subject to permit and reclamation requirements of the department under ss. 30.19, 30.195, 30.20, 30.30 and 30.31.

(3) **PUBLIC NONMETALLIC MINING.** (a) The standards established under s. 295.12 (1) (a) and, except as provided in par. (b), a nonmetallic mining reclamation ordinance apply to nonmetallic mining conducted by or on behalf of the state or a municipality. Notwithstanding s. 13.48 (13), nonmetallic mining operated for the benefit or use of the state or any state agency, board, commission or department shall comply with the permit requirements and nonmetallic mining reclamation standards of any applicable nonmetallic mining reclamation ordinance.

(b) The financial assurance requirements of a nonmetallic mining reclamation ordinance do not apply to nonmetallic mining conducted by the state or a municipality.

(4) **EXEMPT ACTIVITIES.** A nonmetallic mining reclamation ordinance and the standards established under s. 295.12 (1) (a) do not apply to the following activities:

(a) Excavations or grading by a person solely for domestic or farm use at his or her residence or farm.

(b) Excavations or grading conducted for the construction, reconstruction, maintenance or repair of a highway, railroad, airport facility or any other transportation facility if the excavation or grading is within the property boundaries of the transportation facility.

(c) Grading conducted for preparing a construction site or restoring land following a flood or natural disaster.

(d) Excavations for building construction purposes.

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(e) Nonmetallic mining sites of less than one acre.

(f) Any mining operation, the reclamation of which is required in a permit obtained under ch. 293 or subch. III of ch. 295.

(g) Any activities required to prepare, operate or close a solid waste disposal facility under subchs. II to IV of ch. 289 or a hazardous waste disposal facility under ch. 291 that are conducted on the property on which the facility is located, but a nonmetallic mining reclamation ordinance and the standards established under s. 295.12 (1) (a) apply to activities related to solid waste or hazardous waste disposal that are conducted at a nonmetallic mining site that is not on the property on which the solid waste or hazardous waste disposal facility is located such as activities to obtain nonmetallic minerals to be used for lining, capping, covering or constructing berms, dikes or roads.

(i) Dredging for navigational purposes, to construct or maintain farm drainage ditches and for the remediation of environmental contamination and the disposal of spoils from that dredging.

(j) Removal of material from the bed of Lake Michigan or Lake Superior by a public utility pursuant to a permit under s. 30.21.

**History:** 1995 a. 227 s. 806; 1997 a. 27; 1999 a. 9; 2013 a. 1.

**295.17 Inspection.** (1) An agent of a county, city, village or town that has a nonmetallic mining reclamation ordinance that complies with s. 295.13 or 295.14 may enter a nonmetallic mining site in the performance of his or her official duties at any reasonable time in order to inspect those premises and to ascertain compliance with this subchapter. No person may refuse entry or access to an agent of the county, city, village or town who requests entry for purposes of inspection, and who presents appropriate credentials. No person may obstruct, hamper or interfere with the inspection. The county, city, village or town shall furnish to the operator any report prepared by the county, city, village or town regarding the inspection.

(2) Any duly authorized officer, employee or representative of the department may enter and inspect any property, premises or place on or at which any nonmetallic mining operation 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 293 and 299 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 nonmetallic mining site operator a written report setting forth all observations, relevant information and data which relate to compliance status.

**History:** 1995 a. 227 s. 808, 995; 1997 a. 27.

**295.18 Department review.** (1) **REVIEW.** The department shall periodically review the nonmetallic mining reclamation program under this subchapter of each county and each city, village or town that exercises jurisdiction under this subchapter to ascertain compliance with this subchapter and the rules promulgated under this subchapter. This review shall include all of the following:

(a) A performance audit of the nonmetallic mining reclamation program of the county, city, village or town.

(b) Verification, by on-site inspections, of county, city, village or town compliance with this subchapter and rules promulgated under this subchapter.

(c) A written determination by the department, issued at least once every 10 years, of whether the county, city, village or town is in compliance with this subchapter and rules promulgated under this subchapter.

(2) **NONCOMPLIANCE; HEARING.** If the department determines under sub. (1) that a county, city, village or town is not in compliance with this subchapter and rules promulgated under this subchapter, the department shall notify the county, city, village or town of that determination. If the department decides to pursue the matter, it shall conduct a hearing, after 30 days' notice, in the

county, city, village or town. As soon as practicable after the hearing, the department shall issue a written decision regarding compliance with this subchapter and rules promulgated under this subchapter.

(3) **MUNICIPAL NONCOMPLIANCE; CONSEQUENCES.** If the department determines under sub. (2) that a city, village or town is not in compliance with this subchapter and rules promulgated under this subchapter, the city, village or town may not administer the nonmetallic mining reclamation program. The county nonmetallic mining reclamation ordinance applies to that city, village or town and the county shall administer the nonmetallic mining reclamation program in that city, village or town. The city, village or town may apply to the department to resume its authority to administer the nonmetallic mining reclamation program, but not sooner than 3 years after the department issues a decision under sub. (2). The department, after a hearing, may approve the city, village or town request to administer the nonmetallic mining reclamation program if the city, village or town demonstrates the capacity to comply with this subchapter and rules promulgated under this subchapter.

(4) **COUNTY NONCOMPLIANCE; CONSEQUENCES.** If the department issues a written decision under sub. (2) that a county is not in compliance with this subchapter and rules promulgated under this subchapter, the department shall administer the nonmetallic mining reclamation program in that county, including the collection of fees, review and approval of plans, inspection of nonmetallic mining sites and enforcement, except that the department may not administer the nonmetallic mining reclamation program in a city, village or town that enacted an ordinance that complies with s. 295.14 before the department made its determination under sub. (2) and is administering that ordinance. The county may apply to the department at any time to resume administration of the nonmetallic mining reclamation program. The department, after a hearing, may approve the county request to administer the nonmetallic mining reclamation program if the county demonstrates the capacity to comply with this subchapter and rules promulgated under this subchapter. No city, village or town may enact an ordinance for and begin to implement a nonmetallic mining reclamation program during the time that the department administers the nonmetallic mining reclamation program in the county in which the city, village or town is located.

**History:** 1995 a. 227 s. 809; 1997 a. 27.

**295.19 Enforcement; remedies; penalties.** (1) **ORDERS; ENFORCEMENT.** The governing body of a county, city, village or town that has a nonmetallic mining reclamation ordinance that complies with s. 295.13 or 295.14, or an agent designated by that governing body, may do any of the following:

(a) Issue an order requiring an operator to comply with, or to cease violating, this subchapter, rules promulgated under this subchapter, the nonmetallic mining reclamation ordinance, a nonmetallic mining reclamation permit or an approved nonmetallic mining reclamation plan.

(b) Issue an order suspending or revoking a nonmetallic mining reclamation permit as authorized in the nonmetallic mining reclamation ordinance.

(c) Issue an order directing an operator to immediately cease an activity regulated under this subchapter, under rules promulgated under this subchapter or under the nonmetallic mining reclamation ordinance until the necessary nonmetallic mining reclamation plan approval is obtained.

(d) Submit orders to abate violations of the nonmetallic mining reclamation ordinance to the district attorney, the corporation counsel, the municipal attorney or the attorney general for enforcement. The district attorney, the corporation counsel, the municipal attorney or the attorney general may enforce those orders.

(2) **DEPARTMENT ORDERS.** The department may issue an order directing the immediate cessation of an activity regulated under this subchapter until the nonmetallic mining site complies with the

nonmetallic mining reclamation standards established under s. 295.12 (1) (a).

(3) PENALTIES. (a) Any person who violates the rules promulgated under s. 295.12 (1) (a) or an order issued under sub. (2) may be required to forfeit not less than \$25 nor more than \$1,000 for each violation. Each day of continued violation is a separate offense. While an order issued under this subchapter is suspended, stayed or enjoined, this penalty does not accrue.

(b) 1. Except for the violations enumerated in par. (a), any person who violates this subchapter or any rule promulgated or any plan approval order issued under this subchapter 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.

2. In addition to the penalties provided under subd. 1., 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 subdivision. 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: 1995 a. 227 s. 810, 995; 1997 a. 27; 2001 a. 109; 2003 a. 309.

**295.20 Preservation of marketable nonmetallic mineral deposits.** (1) REGISTRATION. (a) Beginning on October 14, 1997, a landowner may register land owned by that person under this section if all of the following apply:

1. The land has a marketable nonmetallic mineral deposit, as evidenced by the certification of a professional geologist licensed under ch. 470 or a professional engineer registered under s. 443.04 and by any other information required under sub. (4).

2. The landowner notifies each county, city, village and town that has authority to zone the land of his or her intent to register the marketable nonmetallic mineral deposit. The notification shall include the evidence required under subd. 1.

3. Nonmetallic mining is a permitted or conditional use for the land that is proposed to be registered under any zoning that is in effect on the day on which the landowner makes the notification under subd. 2.

(b) A governmental unit that receives notification under par. (a) 2. may contest registration under this subsection, in the circuit court for a county in which the land is located, on the grounds that there is not a marketable nonmetallic mineral deposit on the land or that par. (a) 3. is not satisfied. The governmental unit has the burden of proving, by a preponderance of the evidence, that one of those grounds exists.

(c) The registration shall delineate the nonmetallic mineral deposit and is valid only if recorded in the office of the register of deeds in each county in which the nonmetallic mineral deposit is located.

(d) Except as provided under sub. (4) (d), a registration under this subsection lasts for 10 years and may be renewed as provided in the rules under sub. (4) (e).

(1m) PREVIOUSLY REGISTERED DEPOSITS. Land registered under sub. (1) before October 14, 1997, shall remain registered for 10 years after the initial date of registration. The registration may be renewed as provided under sub. (4) (f).

(2) LIMITATION ON ZONING. (a) A county, city, village or town may not by zoning, rezoning, granting a variance, or other official action or inaction, permit the erection of permanent structures upon, or otherwise permit the use of, any land, while a registration under this section is in effect for that land, in a manner that would permanently interfere with the present or future extraction of the nonmetallic mineral deposit that is located on the land.

(b) 1. A county, city, village or town may enact an ordinance changing the zoning of land that is registered under this section if mining has not begun on any portion of the registered land and the

ordinance is necessary to implement a master plan, comprehensive plan or land use plan that was adopted at least one year before the rezoning.

2. A zoning change authorized by subd. 1. does not apply to the registered land during the registration period in effect when the zoning ordinance takes effect or during the 10-year renewal period under sub. (4) (e) or (f) if the land is eligible for that renewal.

3. A zoning change authorized by subd. 1. prevents the registration of the land after the period under subd. 2.

(3) EXCEPTIONS. Nothing in this section shall be construed to prohibit the following:

(a) A use of land permissible under a zoning ordinance in effect on the day before a mineral deposit is registered under sub. (1).

(b) Acquisition of a registered nonmetallic mineral deposit or registered buffer area by a county, city, village or town or other governmental unit for a public purpose.

(4) RULES. The department shall promulgate rules that contain all of the following:

(a) A definition of “marketable nonmetallic mineral deposit”.

(b) Procedures and requirements for registering land containing a marketable nonmetallic mineral deposit under sub. (1).

(c) Procedures and criteria for objecting to the proposed registration of land containing a nonmetallic mineral deposit.

(d) Procedures for terminating the registration of land under this section when there is no longer a marketable nonmetallic mineral deposit on the land.

(e) Procedures and criteria for renewing the registration of land under sub. (1). The rules shall allow renewal for one 10-year period without review of the marketability of the deposit or the zoning of the land, except that, if mining has begun on any portion of the registered land, the rules shall allow the person to renew the registration for an unlimited number of 10-year periods as long as active mining continues.

(f) Procedures and criteria for renewing the registration of land under sub. (1m).

(g) Criteria under which contiguous parcels of land owned by the same person and containing the same marketable nonmetallic mineral deposit may be included in one registration.

History: 1995 a. 227 s. 811; 1997 a. 27, 300.

## SUBCHAPTER II

### OIL AND GAS

**295.31 Definitions; oil and gas.** In this subchapter:

(1) “Department” means the department of natural resources.

(2) “Exploration” means the on-site geologic examination from the surface of an area by core, rotary, percussion or other drilling for the purpose of searching for oil or gas or establishing the nature and extent of a known oil or gas deposit and includes associated activities such as clearing and preparing sites or constructing roads for drilling. For the purposes of the definition of exploration, geologic examination does not include drill holes constructed for the purpose of collecting soil samples or for determining geologic information by seismic methods.

(3) “Gas” means naturally occurring gaseous hydrocarbons.

(4) “Oil” means naturally occurring liquid hydrocarbons.

(6) “Principal shareholder” means any person that owns at least 10 percent of the beneficial interest of another person.

(7) “Production” means the process involved in the extraction of oil or gas for commercial purposes, and the construction of roads, construction, testing and completion of wells and installation and operation of pipelines, tanks and other necessary equipment for that extraction.

(7m) “Other waste” includes all other substances, except industrial wastes, as defined in s. 281.01 (5), and sewage, as

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defined in s. 281.01 (13), which pollute any of the surface waters of the state. The term also includes unnecessary siltation resulting from operations such as the washing of vegetables or raw food products, gravel washing, stripping of lands for development of subdivisions, highways, quarries and gravel pits, mine drainage, cleaning of vehicles or barges or gross neglect of land erosion.

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

(8m) “Related person” means any person that owns or operates an oil or gas exploration or production site in the United States and that is one of the following when an application for an oil or gas exploration or production license 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.

(9) “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.

**History:** 1991 a. 262; 1995 a. 227 s. 813, 995; Stats. 1995 s. 295.31.

**295.33 Oil and gas exploration and production. (1)** No person may engage in the exploration for oil or gas without a license from the department.

(2) No person may engage in the production of oil or gas without a license from the department.

(3) No person may commit waste in the exploration for or in the production of oil or gas.

(4) No person may conduct drilling operations for the exploration for or production of oil or gas if the drilling extends beneath the beds of the Great Lakes or bays or harbors that are adjacent to the Great Lakes, notwithstanding s. 30.20 (2) (b).

(5) No person holding an oil or gas exploration or production license may engage a general contractor or affiliate to operate an oil or gas exploration or production site if the general contractor or affiliate has 2 or more felony convictions for violation of a law for the protection of the natural environment arising out of the operation of an oil or gas exploration or production site in the United States within 10 years before the issuance of the person’s license, 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:** 1991 a. 262; 1995 a. 227 s. 814; Stats. 1995 s. 295.33; 2001 a. 16.

**295.35 Departmental powers and duties; oil and gas.**

(1) The department shall establish a licensing procedure for oil and gas exploration and production in this state. The procedure shall require the applicant to do all of the following:

(a) Submit any information that the department considers necessary to determine whether the applicant is competent to conduct oil and gas exploration, production and site reclamation and to determine whether the requirements of sub. (5) are satisfied.

(b) Submit any information necessary for the department to determine whether the proposed exploration, production and site reclamation will comply with this subchapter and rules promulgated under this subchapter.

(c) Pay fees to cover the costs of plan review and licensing.

(d) File with the department a bond conditioned on the faithful performance of all of the requirements of this subchapter and rules promulgated under this subchapter.

(2) The department shall promulgate rules to protect the waters of the state, air, soil, plants, fish and wildlife from the adverse effects of oil and gas exploration and production, including rules relating to all of the following:

(a) Location, construction, operation and maintenance of wells and ancillary facilities to provide the greatest practicable protection to the environment.

(b) Disposal of waste liquids encountered or produced in oil and gas exploration and production.

(c) Plugging of wells and abandonment and reclamation of well sites and mud pits and all other ancillary facilities to provide long-term environmental protection.

(d) Reclamation of affected land when exploration and production are completed.

(e) Competence of an applicant to conduct oil and gas exploration, production and site reclamation.

(3) The department shall promulgate rules to prevent waste in the exploration for or the production of oil and gas, including rules related to all of the following:

(a) Prevention of the escape of oil or gas from one stratum to another, and water or brine into oil and gas strata.

(b) Prevention of the premature or irregular encroachment of water that reduces the total recovery of oil and gas.

(c) Prevention of fires, explosions, blowouts, seepage or caving.

(d) Secondary recovery methods of oil or gas.

(e) Spacing of wells.

(f) Regulation of well production, including the allocation of allowable production in any field or pool.

(g) Operation of wells with efficient ratios of gas to oil.

(5) The department may not issue a license for oil or gas exploration or production if it finds any of the following:

(a) That the applicant has violated and continues to fail to comply with this subchapter or any rule promulgated under this subchapter.

(b) That the applicant, a principal shareholder of the applicant or a related person has, within 10 years before the application is submitted, forfeited a reclamation bond for oil or gas exploration or production that was posted in accordance with a permit, license or other approval for an oil or gas exploration or production site 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.

(c) That the applicant, a related person or an officer or director of the applicant has, within 10 years before the application is submitted, 2 or more felony convictions for violations of laws for the protection of the natural environment arising out of the operation of an oil or gas exploration or production site in the United States, unless one of the following applies:

1. The court ordered the person convicted, as part of the sentence or as a condition of probation, to engage in activities to remedy the violation and the person has complied with that order.

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 license application under sub. (1) a plan to prevent the occurrence in this state of events similar to the events that directly resulted in the convictions.

(cm) That the applicant, a related person or an officer or director of the applicant or a related person has, within 10 years before the application is submitted, been required to forfeit more than \$10,000 for a violation of a law for the protection of the natural environment arising out of the operation of an oil and gas exploration or production site in the United States, unless one of the following applies:

1. The court ordered the person who was required to forfeit more than \$10,000 to engage in activities to remedy the violation and the person has complied with that order.

2. The person who was required to forfeit more than \$10,000 is a related person with whom the applicant has terminated its relationship.

3. The applicant included in the license application a plan to prevent the occurrence in this state of events similar to the events that directly resulted in the forfeiture.

(d) That the applicant or a related person has, within 10 years before the application is submitted, declared bankruptcy or undergone dissolution that resulted in the failure to reclaim an oil or gas exploration or production 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.

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

(6) The department may not deny a license for oil or gas exploration or production under sub. (5) 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.

**History:** 1991 a. 262; 1995 a. 227 s. 815; Stats. 1995 s. 295.35.

**295.37 Penalties; oil and gas.** (1) Any person who makes or causes to be made in an application or report required under this subchapter a statement known to the person to be false or misleading in any material respect or who refuses to submit information required by the department under this subchapter may be fined not less than \$1,000 nor more than \$5,000.

(2) Any person who violates this subchapter or any order issued or rule promulgated under this subchapter may be required to forfeit not less than \$1,000 nor more than \$10,000 for each violation. Each day of violation is a separate offense.

(3) (a) If a person makes or causes to be made in an application or report required under this subchapter a statement known to the person to be false or misleading and that statement is material to the issuance of an exploration or production license, the department may revoke the license. If a person holding an exploration or production license repeatedly makes or causes to be made in an application or report required under this subchapter a statement known to the person to be false or misleading in any material respect or refuses to submit information required by the department under this subchapter, the department may revoke the license.

(b) If a person holding an exploration or production license continues to violate this subchapter after the department has issued an order to cease those violations, the department shall revoke the license.

(4) Any oil or gas produced in violation of this subchapter or any order issued or rule promulgated under this subchapter, or any product manufactured from that oil or gas, is subject to confiscation. The department may seize that oil, gas or products and request the department of justice to commence an action to confiscate the oil, gas or products.

**History:** 1991 a. 262; 1995 a. 227 s. 816; Stats. 1995 s. 295.37.

### SUBCHAPTER III

#### FERROUS METALLIC MINING

**295.40 Legislative findings.** The legislature finds all of the following:

(1) That attracting and aiding new mining enterprises and expanding the mining industry in Wisconsin is part of Wisconsin public policy.

(2) That mining for nonferrous metallic minerals is different from mining for ferrous minerals because in mining for nonferrous metallic minerals, sulfide minerals react, when exposed to air and water, to form acid drainage.

(3) That if the mineral products and waste materials associated with nonferrous metallic sulfide mining operations are not properly managed and controlled, they can cause significant damage to the environment, affect human health, and degrade the quality of life of the affected community.

(4) That the special concerns surrounding nonferrous metallic mining warrant more stringent regulatory measures than those warranted for ferrous mineral mining operations.

(5) That the provisions in ch. 293, 2011 stats., are a deterrent to ferrous mineral mining in this state and are not necessary to ensure that ferrous mineral mining will be conducted in an environmentally sound manner.

(6) That simplifying and shortening the permitting process for ferrous mineral mining when compared to nonferrous metallic mineral mining, as Minnesota and Michigan have done, will encourage ferrous mineral mining in Wisconsin and create jobs and generate resources for the state.

(7) That because of the fixed location of ferrous mineral deposits in the state, it is probable that mining those deposits will result in adverse impacts to wetlands and that, therefore, the use of wetlands for bulk sampling and mining activities, including the disposal or storage of mining wastes or materials, or the use of other lands for mining activities that would have a significant adverse impact on wetlands, is presumed to be necessary.

**History:** 2013 a. 1.

**295.41 Definitions.** In this subchapter:

(1) “Air pollution” means the presence in the atmosphere of one or more air contaminants in such quantities and of such duration as is injurious to human health or welfare, animal or plant life, or property.

(2) “Applicant” means a person who applies for, or is preparing to apply for, an exploration license or a mining permit or who files a bulk sampling plan.

(3) (a) “Approval” means, except as provided in par. (b), any permit, license, certification, contract, or other authorization that the department issues, or any other action by the department, that is required for exploration, to engage in bulk sampling at a bulk sampling site, or to construct or operate a mining site, including any action required for any of the following:

1. The withdrawal of land entered as county forest land under s. 28.11 and any modification of, or amendment to, a county forest land use plan necessitated by the withdrawal of the land.

2. The withdrawal of land entered as forest cropland under s. 77.10.

3. The withdrawal of land designated as managed forest land under subch. VI of ch. 77 and any modification of, or amendment to, a managed forest land management plan necessitated by the withdrawal of the land.

(b) “Approval” does not include a permit, license, certification, contract, or other authorization related to the construction of any new plant, equipment, property, or facility for the production, transmission, delivery, or furnishing of power.

(4) “Background water quality” means the concentration of a substance in groundwater as determined by monitoring at locations that will not be affected by a mining site.

(5) “Baseline water quality” means the concentration of a substance in groundwater or surface water as determined by monitoring before mining operations begin.

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(6) “Borrow materials” means soil or rock used in construction or reclamation activities.

(7) “Bulk sampling” means excavating in a potential mining site by removing less than 10,000 tons of material for the purposes of obtaining site-specific data to assess the quality and quantity of the ferrous mineral deposits and of collecting data from and analyzing the excavated materials in order to prepare the application for a mining permit or for any other approval.

(8) “Closing” means the time at which a mining waste site ceases to accept mining wastes.

(9) “Closure” means the actions taken by an operator to prepare a mining waste site for long-term care and to make it suitable for other uses.

(10) “Construct” means to engage in a program of on-site construction, including site clearing, grading, dredging, or filling of land.

(11) “Department” means the department of natural resources.

(12) “Disposal” means the discharge, deposit, injection, dumping, or placing of a substance into or on any land or water.

(14) “Environmental impact report” means a document submitted by a person seeking a mining permit that discloses environmental impacts of the proposed mining.

(15) “Environmental impact statement” means a detailed statement under s. 1.11 (2) (c).

(16) “Environmental pollution” means contaminating or rendering unclean or impure the air, land, or waters of the state, or making the air, land, or waters of the state injurious to public health or animal or plant life.

(17) “Exploration license” means a license under s. 295.44.

(18) “Ferrous mineral” means an ore or earthen material in natural deposits in or on the earth that primarily exists in the form of an iron oxide, including taconite and hematite.

(19) “Fill area” means an area proposed to receive or that is receiving direct application of mining waste.

(20) “Freeboard” means the height of the top of a dam above the adjacent liquid surface within the impoundment.

(21) “Groundwater” means any of the waters of the state occurring in a saturated subsurface geological formation of rock or soil.

(22) “Groundwater quality” means the chemical, physical, biological, thermal, or radiological quality of groundwater at a site or within an underground aquifer.

(23) “Groundwater quality standards” means numerical values consisting of enforcement standards and preventive action limits contained in Table 1 of s. NR 140.10, and Table 2 of s. NR 140.12, Wis. Adm. Code, and any preventive action limits for indicator parameters identified under s. NR 140.20 (2), Wis. Adm. Code.

(24) “Leachate” means water or other liquid that has been contaminated by dissolved or suspended materials due to contact with refuse disposed of on the mining site.

(25) “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 minerals, during mining operations, that 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 the material within 3 years from the time it results from or is displaced by mining.

(26) “Mining” means all or part of the process involved in the mining of a ferrous mineral, other than for exploration, including commercial extraction, agglomeration, beneficiation, construction of roads, removal of overburden, and the production of refuse, involving the removal of more than 15,000 tons of earth material a year in the regular operation of a business for the purpose of extracting a ferrous mineral.

(27) “Mining permit” means the permit under s. 295.58.

(28) “Mining plan” means a proposal for mining on a mining site, including a description of the systematic activities to be used for the purpose of extracting ferrous minerals.

(29) “Mining site” means the surface area disturbed by mining, including the surface area from which the ferrous 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 are situated.

(30) “Mining waste” means tailings, waste rock, mine overburden, waste treatment sludges, or other discarded material, including solid, liquid, semi-solid, or contained gaseous material, resulting from mining or from the cleaning or preparation of ferrous minerals during mining operations, except that “mining waste” does not include topsoil and mine overburden intended to be returned to the mining site or used in the reclamation process and that is placed on the mining site for those purposes, as provided for in the approved mining plan, and does not include merchantable by-products.

(31) “Mining waste site” means any land or appurtenances thereto used for the storage or disposal of mining waste or for the storage of merchantable by-products, but does not include land or appurtenances used in the production or transportation of mining waste, such as the concentrator, haul roads, or tailings pipelines, that are part of the mining site.

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

(33) “Operator” means any person who is engaged in mining, or who holds a mining permit, whether individually, jointly, or through subsidiaries, agents, employees, or contractors.

(34) “Overburden” means any unconsolidated material that overlies bedrock.

(35) “Person” means an individual, corporation, limited liability company, partnership, association, local governmental agency, interstate agency, state agency, or federal agency.

(36) “Piping” means the progressive erosion of materials from an embankment or foundation caused by the seepage of water.

(37) “Principal shareholder” means any person who owns at least 10 percent of the beneficial ownership of an applicant or operator.

(38) “Reagent” means a substance or compound that is added to a system in order to bring about a chemical reaction or is added to see if a reaction occurs to confirm the presence of another substance.

(39) “Reclamation” means the process by which an area physically or environmentally affected by exploration or mining is rehabilitated to either its original state or to a state that provides long-term environmental stability.

(40) “Reclamation plan” means the proposal for the reclamation of an exploration site under s. 295.44 (2) (b) or a mining site under s. 295.49.

(41) “Refuse” means all mining waste and all waste materials deposited on or in the mining site from other sources, except merchantable by-products.

(42) “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.

(44) “Subsidence” means lateral or vertical ground movement caused by a failure, initiated at the mine, of a man-made underground mine, that directly damages residences or commercial buildings, except that “subsidence” does not include lateral or vertical ground movement caused by earthquake, landslide, soil conditions, soil erosion, soil freezing and thawing, or roots of trees and shrubs.

(45) “Tailings” means waste material resulting from beneficiation of crushed ferrous minerals at a concentrator or from washing, concentration, or treatment of crushed ferrous minerals.

(46) “Unsuitable” means that the land proposed for mining is not suitable for mining because the mining activity will more probably than not destroy or irreparably damage any 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 the endangered species cannot be 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. Listed properties, as defined in s. 44.31 (4).

(46m) “Wastewater and sludge storage or treatment lagoon” means a man-made containment structure that is constructed primarily of earthen materials, that is for the treatment or storage of wastewater, storm water, or sludge, and that is not a land disposal system, as defined in s. NR 140.05 (11), Wis. Adm. Code.

(47) “Waters of the state” has the meaning given in s. 281.01 (18).

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

(49) “Wetland” has the meaning given in s. 23.32 (1).

History: 2013 a. 1.

**295.43 Responsibilities related to mining.** The department shall serve as the central unit of state government to ensure that the impact from mining and reclamation on the air, lands, waters, plants, fish, and wildlife in this state will be minimized and offset to the extent practicable. The administration of occupational health and safety laws and rules that apply to mining 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) 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: 2013 a. 1.

**295.44 Exploration. (1) DEFINITIONS.** In this section:

(a) “Abandonment” means the filling or sealing of a drillhole.

(b) “Clay slurry” means a fluid mixture of native clay formation or commercial clay or clay mineral products and water prepared with only the amount of water necessary to produce fluidity.

(c) “Concrete grout” means a mixture consisting of type A portland cement and an equal or lesser volume of dry sand combined with water.

(d) “Driller” means a person who performs core, rotary, percussion, or other drilling involved in exploration for ferrous minerals.

(e) “Drilling site” means the area disturbed by exploration, including the drillhole.

(f) “Dump bailer” means a cylindrical container with a valve that empties the contents of the container at the bottom of a drill-hole.

(g) “Explorer” means any person who engages in exploration or who contracts for the services of drillers for the purpose of exploration.

(h) “Exploration” 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 ferrous minerals or establishing the nature of a known ferrous mineral deposit, including associated activities such as clearing and preparing sites or constructing roads for drilling. “Exploration” does not include drilling for the purpose of collecting soil samples or for determining radioactivity by means of placement of devices that are sensitive to radiation.

(i) “License year” means the period beginning on July 1 of any year and ending on the following June 30.

(j) “Neat cement grout” means a mixture consisting of type A portland cement and water.

(k) “Termination” means the filling of drillholes and the reclamation of a drilling site.

(2) LICENSE. No person may engage in exploration, or contract for the services of drillers for purposes of exploration, without an annual license from the department. The department shall provide copies of the application for an exploration license to the state geologist upon issuance of the exploration license. A person seeking an exploration license shall file an application that includes all of the following:

(a) An exploration plan that includes all of the following:

1. A description of the site where the exploration will take place and a map of that area showing the locations of the exploration.

2. A description of the means and method that will be used for the exploration.

3. A description of the grading and stabilization of the excavation, sides, and benches that will be conducted.

4. A description of how the grading and stabilization of any deposits of refuse will be conducted.

5. A description of how any diversion and drainage of water from the exploration site will be conducted.

6. A description of how any backfilling will be conducted.

7. A description of how any pollutant-bearing minerals or materials will be covered.

8. A description of how the topsoils will be removed and stockpiled or how other measures will be taken to protect topsoils before exploration.

9. A description of how vegetative cover will be provided.

10. A description of how any water impoundment will be accomplished.

11. Identification of the means and method that will be used to prevent significant environmental pollution to the extent practicable.

(b) A reclamation plan, designed to minimize adverse effects to the environment to the extent practicable, that includes all of the following:

1. A description of how all toxic and hazardous wastes and other solid waste will be disposed of in solid or hazardous waste disposal facilities licensed under ch. 289 or 291 or otherwise in an environmentally sound manner.

2. A description of how topsoil will be preserved for purposes of future use in reclamation.

3. A description of how revegetation will be conducted to stabilize disturbed soils and prevent air and water pollution to the extent practicable.

4. A description of how disturbance to wetlands will be minimized to the extent practicable.

5. A statement that all drillholes will be abandoned in compliance with sub. (5).

(c) An exploration license fee of \$300.

(d) A bond, as provided in sub. (3) (a).

(e) A certificate of insurance showing that the applicant has in force a liability insurance policy issued by an insurance company licensed to do business in this state covering all exploration conducted or contracted for by the explorer in this state and affording personal injury and property damage protection in a total amount determined to be adequate by the department, but not more than \$1,000,000 and not less than \$50,000.

(f) A copy of the applicant's most recent annual report to the federal securities and exchange commission on form 10–K, or, if this is not available, a report of the applicant's current assets and liabilities or other data necessary to establish that the applicant is competent to conduct exploration in this state.

**(2m) CONFIDENTIALITY.** The department and the state geologist shall protect as confidential any information, other than effluent data, contained in an application for an exploration license, upon a showing that the information is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), and any information relating to the location, quality, or quantity of a ferrous mineral deposit, to production or sales figures, or to processes or production unique to the applicant or that would tend to adversely affect the competitive position of the applicant if made public.

**(3) BOND.** (a) An applicant shall submit, as part of the application for an exploration license, a bond in the amount of \$5,000 that is conditioned on faithful performance of the requirements of this section, that is issued by a surety company licensed to do business in this state, and that provides that the bond may not be canceled by the surety, except after not less than 90 days' notice to the department in writing by registered or certified mail.

(b) If the surety for a bond submitted under par. (a) issues a cancellation notice, the explorer shall deliver a replacement bond at least 30 days before the expiration of the 90 day notice period. If the explorer fails to submit a replacement bond, the explorer may not engage in exploration until the explorer submits a replacement bond.

(c) If the license of the surety company for a bond submitted under par. (a) is revoked or suspended, the explorer, within 30 days after receiving written notice from the department, shall deliver a replacement bond. If the explorer fails to submit a replacement bond, the explorer may not engage in exploration until the explorer submits a replacement bond.

(d) The department may require that the amount of the bond submitted under this subsection be increased at any time, if the department determines that the level of activity by the explorer makes it likely that the bond would be inadequate to fund the termination of all drillholes for which the explorer is responsible.

(e) The department shall release a bond submitted under this subsection one year after the issuance of the last certificate of completion of exploration under sub. (9) (c) 3. if the explorer no longer holds an exploration license and the department determines that the explorer has complied with this section.

**(4) ISSUANCE OR DENIAL OF EXPLORATION LICENSE.** (a) Except as provided in par. (c), within 10 business days of receiving an administratively complete application for an exploration license, the department shall issue the exploration license or provide the notice required under par. (f) of intent not to issue the exploration license, unless the application is for an upcoming license year. If an application is for an upcoming license year, the department shall issue the exploration license or provide the notice required under par. (f) of intent not to issue the exploration license within 10 business days of receiving an administratively complete application or on the next July 1, whichever is later.

(b) An application for an exploration license is considered to be administratively complete on the day that it is submitted, unless, before the 10th business day after receiving the application, the department provides the applicant with written notification

that the application is not administratively complete. The department may determine that an application is not administratively complete only if the application does not include an exploration plan; a reclamation plan; an exploration license fee; a bond; a certificate of insurance; or a copy of the applicant's most recent annual report to the federal securities and exchange commission on form 10–K, or, if this is not available, a report of the applicant's current assets and liabilities or other data necessary to establish that the applicant is competent to conduct exploration in this state. The department may not consider the quality of the information provided. In a notice provided under this paragraph, the department shall identify what is missing from the application.

(c) If the department provides notification, in compliance with par. (b), that an application is not administratively complete, the department shall issue the exploration license or provide the notice required under par. (f) of intent not to issue the license within 7 business days of receipt of the missing item, unless the application is for an upcoming license year. If the application is for an upcoming license year, the department shall issue the exploration license or provide the notice required under par. (f) of intent not to issue the exploration license within 7 business days of receipt of the missing item or on the next July 1, whichever is later.

(d) If the department does not comply with par. (a) or (c), the application is automatically approved and the department shall issue an exploration license that includes the requirements in sub. (5). The explorer may engage in exploration based on the automatic approval, notwithstanding any delay by the department in issuing the license.

(e) Subject to par. (f), the department shall deny an application for an exploration license if the department finds that, after the activities in the exploration plan and the reclamation plan have been completed, the exploration will have a substantial and irreparable adverse impact on the environment or present a substantial risk of injury to public health and welfare.

(f) Before denying an application, the department shall provide the applicant with written notification of its intent not to issue the exploration license, setting forth all of the reasons for its intent not to issue the exploration license, including reference to competent evidence supporting its position. The department shall provide the person with an opportunity to correct any deficiencies in the exploration plan or reclamation plan within 10 business days. If the person amends the exploration plan or reclamation plan and corrects the deficiencies, the department shall issue the exploration license within 10 business days of receipt of the amended exploration plan or reclamation plan, unless the application is for an upcoming license year. If an application is for an upcoming license year, the department shall issue the exploration license within 10 business days of receipt of the amended exploration plan or reclamation plan or on the next July 1, whichever is later. If the department determines that the deficiencies have not been corrected, it shall deny the application, in writing, setting forth all of the reasons for its determination, including reference to competent evidence supporting the determination.

**(5) REQUIREMENTS IN EXPLORATION LICENSE.** The department shall include all of the following in an exploration license:

(a) A requirement that if the explorer wishes to temporarily abandon a drillhole so that the explorer may use the drillhole for future exploration, the explorer leave the well casing in place and seal the upper end of the casing with a watertight threaded or welded cap.

(b) A requirement to permanently abandon a drillhole 4 inches in diameter or smaller by filling the drillhole from the bottom upward to the surface of the ground with concrete grout or neat cement grout.

(c) A requirement to permanently abandon a drillhole larger than 4 inches in diameter by filling the drillhole from the bottom upward to the surface of the ground with concrete grout or neat cement grout or in one of the following ways:

1. If the drillhole is constructed in limestone, dolomite, shale, or Precambrian formations, such as granite, gabbro, gneiss, schist, slate, greenstone, or quartzite, by filling the drillhole with gravel or crushed rock or, if it is physically impracticable to use gravel or crushed rock and if the department approves, with clay slurry, from the bottom upward to a point 20 feet below the top of the first rock formation encountered below the surface of the ground or to at least 40 feet below the surface of the ground, whichever is the greater depth, and filling the remainder of the drillhole with concrete grout or neat cement grout.

2. If the drillhole is constructed in sandstone formation, by filling the drillhole with disinfected sand or pea gravel or, if it is physically impracticable to use sand or pea gravel and if the department approves, with clay slurry, from the bottom upward to a point 20 feet below the top of the first rock formation encountered below the surface of the ground or to at least 40 feet below the surface of the ground, whichever is the greater depth, and filling the remainder of the drillhole with concrete grout or neat cement grout.

3. If the drillhole is constructed in glacial drift or other unconsolidated formation, by filling the hole with clean clay slurry to a point 20 feet below the surface of the ground and filling the remainder of the drillhole with concrete grout or neat cement grout.

4. If the drillhole is constructed in mixed rock types, by filling the drillhole as provided in subs. 1., 2., and 3., and providing a concrete grout or neat cement grout plug that extends at least 20 feet above and below the point of surface contact between each recognized geologic rock type.

(d) 1. A requirement to use a conductor pipe or, when practical, a dump bailer when filling a drillhole.

2. A requirement to keep the bottom end of the conductor pipe submerged in concrete grout or neat cement grout at all times when concrete grout or neat cement grout is placed under water using a conductor pipe.

3. A requirement to fill the drillhole at the same time that all or part of the drillhole casing is removed from an unconsolidated formation, such as sand or gravel, that will not remain open upon abandonment of a drillhole and to keep the end of the casing below the surface of the fill material throughout the operation.

(e) A requirement to obtain approval from the department of the method of containing the flow from, and the method of eventual abandonment of, a drillhole that penetrates an aquifer under artesian pressure so that the groundwater flows at the surface of the ground.

**(6) RENEWALS.** (a) An explorer wishing to renew an exploration license shall file with the department a renewal application that includes all of the following:

1. A renewal fee of \$150.

2. A bond that satisfies sub. (3) (a).

3. A certificate of insurance that satisfies sub. (2) (e).

4. A copy of the applicant's most recent annual report to the federal securities and exchange commission on form 10–K, or, if this is not available, a report of the applicant's current assets and liabilities or other data necessary to establish that the applicant is competent to conduct exploration in this state.

5. Either a statement that no changes are being proposed to the exploration plan and reclamation plan previously approved by the department or a new exploration plan or reclamation plan if the applicant proposes to make changes.

(b) Except as provided in par. (d), within 10 business days of receiving an administratively complete application for renewal of an exploration license, the department shall renew the exploration license or provide the notice, required under par. (g), of intent not to renew the exploration license.

(c) An application for renewal of an exploration license is considered to be administratively complete on the day that it is submitted, unless, before the 10th business day after receiving the

application, the department provides the explorer with written notification that the application is not administratively complete. The department may determine that an application is not administratively complete only if the application does not include a renewal fee; a bond; a certificate of insurance; a copy of the applicant's most recent annual report to the federal securities and exchange commission on form 10–K, or, if this is not available, a report of the applicant's current assets and liabilities or other data necessary to establish that the applicant is competent to conduct exploration in this state; or either a statement that no changes are being proposed to the exploration plan and reclamation plan previously approved by the department or a new exploration plan or reclamation plan if the applicant proposes to make changes. The department may not consider the quality of any information provided. In a notice provided under this paragraph, the department shall identify what is missing from the application.

(d) If the department provides notification, in compliance with par. (c), that an application is not administratively complete, the department shall renew the exploration license or provide the notice, required under par. (g), of intent not to renew the exploration license within 7 business days of receipt of the missing item.

(e) If the department does not comply with par. (b) or (d), the application for renewal is automatically approved.

(f) Subject to par. (g), the department shall deny an application for renewal of an exploration license only if the applicant has filed a new exploration plan or reclamation plan and the department finds that the exploration, after the activities in the new exploration plan and the new reclamation plan have been completed, will have a substantial and irreparable adverse impact on the environment or present a substantial risk of injury to public health and welfare.

(g) Before denying an application, the department shall provide the person who submitted the application with written notification of its intent not to renew the exploration license, setting forth all of the reasons for its intent not to renew the exploration license, including reference to competent evidence supporting its position. The department shall provide the person with an opportunity to correct any deficiencies in the exploration plan or restoration plan within 10 business days. If the person amends the exploration plan or reclamation plan and corrects the deficiencies, the department shall renew the exploration license within 10 business days of receipt of the amended exploration plan or reclamation plan. If the department determines that the deficiencies have not been corrected, it shall deny the application, in writing, setting forth all of the reasons for its determination, including reference to competent evidence supporting the determination.

(h) The renewal of an exploration license takes effect on the date of issuance and expires on the following June 30.

**(7) REVOCATION OR SUSPENSION OF EXPLORATION LICENSE.** After a hearing, the department may revoke or suspend an exploration license if it determines that any of the following apply:

(a) The explorer has not complied with a statute, a rule promulgated by the department, or a condition in the exploration license.

(b) The explorer has failed to increase bond amounts to adequate levels as provided under sub. (3) (d).

**(8) NOTICE PROCEDURE.** (a) An explorer shall notify the department of the explorer's intent to drill on a parcel by registered mail at least 5 days prior to the beginning of drilling. Notice is considered to be given on the date that the department receives the notice. In the notice, the explorer shall specify which drillholes identified in the exploration plan the explorer intends to drill. The explorer shall send the notice to the subunit of the department with authority over mine reclamation.

(b) A notice of intent to drill provided under par. (a) remains in effect for one year beginning on the date that the department receives the notice. If the explorer wishes to continue drilling on the parcel after the notice is no longer in effect, the explorer shall resubmit a notice of intent to drill on the parcel.

(9) **REPORTS.** (a) Within 10 days after completing the temporary or permanent abandonment of a drillhole, an explorer shall file with the department an abandonment report that describes the means and method used in the abandonment and is signed by an authorized representative of the explorer attesting to the accuracy of the information contained in the report. The explorer shall submit the abandonment report to the department's district office for the district in which the drilling site is located.

(b) After permanent abandonment of a drillhole and regrading and revegetation of the drilling site, an explorer shall notify the department of completion of termination of the drilling site. The explorer shall submit the notice, in writing, to the department's district office for the district in which the drilling site is located.

(c) 1. After receipt of a notice under par. (b), the department shall notify the explorer in writing whether the termination is satisfactory or unsatisfactory. If the termination is unsatisfactory, the department shall inform the explorer of the necessary corrective measures. Following the completion of corrective measures, the explorer shall file written notice with the department's district office for the district in which the drilling site is located specifying the means and method used and stating that termination is complete.

2. If an explorer fails to comply with corrective measures identified under subd. 1., the department may suspend the explorer's exploration license in accordance with sub. (7).

3. Upon satisfactory completion of termination of a drilling site, the department shall issue a certificate of completion. The department may not issue a certificate of completion for a drilling site that has only been temporarily abandoned.

(10) **DRILLING FEES.** Upon the submission of a report under sub. (9) (a) of temporary abandonment of a drillhole, if the drillhole is temporarily abandoned, or upon submission of a report under sub. (9) (a) of permanent abandonment of a drillhole, if the drillhole is not temporarily abandoned, the explorer shall pay a fee to the department. The fee is \$100 per drillhole for the first 20 drillholes for which a report is filed in a license year and \$50 for each subsequent drillhole for which a report is filed in that license year.

(11) **INSPECTIONS.** (a) Any duly authorized officer, employee, or representative of the department may enter and inspect any property, premises, or place on or at which exploration is being performed at any reasonable time for the purpose of ascertaining the state of compliance with this section. No explorer may refuse entry or access to any authorized representative of the department who requests entry for the purposes of inspection and who presents appropriate credentials.

(b) No person may obstruct, hamper, or interfere with any inspection authorized in par. (a).

(c) No inspector may obstruct, hamper, or interfere with exploration activities.

(12) **EXEMPTION.** This section does not apply to an operator with a mining permit who is engaged in exploration activities on lands included in a mining plan and reclamation plan, if the mining plan or reclamation plan contains provisions relating to termination of the exploration activities.

(13) **ENVIRONMENTAL ANALYSIS NOT REQUIRED.** The department is not required to prepare an environmental impact statement or an environmental assessment for an application for an exploration license.

**History:** 2013 a. 1; 2013 a. 168 s. 21.

#### 295.443 Local impact committee; local agreement.

(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) related to mining for ferrous minerals.

(g) Negotiating a local agreement under sub. (1m).

(1m) 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. The local agreement may include any 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 determined to be reasonable and necessary by the parties to the agreement.

(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 applying for an exploration license under s. 295.44 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 applying for an exploration license under s. 295.44 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:** 2013 a. 1; 2013 a. 168 s. 21.

**295.45 Bulk sampling plan.** (1) A person who intends to engage in bulk sampling may file a bulk sampling plan with the department. The collection of data under a bulk sampling plan

may include sampling and analysis related to geophysical, geochemical, groundwater, and surface water conditions, as well as any other data or studies necessary to prepare an application for a mining permit, including the mining plan, reclamation plan, mining waste site feasibility study and plan of operation, or any other approval required for the proposed mining.

**(2)** A person shall include all of the following in a bulk sampling plan:

(a) A description and map of the bulk sampling site, including the number of acres in the site, the number of acres of land that will be disturbed, if any, associated with each bulk sampling location, and the locations and types of sampling or studies to be conducted at each bulk sampling location.

(b) A description of the methods to be used for the bulk sampling.

(c) A site-specific plan for controlling surface erosion that conforms to requirements under ss. 281.33 (3) and 283.33 and that identifies how impacts to plant and wildlife habitats will be avoided or minimized to the extent practicable.

(d) A revegetation plan for each area where bulk sampling will be performed that describes how adverse impacts to the environment will be avoided or minimized to the extent practicable and how the site will be revegetated and stabilized and that identifies how adverse impacts to plant and wildlife habitats will be avoided or minimized to the extent practicable.

(e) The estimated time for completing the bulk sampling and revegetation of the bulk sampling locations.

(f) A description of any known adverse environmental impacts that are likely to be caused by the bulk sampling and how those impacts will be avoided or minimized to the extent practicable.

(g) A description of any adverse effects, as defined in s. 44.31 (1), that the bulk sampling might have on any historic property, as defined in s. 44.31 (3), that is a listed property, as defined in s. 44.31 (4), that is on the Wisconsin inventory of historic places, as defined in s. 44.31 (12), or that is on the list of locally designated historic places under s. 44.45; or any scenic or recreational areas; and plans to avoid or minimize those adverse effects to the extent practicable.

**(2m)** The department shall protect as confidential any information, other than effluent data, contained in a bulk sampling plan and in any application for an approval that is required before the bulk sampling may be implemented, upon a showing that the information is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), and any information relating to the location, quality, or quantity of a ferrous mineral deposit, to production or sales figures, or to processes or production unique to the applicant or that would tend to adversely affect the competitive position of the applicant if made public.

**(3)** Within 14 days of receipt of a bulk sampling plan, the department shall identify for the applicant, in writing, all approvals that are required before the bulk sampling may be implemented, any waivers, exemptions, or exceptions to those approvals that are potentially available, and any information that the department needs to issue the approvals or to issue a decision on any waiver, exemption, or exception. If no approvals are required, the department shall notify the applicant that no approvals are required and that the applicant may proceed with the bulk sampling.

**(3e)** If a storm water discharge permit under s. 283.33 (1) (a) or a water quality certification under rules promulgated under subch. II of ch. 281 to implement 33 USC 1341 (a) is required before bulk sampling may be implemented, the person filing the bulk sampling plan may apply for and be issued the permit or certification.

**(3m)** The department shall act on any required construction site erosion control and storm water management approval, notwithstanding any authorization by the department of a local program to administer construction site erosion control and storm water management requirements.

**(3s)** An applicant shall submit all of the following at the same time:

(a) Applications for individual approvals identified under sub. (3).

(b) Applications for coverage under general permits or registration permits identified under sub. (3).

(c) Applications for waivers, exemptions, or exceptions identified under sub. (3).

(d) A bond, as provided in sub. (5).

**(4)** (a) Notwithstanding any provision in ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291 or in a rule promulgated under those chapters that is applicable to an approval identified under sub. (3), the application for any approval, for a waiver, exemption, or exception to an approval, or for a determination that the proposed bulk sampling activity is below the threshold that requires an approval, is considered to be complete on the 30th day after the department receives the application, unless, before that day, the department provides the applicant with written notification that the application is not complete, stating the reason for the determination and describing the specific information necessary to make the application complete.

(b) If the department provides a notice under par. (a), the applicant shall supplement the application by providing the specified information. The application is complete when the applicant provides the information.

(c) If the department determines that the issuance of an approval is contingent upon the issuance of a permit under s. 29.604 (6m), and if the application for the permit under s. 29.604 (6m) is filed with the approval application, the department may not determine that the approval application is incomplete on the basis that the department has not yet issued the permit under s. 29.604 (6m).

**(5)** (a) A person who intends to engage in bulk sampling shall submit with the bulk sampling plan a bond in the amount of \$5,000 that is conditioned on faithful performance of the requirements of this section, that is issued by a surety company licensed to do business in this state, and that provides that the bond may not be canceled by the surety, except after not less than 90 days' notice to the department in writing by registered or certified mail.

(b) If the surety for a bond submitted under par. (a) issues a cancellation notice, the person who filed the bulk sampling plan shall deliver a replacement bond at least 30 days before the expiration of the 90-day notice period. If the person fails to submit a replacement bond, the person may not engage in bulk sampling until the person submits a replacement bond.

(c) If the license of the surety company for a bond submitted under par. (a) is revoked or suspended, the person who filed the bulk sampling plan, within 30 days after receiving written notice from the department, shall deliver a replacement bond. If the person fails to submit a replacement bond, the person may not engage in bulk sampling until the person submits a replacement bond.

(d) The department may require that the amount of the bond submitted under this subsection be increased at any time, if the department determines that it is unlikely that the bond would be adequate to fund the cost to this state of completing the revegetation plan.

(e) The department shall release a bond submitted under this subsection one year after the time for completing the bulk sampling and the revegetation set forth in the bulk sampling plan if the department determines that the person who engaged in bulk sampling has complied with this section.

**(7)** Notwithstanding any provision in ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291 or a rule promulgated under those chapters applicable to an approval identified under sub. (3), the department shall require the bulk sampling activity for which the approval is issued to be conducted at locations that result in the fewest overall adverse environmental impacts.

**(8)** (a) In determining whether to approve or deny an application for an approval identified under sub. (3), the department shall

consider the site-specific erosion control plan, the revegetation plan, and any mitigation program under s. 295.60 (8), any measures under s. 295.605, or any conservation measures under s. 295.61 that the applicant proposes to take.

(b) The department may modify the application for an approval identified under sub. (3) in order to meet the requirements applicable to the approval, and, as modified, approve the application.

(9) Notwithstanding any inconsistent period in ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291 or in a rule promulgated under those chapters that is applicable to an approval identified under sub. (3), the department shall approve or deny an application within 30 days after the day on which the application is considered to be complete under sub. (4) if any of the following apply:

(a) The application is for a waiver, exemption, or exception to an approval for a bulk sampling activity or for a determination that the proposed bulk sampling activity is below the threshold that requires an approval.

(b) The application is for a determination of eligibility for coverage or authorization to proceed under a general permit or a registration permit.

(10) (a) Notwithstanding any inconsistent period in ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291 or in a rule promulgated under those chapters that is applicable to an approval identified under sub. (3), the department shall approve or deny any application for an approval identified under sub. (3) to which sub. (9) does not apply within 60 days after the date on which the application is considered to be complete under sub. (4), unless the application is for an individual permit for which federal law requires the opportunity for public comment or the ability to request a public hearing prior to issuance of the approval.

(b) The department shall publish a class 1 notice, under ch. 985, and shall publish notice on the department's Internet site, that describes the availability of information concerning the activity for which an approval described in par. (a) is required, its proposed decision, its draft approval, information or summaries related to the approval, the department's analyses and preliminary determinations relating to the approval, the preapplication description under s. 295.46, any additional information that a law concerning the approval requires to be made available, and the opportunity to submit written comments within 30 days after the date of the publication of the notice. The date on which the department first publishes the notice on its Internet site shall be considered the date of the publication of the notice required to be published under this paragraph.

(c) In the notice under par. (b), the department shall also specify the date, time, and location of the public informational hearing under par. (e). The department shall send the notice to any person to whom the department is required to give notice of any proposed determination, application, or hearing concerning an approval described in par. (a) under the laws relating to the issuance of the approval and to any person who has requested notice. The department's notice to interested persons under this paragraph may be given through an electronic notification system established by the department.

(d) If there is more than one approval described in par. (a), the department shall issue one notice and coordinate the public comment period for all of the approvals. If possible, the department shall coordinate the notice and the public comment period for an approval that is an individual permit for which federal law requires the opportunity for public comment or the ability to request a public hearing prior to issuance of the approval with notice and the public comment period for the approvals described in par. (a).

(e) The department shall hold a public informational hearing within 30 days after the date of the publication of the notice under par. (b). The department shall hold the public informational hearing in the county where the majority of the proposed bulk sampling site is located. If there is more than one approval described

in par. (a), the department shall hold a single public informational hearing covering all of the approvals and the preapplication description under s. 295.46. If possible, the department shall include consideration of an approval that is an individual permit for which federal law requires the opportunity for public comment or the ability to request a public hearing prior to issuance of the approval in the public informational hearing under this paragraph. The public informational hearing under this paragraph is not a contested case hearing under ch. 227.

(10g) (a) If it is not possible to coordinate the public comment period and public informational hearing for an approval that is an individual permit for which federal law requires the opportunity for public comment or the ability to request a public hearing prior to issuance of the approval with the public comment period and public informational hearing under sub. (10), the department shall issue a separate public notice and hold a separate public informational hearing for the approval in accordance with the law governing the approval.

(b) The department shall approve or deny the application for an approval that is an individual permit for which federal law requires the opportunity for public comment or the ability to request a public hearing prior to issuance of the approval within 180 days after the date on which the application is considered to be complete under sub. (4).

(10r) An approval identified under sub. (3) is issued upon mailing and is final and effective upon issuance.

(11) The department is not required to prepare an environmental impact statement or an environmental assessment for an approval required for bulk sampling.

History: 2013 a. 1.

**295.46 Preapplication description.** (1) A person who files a bulk sampling plan under s. 295.45 with regard to a proposed mining project shall file, together with the bulk sampling plan, a general description of the proposed mining project. A person who proposes to engage in a mining project, but who does not file a bulk sampling plan, shall file a general description of the proposed mining project with the department at the time that the person provides the notice of intent to file an application for a mining permit under s. 295.465. The general description shall include all of the following:

(a) A description of the proposed mining site.

(b) A map that shows all of the following:

1. The boundaries of the area of land that will be affected by the proposed mining project.

2. The location and names of all streams, roads, railroads, pipelines, and utility lines on or within 1,000 feet of the proposed mining site.

3. The name or names of the owner or owners of the proposed mining site.

4. The name of each city, village, or town in which the proposed mining site is located and the name of any other city, village, or town that is located within 3 miles of the proposed mining site.

5. The federal natural resources conservation service land capabilities classifications of the area affected by the proposed mining project.

6. The elevation of the water table.

(c) A general description of the nature, extent, and final configuration of the proposed excavation and mining site, including an estimate of the production of tailings, waste rock, and other refuse and the location of their disposal.

(d) A general conceptual description of the likely operating procedures of the proposed mining project.

(e) The likely location, and a general description, of the excavation, waste site, and processing facilities relating to the proposed mining project.

(2) (a) If the department provides notice to an applicant under s. 295.45 (3) that no approvals are required for bulk sampling or if a person who proposes to engage in a mining project files a pre-

application description of the proposed mining project at the time that the person provides the notice of intent to file an application for a mining permit under s. 295.465 because the person did not file a bulk sampling plan, the department shall publish a class 1 notice, under ch. 985, and shall publish notice on the department's Internet site, of a public informational hearing on the proposed mining project. The date on which the department first publishes the notice on its Internet site shall be considered the date of the publication of the notice required to be published under this paragraph. The department shall publish the notice when it notifies the applicant that no approvals are required or after it receives the notice of intent.

(b) In a notice under par. (a), the department shall do all of the following:

1. Describe the availability of the preapplication description.
2. Describe the opportunity to submit written comments within 30 days after the date of the publication of the notice.
3. Specify the date, time, and location of the public informational hearing.

(c) The department shall send a notice under par. (a) to all of the following:

1. The clerk of any city, village, town, or county within which any part the proposed mining site lies.
2. The clerk of any city, village, or town, contiguous to any city, village, or town within which any portion of the proposed mining site is located.
3. Any regional planning commission for the area within which the affected area lies.
4. Any state agency that the department knows may be required to grant a permit or other authorization necessary for the proposed mining project.
5. Any interested person who has requested notification. The department's notice under this subdivision may be given through an electronic notification system established by the department.

(d) The department shall hold a public informational hearing within 30 days after the date of the publication of the notice under par. (a). The department shall hold the public informational hearing in the county in which the majority of the proposed mining site is located.

**History:** 2013 a. 1.

**295.465 Preapplication notification.** (1) Except as provided in sub. (3), at least 12 months before filing an application for a mining permit under s. 295.47, a person proposing to engage in a mining project shall notify the department and the U.S. army corps of engineers in writing of the intention to file an application for a mining permit. After receiving the notification, the department shall hold at least one meeting with the person to make a preliminary assessment of the project's scope, to make an analysis of alternatives, to identify potential interested persons, and to ensure that the person making the proposal is aware of all of the following:

(a) The approvals, including the filing requirements for the approvals, that the person may be required to obtain for the mining project.

(b) The requirements for submission of an environmental impact report and for submission of any other information required by the department to prepare an environmental impact statement under s. 295.53.

(c) The information the department will require to enable the department to process the application for the mining permit in a timely manner.

(2) Within 60 days of a meeting under sub. (1), the department shall provide all of the following to the person:

(a) A detailed written summary of the requirements under sub. (1) (a) to (c).

(b) Any available information relevant to the potential impacts of the mining project on rare, threatened, or endangered species

and historic or cultural resources and any other information relevant to potential impacts that may occur from the project that are required to be considered under s. 1.11.

(c) Available information to evaluate the environmental impact of the project and to expedite the preparation of the environmental impact report and the environmental impact statement, including information concerning preliminary environmental reviews, field studies, and investigations; monitoring programs to establish baseline water quality; laboratory studies and investigations; advisory services; and the timing and the processes associated with any necessary consultations with other state or federal agencies and within the department, such as those required for endangered resources and cultural resource consultations and approvals.

(3) A person who files an application under s. 295.47 for a mining proposal is not required to provide notice under sub. (1) if the person files the application no more than one year after the department denied the person's application for the same mining proposal.

(4) After providing notice to the U.S. army corps of engineers under sub. (1), a person shall make a good faith effort to meet with the U.S. army corps of engineers to discuss the mining project, the environmental impact report, and information related to federal requirements that may be applicable to the mining project.

(5) After receiving notice under sub. (1), the department shall seek to enter into a memorandum of understanding with any federal regulatory agency with responsibilities related to the potential mining operation covering timelines, sampling metrology, and any other issue of mutual concern related to processing an application for a mining permit.

**History:** 2013 a. 1; 2015 a. 196.

**295.47 Application for mining permit.** (1) (a) No person may engage in mining or reclamation at any mining site unless the mining site is covered by a mining permit and by written authorization to mine under s. 295.59 (3). An applicant shall submit an application for a mining permit to the department in writing and in reproducible form and shall provide the number of copies that are requested by the department. An application and a mining permit are required for each separate mining site. The applicant shall distribute copies of the application to the clerk of any city, village, town, or county with zoning jurisdiction over the proposed site, to the clerk of any city, village, town, or county within whose boundaries any portion of the proposed mining site is located, to the elected governing body of any federally recognized American Indian tribe or band with a reservation the boundaries of which are within 20 miles of the proposed site, and to the main public library of each city, village, town, or county with zoning jurisdiction over the proposed site or within whose boundaries any portion of the proposed site is located.

(am) For the purposes of s. 295.57 (7) (a), as part of the application for a mining permit, an applicant may specify a deadline for the department to act on the mining permit that is more than 420 days after the day on which the application is administratively complete under s. 295.57 (2).

(b) If a person proposes to conduct mining at a mining site that includes an abandoned mining site, the person shall include plans for reclamation of the abandoned mining site, or the portion of the abandoned mining site that is included in the mining site, in its mining plan and reclamation plan.

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

(a) A mining plan under s. 295.48.

(b) A reclamation plan under s. 295.49.

(c) A mining waste site feasibility study and plan of operation under s. 295.51.

(e) 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.

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(f) A list of all mining permits in this state held by the applicant.

(g) Evidence the applicant has applied or will apply for necessary permits or other permissions under all applicable zoning ordinances and that the applicant has applied or will apply to the department for any approval and has applied or will apply for any other license or permit required under state law.

(h) 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.

(i) A description of any land contiguous to the proposed mining site that the applicant owns or leases or has an option to purchase or lease.

(j) Any other pertinent information that the applicant believes may be useful to the department.

**History:** 2013 a. 1.

**295.48 Mining plan. (1) GENERAL.** An applicant for a mining permit shall submit as part of the application a mining plan that includes a description of the proposed mining site and either a detailed map drawn to a scale approved by the department or aerial photographs, if the photographs show the details to the satisfaction of the department, prepared and certified by a competent engineer, licensed professional surveyor, or other person approved by the department that show all of the following:

(a) The boundaries of the area of land that will be affected.

(b) The drainage area above and below the area that will be affected.

(c) The location and names of all streams, roads, railroads, pipelines, and utility lines on or within 1,000 feet of the mining site.

(d) The name or names of the owner or owners of the mining site.

(e) The name of the city, village, or town in which the mining site is located and the name of any other city, village, or town that is within 3 miles of the mining site.

**(2) DESCRIPTIVE DATA.** The applicant shall provide descriptive data to accompany the map or photographs under sub. (1), including all of the following:

(a) The federal natural resources conservation service land capabilities classifications of the affected area.

(b) The elevation of the water table.

(c) Details of the nature, extent, and final configuration of the proposed excavation and mining site, including the total estimated production of tailings, waste rock, and other refuse and the location of their disposal.

(d) The nature and depth of the overburden.

**(3) OPERATING PROCEDURES.** The applicant shall also include in the mining plan the details of the proposed operating procedures, including descriptions of all of the following:

(a) The sequence of mining operations.

(b) The handling of overburden materials.

(c) The production, handling, and final disposition of tailings.

(d) The milling, concentrating, refining, and other processing of ferrous minerals.

(e) The storage, loading, and transportation of the final product.

(f) Groundwater and surface water management techniques, including provisions for erosion protection and drainage control, and a water management plan showing water sources, flow paths and rates, storage volumes, and release points.

(g) Plans for collection, treatment, and discharge of any water resulting from the mining.

(h) Plans for protecting air quality under ch. 285.

(hm) A plan for monitoring environmental changes at the mining site.

(hr) An assessment of the risk of the occurrence of an accidental health or environmental hazard in connection with the operation of the mine. The assessment shall include, with specificity, a description of the assumptions that the applicant used in making the risk assessment and the contingency measures that the applicant proposes to take in the event that an accidental health or environmental hazard occurs.

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

(j) All surface facilities associated with the mining site and any use of mining waste in reclamation or the construction of any facility or structure.

(k) All geological and geotechnical investigations and drilling programs.

(L) A plan for completing and submitting a preblasting survey to the department before any blasting is conducted.

**(4) REQUIRED DEMONSTRATIONS.** The applicant shall demonstrate in the mining plan that the proposed mining will be consistent with the reclamation plan under s. 295.49 and that all of the following will apply, at a minimum:

(a) Handling and storage of all materials on the mining site will be done in an environmentally sound manner.

(b) Buildings and other structures will be painted and maintained in a manner that is visually compatible with the surrounding vegetational and earth conditions, except that if a building or other structure cannot be painted and maintained in a manner that is visually compatible or if painting and maintaining a building or other structure in a manner that is visually compatible would cause safety concerns, the building or structure will be made as visually inconspicuous as is practicable.

(c) Effective means will be taken to limit access to the mining site to minimize exposure of the public to hazards.

(d) The use of mine mill chemicals and processing reagent wastes will be governed by all of the following:

1. Reagents and mine mill chemicals will not be used in a manner that will result in substantial harm to public safety or health or to the environment.

2. Reagents and mine mill chemicals that consist of or contain water soluble salts or metals will be used in accordance with any applicable approval.

3. Reagents will not be used or stored at the mining site if they are not included in the mining waste site feasibility study and plan

of operation or in the mining plan, except for reagents for laboratory, testing, research, or experimental purposes.

(e) Provisions will be made for back-up equipment in the event of the breakdown of critical operation equipment.

(f) The design and operation specifications for mining site facilities include features, which may include emergency power supplies, redundant equipment, or temporary holding facilities, to deal with emergency conditions.

(g) Mining site facilities are designed to minimize disturbance to surface areas, to the extent practicable.

(h) Where practicable, elevation differences in water-based transport systems will be used for gravity flows to minimize pumping facilities and pressures.

(i) The following apply:

1. Systems for transporting tailings in slurry through pipelines that are not buried are designed to provide for emergency tailings conveyance or storage in case a pipeline breaks, plugs, freezes, or needs repairs and will be accessible for inspection, emergency repair, and maintenance.

2. The location of emergency spill containment areas is consistent with the prevention of substantial environmental pollution of surface waters.

3. In the event of a power failure, tailings pipelines will be self draining to a tailings area or an emergency spill containment area or standby pumps and pipelines or standby power is provided.

4. More than one emergency spill containment area is provided if necessary.

(j) If practicable, all liquid effluents from the mining site will be directed to a common point, for treatment if necessary, before discharge to a natural watercourse.

(L) If sanitary wastes will be directed to a tailings area they will be appropriately treated.

**History:** 2013 a. 1, 358.

**295.49 Reclamation plan. (1)** An applicant for a mining permit shall submit as part of the application a reclamation plan, designed to minimize adverse effects to the environment to the extent practicable, that includes all of the following:

(a) A description of the manner, location, sequence, and timing of reclamation of the mining site, including the mine, mining waste site, and sites for the disposal of wastes that are not mining wastes.

(am) Prereclamation and postreclamation drawings.

(b) A map showing the specific reclamation proposal for each area of the mining site.

(c) A description of ongoing reclamation procedures during mining.

(d) A description of proposed interim and final topography and slope stabilization.

(e) A description of the proposed final land use and the relationship to surrounding land and land use.

(f) Plans for the long-term care of the mining site, that include all of the following:

1. Monitoring of the mine; mining waste sites; sites for the disposal of wastes that are not mining wastes; groundwater quality; and surface water quality.

2. The names of persons legally and operationally responsible for long-term care.

(g) Projected costs of reclamation, including the estimated cost of fulfilling the reclamation plan.

**(2)** The applicant shall demonstrate in the reclamation plan that all of the following will apply to the proposed reclamation, at a minimum:

(a) All toxic and hazardous wastes will be disposed of in conformance with applicable state and federal laws.

(b) At the conclusion of mining activity, each tunnel, shaft, and other underground opening will be sealed in a manner that will

prevent seepage of water in amounts that may be expected to create a safety, health, or environmental hazard, unless the applicant demonstrates alternative uses for the tunnel, shaft, or other underground opening that do not endanger public health or safety and that conform to applicable environmental protection and mine safety laws and rules.

(c) Grading and stabilization of the excavation, sides, benches, and final slope will conform with state and federal environmental and safety requirements and will prevent erosion and environmental pollution to the extent practicable.

(d) Grading and stabilization of the mining waste site and sites for the disposal of wastes that are not mining wastes will conform with state and federal environmental and safety requirements.

(e) Merchantable by-products will be stabilized.

(f) Diversion and drainage of water from the mining site, including the mining waste site and sites for the disposal of wastes that are not mining wastes, will be adequate to prevent erosion and contamination of surface water and groundwater to the extent practicable.

(g) Backfilling with tailings, waste rock, overburden, or borrow materials will be conducted where the backfilling will not interfere with the mining and will not cause an applicable groundwater quality standard to be exceeded.

(h) All underground and surface runoff waters from the mining site will be managed, impounded, or treated in compliance with any approval that regulates construction site erosion control or storm water management or discharge.

(i) All surface structures constructed as part of the mining activities will be removed unless an alternate use is approved in the reclamation plan.

(j) Adequate measures will be taken to prevent significant subsidence, but if subsidence does occur, the affected area will be reclaimed.

(k) All recoverable topsoil from surface areas disturbed by the mining will be removed and stored in an environmentally acceptable manner for use in reclamation or in offsetting or minimizing adverse environmental impacts.

(L) All disturbed surface areas will be revegetated as soon as practicable after the disturbance to stabilize slopes and minimize air pollution and water pollution, with the objective of reestablishing a variety of plants and animals indigenous to the area immediately prior to mining to the extent practicable.

(m) Plant species not indigenous to the area will be used for revegetation only if necessary to provide rapid stabilization of slopes and prevention of erosion and only with the approval of the department, but the objective under par. (L) will be maintained.

**(3)** If it is physically or economically impracticable or environmentally or socially undesirable for the reclamation process to return the area affected by mining to its original state, the applicant shall provide, in the reclamation plan, the reasons it would be impracticable or undesirable and a discussion of alternative conditions and uses to which the affected area can be put.

**History:** 2013 a. 1.

**295.51 Mining waste site location criteria; feasibility study, and plan of operation. (1) DEFINITIONS.** In this section:

(a) “Groundwater flow net” means a drawing showing equipotential contour lines and the direction that groundwater will flow.

(c) “Regional” means relating to the area that may affect or be affected by a proposed mining waste site, which ordinarily will not exceed the area within a radius of 5 miles of the mining waste site.

(e) “Water budget” means an assessment of water inputs, outputs, and net changes to a natural system or engineered facility over a fixed period.

(f) “Well nest” means 2 or more wells constructed to different depths and installed within 10 feet of each other at the ground surface.

**(1e) HAZARDOUS MINING WASTE.** (a) Prior to the informational hearing under s. 295.57 (5) the department shall designate any mining wastes identified by the department as hazardous under s. 291.05 (1).

(b) The disposal of any mining wastes that are identified by the department as hazardous under s. 291.05 (1) in a mining waste site is subject to this subchapter, and not to chs. NR 660 to 679, Wis. Adm. Code, except as necessary to comply with applicable federal regulations adopted under the federal Resource Conservation and Recovery Act, 42 USC 6901 to 6991m.

**(1m) LOCATION CRITERIA.** (a) Except as provided in par. (b), no person may locate or operate a mining waste site, excluding the portion of a mining site from which ferrous minerals are extracted and that is backfilled with mining waste, within 1,000 feet of any of the following:

1. The nearest edge of the right-of-way of any state trunk highway, as defined in s. 340.01 (60).
2. The boundary of any state or national park.
3. The boundary of a scenic easement purchased by the department or the department of transportation.
4. The boundary of a designated scenic or wild river.
5. A scenic overlook designated by the department by rule.
6. A hiking or biking trail designated by the department or the U.S. Congress.

(b) The prohibition in par. (a) does not apply if, regardless of season, the proposed mining waste site is visually inconspicuous due to screening or being visually absorbed due to natural objects, compatible natural plantings, earth berm, or other appropriate means; or if, regardless of season, the proposed mining waste site is screened so as to be as aesthetically pleasing and inconspicuous as is feasible.

(be) Except as provided in par. (bn), no person may locate or operate a mining waste site, excluding the portion of a mining site from which ferrous minerals are extracted and that is backfilled with mining waste, within 1,000 feet of a navigable water that is a lake, pond, or flowage.

(bg) Except as provided in par. (bn), no person may locate or operate a mining waste site, excluding the portion of a mining site from which ferrous minerals are extracted and that is backfilled with mining waste, within 300 feet of a navigable water that is a river or stream.

(bn) The prohibitions in pars. (be) and (bg) do not apply to an activity that is associated with a mining waste site and that is approved by the department under s. 295.60, 295.605, or 295.61.

(bq) No person may locate or operate a mining waste site, excluding the portion of a mining site from which ferrous minerals are extracted and that is backfilled with mining waste, within a floodplain.

(bt) No person may locate or operate a mining waste site, excluding the portion of a mining site from which ferrous minerals are extracted and that is backfilled with mining waste, in an area within the property owned or leased by the mining operator, or on which the mining operator holds an easement, and on which the mining site is located if the area is closer than 200 feet to the outer boundary of that property.

(c) No person may locate or operate a mining waste site, excluding the portion of a mining site from which ferrous minerals are extracted and that is backfilled with mining waste, within 1,200 feet of any public or private water supply well that provides water for human consumption.

(d) No person may locate or operate a mining waste site, excluding the portion of a mining site from which ferrous minerals are extracted and that is backfilled with mining waste, within an area that contains mineral resources that are known at the time the application for the mining permit is issued, are likely to be mined in the future, and lie within 1,000 feet of the surface.

**(1s) BACKFILLED WASTE SITE.** For surface mining, the portion of a mining site from which ferrous minerals are extracted and that

is backfilled with mining waste and any buildings, structures, roads, or drainage controls associated with that portion of the mining site may be considered a single mining waste site.

**(2) GENERAL.** An applicant for a mining permit shall submit as part of the application a mining waste site feasibility study and plan of operation that demonstrates the suitability of the proposed mining waste site for the disposal of mining wastes and that describes the operation of the mining waste site.

**(3) WASTE CHARACTERIZATION AND ANALYSIS.** For the purposes of this section, the applicant shall perform waste characterization and analysis, to identify the quantities, variability, and physical, radiological, and chemical properties of each mining waste as necessary to assess the potential environmental impact of handling, storage, and disposal. The applicant may include in the waste characterization and analysis a review of the literature and results from similar existing facilities, materials, or studies. For the purpose of the waste characterization and analysis, the applicant shall conduct testing on representative samples of materials available, on individual mining wastes from the mining process, and if the applicant proposes mixed storage or disposal of individual mining wastes, on composite mining wastes. If physical or chemical segregation of a mining waste is proposed, the applicant shall test each individual waste resulting from the physical or chemical segregation. The applicant shall complete all of the following components of the waste characterization and analysis:

(a) Identification of all mining wastes that will be disposed of or stored in the mining waste site, including classification of mining waste types, estimates of the rates of generation and volumes of each type, and an explanation of the proposed ultimate disposition of each type.

(b) Chemical, radiological, physical, and mineralogical analyses of each type of mining waste.

(c) Analyses of the particle size of the mining wastes.

(d) Chemical and physical characteristics testing, including testing to determine the leaching potential of the mining wastes and the composition of the resulting leachate, using, at a minimum, static testing, kinetic testing, and microscopic testing for mineralization characterization, except that this testing is not required if the applicant demonstrates, based on the analyses in pars. (b) and (c) or on past experience, that there is not a probability for significant adverse environmental impact or a probability of an adverse impact on public health, safety, or welfare.

**(4) SITE SPECIFIC INFORMATION.** In addition to performing the mining waste characterization and analysis under sub. (3), for the purposes of the mining waste site feasibility study and plan of operation, an applicant shall conduct field and laboratory investigations to determine physical, chemical, and biological characteristics of the proposed mining waste site. The applicant shall do all of the following:

(a) Perform field investigations to determine the specific topography, soil types, and depth to bedrock and groundwater.

(b) Perform at least one soil boring, to bedrock or refusal, every 80 acres, characterizing the major geomorphic features such as ridges and lowlands and characterizing each major soil layer according to the unified soil classification system.

(c) Prepare a boring log for each soil boring, including soil and rock descriptions, method of drilling, method of sampling, sample depths, date of boring, and water level measurements and dates, with elevations referring to United States geological survey mean sea level datum.

(d) Collect soil samples to adequately determine the geology and ensure the proper design and monitoring of the mining waste site, including doing all of the following:

1. Collecting the soil samples at not greater than 5 foot depth intervals, unless physical conditions such as soil homogeneity indicate that greater intervals are adequate.

2. Collecting the soil samples using generally accepted techniques for sampling undisturbed soils, where that is appropriate.

3. Classifying all soil samples according to the unified soil classification system.

(e) Perform soil tests as necessary for classification and correlation purposes and to develop necessary geotechnical design parameters for the mining waste site, without compositing soil samples.

(f) Determine the hydraulic conductivity of the various soil strata, using in situ hydraulic conductivity testing procedures as appropriate to confirm values determined in the laboratory.

(g) Determine horizontal and vertical groundwater flow patterns in and around the proposed mining waste site based on data obtained from groundwater monitoring wells and piezometers constructed in conformity with ch. NR 141, Wis. Adm. Code.

(h) Conduct a program to establish baseline water quality through monitoring groundwater and surface water in the vicinity of the mine and the proposed mining waste site on a monthly basis and establishing physical–chemical and biological characteristics of the concentrations of substances in the water before mining begins at the mining site. The applicant shall do all of the following:

1. Select physical–chemical parameters based on transport and transformation mechanisms in the environment as well as other factors affecting the mobility and toxicity of pollutants.

2. Select biological parameters based on the environmental characterizations under sub. (5) (g), the degree of impact predicted, and the potentially affected organism's sensitivity to contaminants.

3. Establish a final parameter list for groundwater and surface water based on preliminary sampling and known information concerning the waters in the vicinity of the mine and the mining waste site, consideration of applicable water quality standards, and the geology and composition of the ferrous mineral deposit that will be mined. At a minimum, in the program under this paragraph the applicant shall collect water quality data for all of the following parameters:

- a. Specific conductance.
- b. Temperature.
- c. Hydrogen ion concentration (pH).
- d. Dissolved oxygen.
- e. The major anions sulfate, chloride, and bicarbonate.
- f. The major cations calcium, magnesium, potassium, and sodium.
- g. Other total and dissolved metals, including aluminum, iron, and manganese, that may be introduced by the mining activities.
- h. General chemistry, including total alkalinity, total organic carbon, gross alpha, gross beta, ammonia, nitrate, total dissolved solids, total hardness, and total suspended solids.

**(5) CONTENTS RELATED TO WASTE SITE FEASIBILITY.** An applicant shall include all of the following in the mining waste site feasibility study and plan of operation:

(a) A description of the mining waste site location, proposed acreage, proposed mining waste site life and range of disposal capacity, and estimated types and quantities of mining wastes to be contained.

(b) A description of the mining waste characterization and analysis conducted under sub. (3), including a description of the test methods used in evaluating the characteristics of the mining waste and the procedures and records for documenting the chain of custody of the test samples.

(c) An existing site conditions plan sheet consisting of a topographic survey of the area, with elevations tied to United States geological survey mean sea level datum, illustrating the property boundaries, proposed boundaries of the mining waste site, survey grid and north arrow, buildings, water supply wells, utility lines, other man–made features, soil boring locations, observation well locations, and other pertinent information.

(d) A series of geologic cross–sections illustrating existing topography; soil borings; soil classification; soil properties; interpreted soil stratigraphy; bedrock; well and boring locations and constructions; and stabilized water level readings.

(e) A water table map, using the existing site conditions plan under par. (c) as a base, that is based on stabilized water level readings and, if seasonal changes in groundwater levels are significant, maps those changes.

(f) If more than 2 well nests are constructed, groundwater flow nets to illustrate horizontal and vertical flow, which may be illustrated on the geologic cross–sections under par. (d), if appropriate.

(g) An environmental characterization that describes the structure and functional relationships of ecosystems potentially affected by the proposed mining waste site.

(h) A report on the water quality data collected under the baseline monitoring program under sub. (4) (h) to establish baseline water quality.

(i) A land use map, using the existing site conditions plan under par. (c) as a base, showing plant communities, wildlife habitat, places where rare and endangered species have been sighted, archaeological or historic sites, buildings, and areas of social importance.

(j) A table showing existing water quality of all potentially affected surface waters, indicating important aquatic habitat.

(k) Local climatological data for seasonal precipitation, evaporation, air temperature, and wind velocity and direction. The applicant may use an annual record on the proposed mining waste site or adequate data to correlate the proposed mining waste site conditions to an existing observation station as the basis for this data.

(L) A discussion of regional conditions, supplemented with maps or cross–sections where appropriate, addressing all of the following:

1. Topography.
2. Hydrology, including surface water drainage patterns and important hydrologic features such as navigable waters, springs, drainage divides, and wetlands.
3. Geology, including the nature and distribution of bedrock and unconsolidated deposits.
4. Hydrogeology, including depth of groundwater, flow directions, recharge and discharge areas, groundwater divides, aquifers, and the identification of the aquifers used by all public and private wells within at least 1,200 feet of the proposed mining waste site.
5. Groundwater and surface water quality and precipitation chemistry.
6. Climatology.
7. Identification of owners of land adjacent to the proposed mining waste site.
8. Zoning.
9. Existing land uses with particular emphasis on known recreational, historic, archaeological, scientific, cultural, or scenic significance.
10. Existing or proposed access roads and weight restrictions on those roads.
11. Identification of aquatic and terrestrial ecosystems such as stream orders and classifications.

(m) A discussion of alternative methods of disposing of mining waste materials, including an analysis of the practicability of the reuse, sale, recovery, or processing of the mining wastes for other purposes.

(n) An analysis of the results of the mining waste characterizations under sub. (3), the site specific information under sub. (4) and this subsection, and the regional information under par. (L) in relation to the approach for locating the mining waste site and developing appropriate design, construction, operation, monitoring, and long–term care requirements for each type of mining waste.

(o) A proposed mining waste site design, based on conclusions resulting from analysis of the mining waste characterizations under sub. (3) and the site data under sub. (4), that includes all of the following:

1. A map, using the existing site conditions plan under par. (c) as a base, that shows proposed access, lateral extent of filling, and phases of mining waste site development.
2. A series of cross-sections, using the geologic cross-sections under par. (d) as the base, that show existing topography, proposed base grades, and final grades.
3. Preliminary earthwork balance calculations, showing amounts of materials expected to be moved on the mining waste site prior to the disposal of mining waste.
4. Proposed methods for leachate control.
5. Proposed methods of mining waste site development, phasing, access control, and other special design features.
6. Expected material balances showing the quantities of each type of mining waste identified in par. (a) showing the amounts generated, disposed of on site, and taken off site, including all of the following:
  - a. The projected conditions existing at the end of a typical year of production.
  - b. The projected conditions existing at the end of operations.
  - c. The projected conditions existing at the end of reclamation.
7. A discussion of the reasoning behind the design of the major features of the mining waste site, such as traffic routing, base grade and relationships to subsurface conditions, anticipated waste types and characteristics, phases of development, mining waste site monitoring, and similar design features.
8. A proposed monitoring program, based on potential variations in the quality and quantity of mining waste and methods of processing, transport and disposal, and on the variability of important environmental conditions, designed to monitor the proposed mining waste site for compliance with all environmental standards that are applicable under this subchapter.
9. The results of engineering and hydrologic modeling to assess mining waste site performance relative to compliance with applicable groundwater quality standards to a depth of not more than 1,000 feet into the Precambrian bedrock or to the final depth of the mining excavation, whichever is greater, and to compliance with applicable surface water quality standards, examining a period equal to the proposed period in which the mining waste site is proposed to operate plus 250 years after closure of the mining waste site. The applicant may also include information from other mining operations and operations for the extraction of nonferrous metallic minerals to substantiate that the proposed mining waste site design, including associated contingency plans and monitoring and response plans, will allow for the operation and closure of the mining waste site in a manner that will not substantially adversely affect groundwater and surface water quality in accordance with applicable standards.
10. If the applicant proposes to expand an existing mining waste site, an evaluation of the existing mining waste site design and operation.

(p) Preliminary water budgets for the periods before construction, during construction, and after closure of the mining waste site, each addressing climatological situations depicting dry, wet, and average precipitation and evaporation conditions, based on climatological records. In preparing the water budget, the applicant shall consider precipitation, slurry water input and return, evaporation, surface runoff, evapotranspiration, the moisture holding capacity of soil and mining waste, and the velocities and volumes of groundwater flow. In the water budget, the applicant shall describe the estimated amount and quality of seepage and discharge to surface water and groundwater.

(q) An analysis of the impact of the mining waste site on aesthetics and how any impact can be minimized or offset to the extent practicable.

(r) Data regarding the safety factors of tailings basin embankments, considering the following, on a case-by-case basis:

1. Geology of the mining waste site including type and homogeneity of the foundation.
2. Materials and methods to be used for embankment construction.
3. Physical and chemical characteristics of the mining waste as deposited and predicted changes through time.
4. The potential area to be affected in case of failure, considering land use and the surrounding environment.
5. Requirements of the mine safety and health administration of the federal department of labor.

(s) An economic analysis, including an engineer's cost estimate, for mining waste site closure and long-term care.

(t) Identification and analysis of alternatives to the design and location of any new proposed mining waste site and discussion of operation alternatives to the extent they have a significant impact on design and location alternatives.

(u) An appendix that includes all of the following:

1. Boring logs, soil tests, well construction data, and water level measurements.
2. A description of the methods and equations used in the analysis of the raw data.
3. References.

(6) CONTENTS RELATING TO OPERATION. An applicant for a mining permit shall submit as part of the mining waste site feasibility study and plan of operation provisions relating to operation of the mining waste site including all of the following:

(a) Engineering plans consisting of all of the following:

1. An existing site conditions plan sheet indicating site conditions before development to the extent not provided under sub. (5).
2. A base grade plan sheet indicating mining waste site base grades or the appearance of the mining waste site if it were excavated in its entirety to the base elevation, before installation of any engineering modifications and before disposal of any mining wastes.
3. An engineering modifications plan sheet indicating the appearance of the mining waste site after installation of engineering modifications.
4. A final site topography plan sheet indicating the appearance of the site at closing including the details necessary to prepare the mining waste site for reclamation and long-term care.
5. A series of phasing plan sheets showing initial mining waste site preparations for each subsequent major phase or new area where substantial mining waste site preparation must be performed, along with a list of construction items and quantities projected to be necessary to prepare the phase indicated.
6. A site monitoring plan sheet showing the location of all devices for the monitoring of leachate quality, leachate production, and groundwater quality and levels in both the natural zone of saturation and that developed within the mining waste site, along with a table indicating the parameters to be monitored for and the frequency of monitoring before and during mining waste site development.
7. A long-term care plan sheet showing the completion of closure and indicating those items anticipated to be performed during the period of long-term care for the mining waste site, along with a discussion of the procedures to be used for the inspection and maintenance of runoff control structures, settlement, erosion damage, leachate control facilities, and leachate and groundwater monitoring and a table listing those items and the anticipated schedule for monitoring and maintenance.

8. If applicable, the following information on the plan sheets under subs. 1. to 7.:

- a. A survey grid with baselines and monuments to be used for field control.

b. Limits of filling for each major mining waste type or fill area.

c. All drainage patterns and surface water drainage control structures both within the actual fill area and at the perimeter of the mining waste site, including any berms, ditches, sedimentation basins, pumps, sumps, culverts, pipes, inlets, velocity breaks, sodding, erosion matting, vegetation, or other methods of erosion control.

d. The method of placing mining waste within each phase.

e. Ground surface contours at the time represented by the drawing, indicating spot elevations for key features.

f. Areas to be cleared, grubbed, and stripped of topsoil.

g. Borrow areas for liner materials, granular materials for filter beds, berms, roadway construction, and cover materials.

h. All soil stockpiles, including soils to be used for cover, topsoil, liner materials, filter bed materials, and other excavation.

i. Access roads and traffic flow patterns to and within the active fill area.

j. All temporary and permanent fencing.

k. The methods of screening such as berms, vegetation, or special fencing.

L. Leachate collection, control, and treatment systems, including any pipes, manholes, trenches, berms, collection sumps or basins, pumps, risers, liners, and liner splices.

m. Leachate and groundwater monitoring devices and systems.

n. Disposal areas for severe weather operations.

o. Support buildings, utilities, gates, and signs.

p. Handling areas for the segregation of various types of mining waste.

q. Construction notes and references to details.

r. On the appropriate plan sheet, the location of each cross-section under subd. 9., with the section labeled using the mining waste site grid system.

9. A series of mining waste site cross-sections, drawn perpendicular and parallel to the mining waste site baseline at a maximum distance of 500 feet between cross-sections and at points of important construction features, each cross-section showing, where applicable: existing and proposed base and final grades; soil borings and monitoring wells that the section passes through or is adjacent to; soil types, bedrock, and water table; leachate control, collection, and monitoring systems; quantity of mining waste and area filled by each major mining waste type; drainage control structures; access roads and ramps on the mining waste site perimeter and within the active fill area; the filling sequence or phases; and other appropriate site features.

10. Drawings and typical sections for, as appropriate, drainage control structures, tailings distribution systems, access roads, fencing, leachate control systems and monitoring devices, buildings, signs, and other construction details.

(b) A plan for initial site preparations, including a discussion of the field measurements, photographs to be taken, and sampling and testing procedures to be used to verify that the in-field conditions encountered were the same as those defined in the mining waste site feasibility study and plan of operation and to document that the mining waste site was constructed according to the engineering plans and specifications submitted for department approval.

(c) A description of typical daily operations, including a discussion of the timetable for development; methods for determining mining waste types disposed of or excluded; typical mining waste handling techniques; hours of operation; traffic routing; drainage and erosion control; windy, wet, and cold weather operations; fire protection equipment; methods for dust control; method of placing mining waste materials; monitoring; closure of filled areas; leachate control methods; and critical backup equipment.

(d) An analysis of the financial responsibility for closure and long-term care from the time of closing of the mining waste site to termination of the obligation to maintain proof of financial responsibility for long-term care.

(e) A description of procedures for backfilling all soil borings and monitoring wells when they are abandoned.

(f) A contingency plan to prevent or minimize damage to human health or the environment in the event of an accidental or emergency discharge or other condition that does not comply with conditions of the mining permit or other applicable standards. The applicant shall ensure that the plan does all of the following:

1. Follows the spill prevention, control, and countermeasures plan in regulations promulgated under **33 USC 1321**.

2. Indicates, for the monitoring programs required under sub. (5) (o) 8., the levels of substances that if exceeded require the operator to activate the contingency plan.

3. Includes a provision for more concentrated and frequent monitoring in the area of any excessive measurement.

4. Describes possible accidental or emergency discharges or other unplanned events and identifies the corresponding corrective action or alternative action to be implemented should the criteria for action be exceeded.

5. Specifies the action to be taken if an analysis of groundwater samples requires a response.

(g) A list of the groundwater and surface water quality parameters for which the applicant will monitor under s. 295.643 and a description of the methods for groundwater and surface water sample collection, preservation, and analysis that will be used.

(7) REQUIRED DEMONSTRATIONS. Through the mining waste site feasibility study and plan of operation, the applicant shall demonstrate that all of the following apply or will apply with respect to the operation of the mining waste site, excluding the area from which ferrous minerals will be extracted and that is backfilled with mining waste:

(a) No mining waste will be deposited in such a way that the mining waste or leachate from the mining waste will result in a violation of any applicable surface water quality criteria or standards, applicable wetland water quality standards, or applicable groundwater quality standards.

(b) Surface water drainage will be diverted away from and off the active fill area.

(c) Access to the mining waste site will be restricted through the use of fencing, natural barriers, or other methods approved by the department.

(d) The entire perimeter of the mining waste site will be made accessible for inspection and for earth moving equipment required for emergency maintenance.

(e) Any area to be used for the disposal of mining waste and any borrow areas will first be stripped of all topsoil to ensure that adequate amounts are available for reclamation and closure activities.

(f) Effective means will be taken to control dust resulting from the mining waste site.

(g) Provisions will be made for back-up equipment in the event of the breakdown of critical operating equipment.

(h) The design and operation specifications for mining waste site facilities include contingency measures, which may include emergency power supplies, redundant equipment, or temporary holding facilities, to deal with emergency conditions.

(hm) Any mining waste site designed with a liner or situated in soils with sufficiently low permeability to either partially or completely contain leachate is designed with a leachate management system that can effectively remove leachate, prevent surface seepage, and promote adequate settlement to permit final reclamation.

(i) All surface water drainage ditches, culverts, and other drainage control structures are designed for a rainfall event mea-

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sured in terms of the depth of the rainfall occurring within a 24-hour period and having an expected recurrence interval of once in 100 years.

(j) The final slopes of the completed mining waste site will be no greater than 50 percent, unless the mining waste site is specifically designed for a final use compatible with other slopes.

(k) The final cover design for the mining waste site is based on the results of the mining waste characterization and engineering needs identified in studying the mining waste site feasibility.

(L) Provisions are made for collection and treatment of leachate for all areas designed to contain leachate.

(m) The mining waste site is located and designed, and will be constructed and operated, so that any liner system or naturally occurring soil barrier is compatible with all mining waste that is disposed of or stored in the mining waste site.

(n) For any dam, sufficient freeboard, measured from the inside of the top of the dam, to contain a rainfall event measured in terms of the depth of the rainfall occurring within a 24-hour period and having an expected recurrence interval of once in 100 years and to prevent overtopping by waves during such a rainfall event or a minimum of 2 feet of freeboard, whichever is greater, will be provided.

(o) Drainage or filter bed material has been selected and designed to promote drainage, reduce the potential for piping, and be stable under leaching conditions.

(p) Material used in earth embankments or drainage or filter beds will be free of vegetation, organic soils, frozen soils, and other extraneous matter that could affect the compactibility, density, permeability, or shear strength of the finished embankment.

(q) Embankment materials and drainage or filter bed materials will be compacted to 90 percent of the maximum dry density as determined by the standard proctor compaction test, ASTM D698, or to a greater density as necessitated by the embankment height, and the materials will be compacted in appropriate layers as determined through the slope stability analysis, except that compaction and crushing of waste rock for use outside an earth core is not required.

(r) Emergency spill containment areas will be provided near the tailings pipeline in case of power or pipeline failure.

(s) Tailings pipelines will be self-draining to the tailings area or to an emergency spill containment area.

(t) The mining waste site is located in the same watershed as the surface facilities for the mining unless it is not practicable to locate the mining waste site in the same watershed as the surface facilities for the mining, as determined on a site specific basis.

(u) The disposal of the mining waste will minimize the discharge of environmental pollutants to groundwater to the extent practicable.

(w) Tailings pipelines are as short as practicable.

(x) Upstream rainfall catchment areas are minimized.

(y) The outside of the top of any dam is higher than the inside of the top of the dam so that runoff from the top is forced to the inside of the dam.

(z) The mining waste site design includes staged reclamation, if practicable.

**(8) LIMITATION ON REGULATION OF CERTAIN MINING WASTE.** The department may not regulate the use of mining waste in reclamation or in the construction of any facility or structure on a mining site except through the department's review of the mining plan and reclamation plan and the approval of the application for the mining permit.

**(9) APPLICABILITY OF OTHER LAWS.** Subchapters I to V and VIII of ch. 289 and rules promulgated under those subchapters do not apply to a mining waste site, to the disposal of mining waste in a mining waste site, or to mining wastes used in the reclamation or construction of facilities and structures on the mining site.

History: 2013 a. 1.

**295.53 Environmental impact statement. (1) CONSULTANTS.** The department may enter into contracts for environmental consultant services under s. 23.41 to assist in the preparation of an environmental impact statement or to provide assistance to applicants.

**(2) NOTICE.** After the department receives an application for a mining permit, it shall notify the public and affected agencies that an environmental impact statement will be prepared for the proposed mine and that the process of identifying major issues under s. NR 150.30 (1) (f), Wis. Adm. Code, is beginning.

**(3) ENVIRONMENTAL IMPACT REPORT.** (a) An applicant shall prepare an environmental impact report for the mining project. In the environmental impact report, the applicant shall provide a description of the proposed mining project, the present environmental conditions in the area and the anticipated environmental impacts of the proposed mining project, the present socioeconomic conditions in the area and the anticipated socioeconomic impacts of the proposed mining project, details of any wetlands mitigation program under s. 295.60 (8), any measures for navigable waters under s. 295.605 (4), any proposed changes to the forest designations specified in sub. (4) (c), and the alternatives to the proposed mining project. As the applicant provides more information or makes modifications to the proposed mining project, the department may revise the requirements it specified under s. 295.465 (1) (b) to ensure the potential environmental effects can be identified in the department's environmental impact statement.

(b) The department shall assist the applicant in meeting the deadlines for ultimate submission and review of any scientific analyses consistent with this subchapter. If a particular scientific analysis is not completed as of the date the environmental impact report is required to be submitted, the applicant shall identify in the environmental impact report the scope of the analysis and anticipated date that it will be submitted.

(c) 1. The applicant shall submit the environmental impact report with the application for the mining permit.

3. Upon receipt of the environmental impact report, the department shall review the environmental impact report and, if the department finds that the environmental impact report does not contain information reasonably necessary for the department to evaluate the proposed mining project and its environmental effects, the department may request additional information from the applicant.

(d) The department shall accept original data from an environmental impact report for use in the environmental impact statement and need not verify all original data provided by the applicant to accept the data as accurate. The department shall use original data from an environmental impact report in the environmental impact statement if the data contains the information identified under s. 295.465 (1) (b) and any of the following conditions is met:

1. The department, its consultant, or a cooperating state or federal agency collects sufficient data to perform a limited statistical comparison with data from the environmental impact report that demonstrates that the data sets are statistically similar within a reasonable confidence limit.

2. An expert who is employed by, or is a consultant to, the department or is employed by, or is a consultant to, a cooperating state or federal agency determines that the data is within the range of expected results.

3. The department, its consultant or a cooperating state or federal agency determines that the methodology used in the environmental impact report is scientifically and technically adequate for the tests being performed.

**(4) PROCEDURE FOR ENVIRONMENTAL IMPACT STATEMENT.** (a) The department shall prepare an environmental impact statement for every application for a mining permit. In preparing the environmental impact statement, the department shall comply with s. 1.11 (2) and s. NR 150.30 (2), Wis. Adm. Code.

(b) The department shall include in the environmental impact statement a description of the significant long-term and short-term impacts, including impacts after the mining has ended, on all of the following:

1. Tourism.
2. Employment.
3. Schools and medical care facilities.
4. Private and public social services.
5. The tax base.
6. The local economy.
7. Archaeological sites.

(c) The department and other state agencies shall address the application for a mining permit, for any approval, and for any action relating to the mining project involving other state agencies in one comprehensive analysis in the environmental impact statement prepared by the department, including any environmental analysis required by the department with regard to any of the following:

1. The withdrawal of land entered as county forest land under s. 28.11 and any modification of, or amendment to, a county forest land use plan necessitated by the withdrawal of the land.
2. The withdrawal of land entered as forest cropland under s. 77.10.
3. The withdrawal of land designated as managed forest land under subch. VI of ch. 77 and any modification of, or amendment to, a managed forest land management plan necessitated by the withdrawal of the land.
4. The transfer of land for which amounts were awarded by the department, including under s. 23.09 (17m), 26.38, 28.11 (5r), or 77.895, to fund the acquisition of, or to fund activities conducted on, forest land and any modification of, or amendment to, a forest stewardship management plan or other plan necessitated by the transfer of the land.

(d) The public notice, informational hearing, and comment provisions in s. 295.57, the provision concerning the effective date of approvals in s. 295.58 (6), and the provisions for review in s. 295.77 (1) and (2) apply to an environmental impact statement prepared under this subsection. If the department revises and redistributes an environmental impact statement or portion of an environmental impact statement prepared under this subsection, the department shall distribute the environmental impact statement or portion of the environmental impact statement as provided in s. 295.57, but the period for public comment is 30 days, rather than 45 days.

(e) The department shall conduct its environmental review process jointly with any federal or local agency that consents to a joint environmental review process. The department may adopt any environmental analysis prepared by another state agency or by a federal or local agency. The department may enter into a written agreement with any of those agencies that have a major responsibility related to or that are significantly affected by the proposed mining. In the written agreement, the parties shall define the responsibility of each agency in the development of a single environmental impact statement on the proposed mining and outline the procedures to be used in the regulatory process. The department shall be the lead agency for any environmental review process involving other state agencies. To the extent that any federal or local agency's environmental review process conflicts with the provisions of this section or s. 295.57, the department shall follow the provisions of this section and s. 295.57 and may only coordinate its environmental review to the extent consistent with the provisions of this section and s. 295.57. The department shall comment on any federal agency's environmental assessment or environmental impact statement associated with a mining project in accordance with s. NR 150.40, Wis. Adm. Code.

(5) RELATIONSHIP TO OTHER LAWS. This section and s. 295.57 govern the department's obligations under ss. 1.11 and 1.12 with respect to a mining project. Sections 23.11 (5) and 23.40 and ss.

NR 2.085, 2.09, and 2.157, Wis. Adm. Code, do not apply with respect to a mining project. The rest of ch. NR 2, Wis. Adm. Code, only applies with respect to a mining project to the extent that it does not conflict with this section and s. 295.57. Sections NR 150.30 (1) (g) and 150.35, Wis. Adm. Code, do not apply with respect to a mining project. The rest of ch. NR 150, Wis. Adm. Code, only applies with respect to a mining project to the extent that it does not conflict with this section and s. 295.57.

History: 2013 a. 1; 2013 a. 168 s. 21; 2015 a. 195.

**295.56 Exemptions.** (1) The department may grant an exemption, as provided in this section, from any of the requirements of this subchapter applicable to any of the following:

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

(b) A mining permit.

(c) Any other approval.

(2) (a) An applicant shall submit a request for an exemption in writing and shall describe the grounds for the exemption and provide documentation identifying the conditions requiring the exemption, the reasons for the exemption, and the reasonableness of the exemption.

(b) An applicant may obtain an exemption only if the applicant submits the request no later than the 180th day after the application for the mining permit is administratively complete under s. 295.57 (2), unless the condition that is the basis for the requested exemption is not known to the applicant before that day, in which case the deadline is extended to the 20th day before the deadline under s. 295.57 (7) (a).

(c) The department shall issue a decision on a request for an exemption no later than the 15th day after the day on which it received the request under par. (a). Subject to par. (b) and except as provided in par. (d), the department shall grant the exemption if it is consistent with the purposes of this subchapter and will not violate any applicable environmental law outside of this subchapter and if both of the following apply:

1. The exemption will not result in significant adverse environmental impacts on the mining site or, if the exemption will result in significant adverse environmental impacts on the mining site, the applicant will offset those impacts through a mitigation program, as provided in s. 295.60 (8), through the measures provided in s. 295.605, or through the conservation measures provided in s. 295.61.

2. The exemption will not result in significant adverse environmental impacts off of the mining site.

(d) 1. The department shall deny a request for an exemption if granting the exemption would violate federal law.

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

History: 2013 a. 1.

**295.57 Application procedure.** (1) SUBMISSION. (a) An applicant shall submit the application for a mining permit as provided in s. 295.47.

(b) The department shall protect as confidential any information, other than effluent data, contained in an application for a mining permit, upon a showing that the information is entitled to protection as a trade secret, as defined in s. 134.90 (1) (c), and any information relating to production or sales figures or to processes or production unique to the applicant or that would tend to adversely affect the competitive position of the applicant if made public.

(2) DETERMINATION OF ADMINISTRATIVE COMPLETENESS. (a) The department shall review an application for a mining permit

and, within 30 days after the application is submitted, shall determine either that the application is complete or that additional information is needed. If the department determines that the application is complete, the department shall notify the applicant in writing of that fact within the 30–day period and the date on which the department sends the notice is the day on which the application is administratively complete.

(b) If the department determines under par. (a) that an application is incomplete, the department shall notify the applicant in writing and may make one request for additional information during the 30–day period specified in par. (a). Within 10 days after receiving additional requested information from the applicant, the department shall notify the applicant in writing as to whether it has received all of the requested information. The day on which the department sends the 2nd notice under this paragraph is the day on which the application is administratively complete.

(c) If the department fails to meet the 30–day time limit under par. (a) or the 10–day time limit under par. (b), the application is administratively complete on the last day of the 30–day time limit or 10–day time limit.

(d) The department may request additional information needed to process a mining application from the applicant after the application is administratively complete, but the department may not delay the determination of administrative completeness based on a request for additional information.

**(3) NOTICE OF ADDITIONAL APPROVALS.** Within 30 days after the mining permit is administratively complete under sub. (2), the department shall notify the applicant in writing of any approval required for the construction or operation of the mining site that was not previously identified by the department.

**(3m) RECEIPT OF CERTAIN APPROVALS.** If a storm water discharge permit under s. 283.33 (1) (a) or a water quality certification under rules promulgated under subch. II of ch. 281 to implement 33 USC 1341 (a) is needed for a mining operation, the person applying for the mining permit may apply for and be issued the permit or certification.

**(4) PUBLIC INFORMATION AND NOTICE.** (a) The department shall make available for review in the city, village, or town in which the proposed mining site is located, information concerning the proposed mining, including all of the following:

1. The application for the mining permit, including the mining plan, reclamation plan, and mining waste site feasibility study and plan of operation.
2. Any of the following relating to an approval other than the mining permit:
  - a. The application.
  - b. A draft approval.
  - c. Information or summaries relating to the approval.
3. The environmental impact statement, environmental impact report, and any additional supporting information used in the department’s evaluation of the proposed mining.
4. The department’s analyses and preliminary determinations relating to any approval.

(b) The department shall distribute a notice that describes the availability of the information under par. (a); the opportunity for written public comment, including an invitation for the submission of written comments by any person within 45 days after the date of the publication of the notice; and the date, time, and location of the public informational hearing and that includes any additional information that a law concerning any approval requires to be provided. The department shall publish the notice as a class 1 notice under ch. 985 and shall publish notice on the department’s Internet site. The date on which the department first publishes the notice on its Internet site shall be considered the date of the publication of the notice required to be published under this paragraph. The department shall also send the notice to all of the following:

1. The clerk of any city, village, town, or county with zoning jurisdiction over the proposed mining site.
  2. The clerk of any city, village, town, or county within whose boundaries any portion of the proposed mining site is located.
  3. The clerk of any city, village, or town, contiguous to any city, village, or town within whose boundaries any portion of the proposed mining site is located.
  4. The main public library of each city, village, town, or county with zoning jurisdiction over the proposed mining site or within whose boundaries any portion of the proposed mining site is located.
  5. Any regional planning commission for the area within which the proposed mining site lies.
  6. Any state agency that the department knows is required to grant a permit or other authorization necessary for the construction or operation of the proposed mining project.
  7. The federal environmental protection agency, U.S. army corps of engineers, and states potentially affected by the proposed discharge if a water discharge permit under ch. 283 or a wetland permit that constitutes a water quality certification as required by 33 USC 1341 (a) is to be considered at the public informational hearing.
  8. The federal environmental protection agency and appropriate agencies in other states that may be affected if an air pollution control permit under ch. 285 is to be considered at the public informational hearing.
  9. If a water withdrawal permit under s. 295.61 for a withdrawal of surface water is to be considered at the public informational hearing, the persons specified in s. 30.18 (4) (a).
  10. If an individual permit under s. 30.12 for a structure through which water transferred from the Great Lakes basin would be returned to the source watershed through a stream tributary to one of the Great Lakes is to be considered at the public informational hearing, the governing body of each city, village, and town through which the stream flows or that is adjacent to the stream downstream from the point at which the water would enter the stream.
  11. Any person upon request. The department’s notice under this subdivision may be given through an electronic notification system established by the department.
  12. The applicant.
  13. Any other person to whom the department is required to give notice of any proposed determination, application, or hearing concerning an approval under the laws relating to the issuance of any approval or under s. 1.11.
- (c) The department shall coordinate the public comment period for the mining permit with the public comment period for any other approval for the mining operation, except that if an application for an approval is filed too late to allow public comment within the public comment period for the mining permit, the department shall issue separate notice, as described in par. (b), for the approval after the application is filed.
- (5) INFORMATIONAL HEARING.** The department shall hold a public informational hearing before it approves or denies an application for a mining permit and not less than 30 days after the date of the publication of the notice under sub. (4) (b). The department shall hold the public informational hearing in the county where the majority of the proposed mining site is located. The department shall hold a single public informational hearing covering the mining permit, all other approvals, and the environmental impact statement, except that if an application for an approval is filed too late to allow the application to be considered at the public informational hearing for the mining permit, the department shall hold a separate public informational hearing on the approval in the county where the majority of the proposed mining site is located not less than 30 days after the date of the publication of the notice under sub. (4) (b) for the approval. The department shall publish the notice on its Internet site not more than 10 days after the appli-

cation is considered to be complete under sub. (8) (b) 1. The public informational hearing under this subsection is not a contested case hearing under ch. 227. At the hearing, the department shall take testimony on all of the following with regard to any proposed withdrawal of groundwater or surface water:

(a) The public rights in any body of water and the related environment that may be injured by the proposed withdrawal of groundwater or surface water.

(b) The public benefits provided by increased employment, economic activity, and tax revenues from the proposed mining operation.

(c) The direct and indirect social and economic costs and benefits of the proposed mining operation.

(d) Whether the proposed withdrawal of groundwater or surface water will consume nonsurplus water.

(e) The rights of competing users of the groundwater or surface water.

(f) Any other water withdrawal issues identified by the department as relevant to the decision of whether to issue or deny a permit.

(6) SUMMARY. After considering the comments received under subs. (4) and (5) and before acting on the application for the mining permit, the department shall prepare a summary of the comments and the department's response to the comments.

(7) DEADLINE FOR ACTING ON MINING PERMIT APPLICATION. (a) No later than the deadline specified by the applicant under s. 295.47 (1) (am) or, if the applicant does not specify a deadline under s. 295.47 (1) (am), no more than 420 days after the day on which the application for a mining permit is administratively complete under sub. (2), the department shall approve the application, and issue a mining permit, or deny the application, in accordance with s. 295.58, unless the department and the applicant agree to extend the deadline. The department and the applicant may agree to not more than one extension and that extension may not exceed 60 days. The department and the applicant may enter into an extension only if one of the following applies:

1. An extension is necessary to enable the department and the U.S. army corps of engineers to jointly prepare their environmental impact statements.

2. New information or a change to the mining proposal necessitates additional time to review the application.

(b) If the department does not comply with the deadline under par. (a), including any extension agreed to by the applicant, the department shall refund the fees under s. 295.73 (3) (a), (d), and (e) that were paid by the applicant.

(c) If the department does not comply with the deadline under par. (a), including any extension agreed to by the applicant, the applicant may bring an action for mandamus in the circuit court for the county in which the majority of the proposed mining site is located to compel the department to approve or deny the application. Notwithstanding s. 814.04 (1), in an action under this paragraph the court shall award the applicant its costs, including reasonable attorney fees, if it determines that the department did not comply with the deadline under par. (a).

(8) DEADLINE FOR ACTING ON OTHER APPROVALS. (a) Except as provided in par. (c), if an applicant files an application for an approval other than a mining permit no later than 60 days after the day on which the application for the mining permit is administratively complete under sub. (2) or more than 60 days after that day but in time to allow the application to be considered at the public informational hearing for the mining permit under sub. (5), the department shall approve the application, and issue the approval, or deny the application no later than the deadline under sub. (7) (a), including any extension agreed to by the applicant.

(b) 1. If an applicant files an application for an approval other than a mining permit too late to allow the application to be considered at the public informational hearing for the mining permit under sub. (5) but before the department issues the decision to

grant or deny the application for the mining permit, the application for the approval is considered to be complete on the 30th day after the department receives the application, unless, before that day, the department provides the applicant with written notification that the application is not complete, stating the reason for the determination and describing the specific information necessary to make the application complete. If the department provides such a notice, the applicant shall supplement the application by providing the specified information. The application is considered to be complete when the applicant provides the information.

2. Except as provided in subd. 3., the department shall approve the application for an approval described in subd. 1., and issue the approval, or deny the application after the separate public informational hearing for the approval required under sub. (5) and no later than 75 days after the application for the approval is considered to be complete under subd. 1.

3. Except as provided in par. (c), the department shall approve or deny the application for an approval described in subd. 1. that is an individual permit for which federal law requires the opportunity for public comment or the ability to request a public hearing prior to issuance of the approval after the separate public informational hearing required for the approval under sub. (5) and no later than 180 days after the application is considered to be complete under subd. 1.

(c) The deadlines in pars. (a) and (b) do not apply to the application for an air pollution control permit under s. 285.62 for which the department receives an objection from the federal environmental protection agency under s. 285.62 (6).

(d) The department shall incorporate an approval other than a mining permit into a single document with the mining permit, unless the application for the approval was filed more than 60 days after the day on which the application for the mining permit is administratively complete under sub. (2).

(8m) SUBMISSION OF TECHNICAL REVIEW TO GREAT LAKES REGIONAL BODY. If an applicant files an application under s. 281.346 for an approval for a withdrawal of surface water or groundwater that is subject to regional review or council approval, the department shall provide its technical review, as defined in s. 281.346 (1) (u), to the regional body, as defined in s. 281.346 (1) (q), no later than 90 days after the applicant files the application for the approval.

(9) APPLICABLE PROCEDURE. (a) The provisions of this section and ss. 295.58 (5) and (6) and 295.77 concerning public notice, comment, and hearing; issuance of department decisions; effective date of department decisions; and review of department decisions; and the duration of approvals apply to any approval for which the application is filed before the department issues the decision to grant or deny the application for the mining permit, notwithstanding any provisions related to those matters in s. 44.40 or 169.25, subch. I or VI of ch. 77, ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291, or rules promulgated under those provisions, except as provided in s. 281.343 (7r) and except that if a withdrawal of surface water or groundwater is subject to regional review or council approval under s. 281.346, the applicable provisions related to regional review or council approval apply.

(b) The provisions of ss. 295.58 (5) and (6) and 295.77 concerning review of department decisions and the duration of department decisions apply to any approval for which the application is filed after the department issues the mining permit, notwithstanding any provisions related to those matters in s. 44.40 or 169.25, subch. I or VI of ch. 77, ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291, or rules promulgated under those provisions, except as provided in s. 281.343 (7r).

History: 2013 a. 1; 2015 a. 196.

### 295.58 Mining; department grant or denial of permit.

(1) CRITERIA FOR APPROVAL. (a) Except as provided in sub. (2) and except with respect to property specified in s. 41.41 (11), the department shall issue a mining permit if it finds all of the following:

1. That the mining plan and reclamation plan are reasonably certain to result in reclamation of the mining site consistent with this subchapter.

2. That the waste site feasibility study and plan of operation complies with s. 295.51.

3. That the applicant has committed to conducting the proposed mining in compliance with the mining permit and any other approvals issued for the mining.

3m. That the proposed mining is likely to meet or exceed the requirements of any municipal floodplain zoning ordinance applicable to the proposed mining under s. 295.607 (3) to the extent that the ordinance has not been made inapplicable to the proposed mining by a local agreement under s. 295.443 (1m).

4. That the proposed mining is reasonably certain not to result in substantial adverse impacts to public health, safety, or welfare.

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

6. That the applicant has applied for all necessary zoning approvals applicable to the proposed mining.

(b) The department shall approve or deny an application for a mining permit in writing and shall include the reasons for its decision with clarity and in detail. The department may modify the applicant's proposed mining plan, reclamation plan, or mining waste site feasibility study and plan of operation in order to meet the requirements of this subchapter, and, as modified, approve the application. The approval of the application for a mining permit constitutes the approval of the mining plan, reclamation plan, and waste site feasibility study and plan of operation. In its decision on the application for a mining permit, the department shall include a final decision on compliance with s. 1.11 and the requirements of s. 295.53, discussing all of the following:

1. Whether the department has considered the environmental impact statement and comments received on it.

2. Whether the department has complied with ss. 1.11 and 295.53.

3. Whether, consistent with social, economic, and other essential considerations, the department has adopted all practicable means within its authority to avoid or minimize any harm to the environment and, if not, why not.

**(2) CRITERIA FOR DENIAL.** The department shall deny the mining permit if it finds any of the following:

(a) That the site is unsuitable for mining.

(b) That the proposed mining may reasonably be expected to create any of the following situations:

1. Hazards resulting in irreparable, substantial physical damage to any of the following that cannot be prevented under the requirements of this subchapter, avoided to the extent practicable by removal from the area of hazard, or offset by purchase or by obtaining the consent of the owner:

- a. A dwelling house.
- b. A public building.
- c. A school.
- d. A church.
- e. A cemetery.
- f. A commercial or institutional building.
- g. A public road.

2. Irreparable substantial environmental damage to lake or stream bodies despite adherence to the requirements of this subchapter. This subdivision does not apply to an activity that the department has authorized under statute, except that the destruction or filling in of a lake bed may not be authorized unless it is authorized under s. 295.60, 295.605, or 295.61.

3. Landslides or substantial deposition from the proposed mining operation in stream or lake beds which cannot feasibly be prevented and which have not been authorized under s. 295.60 or 295.605.

(c) That the applicant has violated, and continues to fail to comply with, this subchapter.

(d) Subject to sub. (3), 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 authorization 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.

(e) Subject to sub. (3), 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. 295.47 a plan to prevent the occurrence in this state of events similar to the events that directly resulted in the convictions.

(f) Subject to sub. (3), that the applicant or a related person has, within 10 years before the application is submitted, declared bankruptcy or undergone dissolution that resulted in the failure to reclaim a mining site in the United States in violation of a state or federal law and that failure has not been remedied and is not being remedied.

(g) Subject to sub. (3), that, within 10 years before the application is submitted, a mining permit or other authorization for mining 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) EXCEPTION FROM DENIAL CRITERIA.** The department may not deny a mining permit under sub. (2) (d) to (g) if the person subject to the convictions, forfeiture, permanent revocation, bankruptcy, or dissolution is a related person but the applicant shows that the person was not the parent corporation of the applicant, a person that holds more than a 30 percent ownership in the applicant, or a subsidiary or affiliate of the applicant in which the applicant holds more than a 30 percent interest at the time of the convictions, forfeiture, permanent revocation, bankruptcy, or dissolution.

**(4) STATEMENT.** The department shall send a statement as to whether the applicant has satisfied the requirements of this subchapter to the applicant and to the other persons specified in s. 295.57 (4) (b) 1. to 9.

**(5) DURATION OF APPROVALS.** (a) A mining permit is valid for the life of the mining project, subject to the enforcement provisions under s. 295.79.

(b) An approval under s. 295.60 or 295.61 remains valid for the life of the mining project, subject to the enforcement provisions under s. 295.79.

(c) An approval issued for a mining project under ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291, except for a permit under ch. 283 or 285 that is subject to a federal requirement limiting its duration, remains valid for the life of the mining project, subject to the enforcement provisions applicable to the approval.

**(6) EFFECTIVE DATE OF APPROVALS.** A mining permit and any other approval is issued upon mailing and is final and effective upon issuance.

**(7) MERCHANTABLE BY-PRODUCTS.** In a mining permit, the department shall require the operator to treat merchantable by-products as refuse if after 3 years from the time the merchantable by-products result from or are displaced by mining the material

has not been transported off the mining site, unless removal is continuing at a rate of more than 12,000 cubic yards per year.

**(8) GENERAL CONTRACTOR OR AFFILIATE.** 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 mining 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:** 2013 a. 1.

**295.59 Bonds and other security. (1) SECURITY FOR RECLAMATION.** (a) Upon notification that an application for a mining permit has been approved by the department but before beginning mining, the operator shall furnish one of the following to the department:

1. A bond, furnished by a surety company licensed to do business in this state, conditioned on faithful performance of all of the requirements of this subchapter and all rules adopted by the department under this subchapter.

2. Cash.
3. Certificates of deposit.
4. Government securities.

(b) The department shall pay to the operator interest received on certificates of deposit or government securities furnished under par. (a).

(c) The operator shall furnish the security required under par. (a) in the amount equal to the estimated cost to the state of fulfilling the reclamation plan, other than the cost of long-term care of the mining waste site, in relation to the portion of the mining site that will be disturbed by the end of the following year. The department shall determine the estimated cost of reclamation of each mining site on the basis of relevant factors, including the character and nature of the lands to be reclaimed, the future suitable use of the land involved, the topography of the mining site, the methods of reclamation being employed, the depth and composition of overburden, and the depth of the ferrous mineral deposit being mined.

**(2) CERTIFICATE OF INSURANCE.** The operator 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 operator in this state and affording personal injury and property damage protection in a total amount determined to be adequate by the department but not more than \$1,000,000 and not less than \$50,000.

**(2m) PROOF OF FINANCIAL RESPONSIBILITY FOR LONG-TERM CARE OF MINING WASTE SITE.** An operator shall maintain proof of financial responsibility ensuring the availability of funds for compliance with the long-term care requirements specified in the waste site feasibility study and plan of operation for a period of 40 years after closing of the mining waste site. The operator shall furnish the proof of financial responsibility to the department in one of the following forms:

- (a) A bond.
- (b) Cash.
- (c) Certificates of deposit.
- (d) Government securities.
- (e) Insurance.

**(3) WRITTEN AUTHORIZATION TO MINE.** Upon approval of the operator's bonds or other security under subs. (1) and (2m), mining application, and certificate of insurance, the department shall issue written authorization to begin mining at the permitted min-

ing site in accordance with the approved mining plan, reclamation plan, and mining waste site feasibility study and plan of operation.

**(4) RECLAMATION BOND FOR MORE THAN ONE MINING SITE.** Any operator who obtains mining permits from the department for 2 or more mining sites may elect, at the time that the mining permit for the 2nd or any subsequent mining site is approved, to post a single bond under sub. (1) in lieu of separate bonds for each mining site. An operator who chooses to post a single bond under this subsection shall post a bond in an amount equal to the estimated cost to the state determined under sub. (1) of reclaiming all mining 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 mining sites, the department may not release the separate bonds until the department accepts the new bond.

**(5) REVIEW OF AMOUNTS.** If an operator disagrees with the amount of the bonds or other security that the department requires under this section, the operator may seek review under s. 295.77 (3) of the amount required. The operator may post a bond or other security in the amount required by the department and begin mining without forfeiting its right to seek review.

**History:** 2013 a. 1.

**295.60 Impacts to wetlands. (1) DEFINITIONS.** In this section:

(a) "Artificial wetland" means a landscape feature where hydrophytic vegetation may be present as a result of human modifications to the landscape or hydrology and for which there is no prior wetland or stream history.

(b) "Ceded territory" means the territory in Wisconsin ceded by the Chippewa Indians to the United States in the treaty of 1837, 7 Stat. 536, and the treaty of 1842, 7 Stat. 591.

(c) "Federal wetland" means a wetland that is subject to federal jurisdiction under 33 USC 1344.

(d) "Fill material" has the meaning given in 33 CFR 323.2 (e), as the meaning exists on July 1, 2012.

(e) "Mitigation" means the restoration, enhancement, creation, or preservation of wetlands to compensate for adverse impacts to other wetlands.

(f) "Mitigation bank" means a system of accounting for wetland loss and compensation that includes one or more sites where wetlands are restored, enhanced, created, or preserved to provide credits to be subsequently applied or purchased in order to compensate for adverse impacts to other wetlands.

(g) "On-site location" means a location that is on a mining site or within one-half mile of an outer boundary of a mining site.

(h) "Practicable" means reasonably available and capable of being implemented after taking into consideration cost, site availability, available technology, logistics, and proximity to the proposed project site, in light of the overall purpose and scope of the project.

(i) "Water basin" means the Lake Michigan basin, the Lake Superior basin, or the Mississippi River basin or other water basin established by the department.

(j) "Water management unit" means a subdivision of a water basin that is established on a hydrological basis by the department.

(k) "Water quality standard" means a wetland water quality standard specified under sub. (5) or any other water quality standard set by rule under s. 281.15.

(L) "Wetland impact evaluation" means an evaluation of impacts to a wetland.

**(1m) APPLICABILITY.** Subsections (2) to (11) do not apply to a wetland individual permit or other approval that requires a wetland impact evaluation if the operator files the application for the wetland individual permit or other approval after the department issues the mining permit for the mining operation.

**(2) WETLAND DETERMINATIONS AND DELINEATIONS.** For purposes of this section, wetland determinations and wetland boundary delineations shall be consistent with the U.S. army corps of engineers 1987 Wetlands Delineation Manual and any final

regional supplement to the manual. Any owner or lessee of land, or a holder of an easement in land, may request that the department provide a wetland determination or wetland boundary delineation for an application for a wetland individual permit under this section or for another approval for which a wetland impact evaluation is required. The department may rely on wetland determinations and wetland boundary delineations made by other agencies and consultants. If the applicant has provided information to the department that is identified in the manual or any final regional supplement as being sufficient to make a wetland determination or a delineation of boundaries, the department may visit a mining site to conduct surveys or gather additional site-specific quantitative data provided that the department does not discontinue the processing of the application to do so.

**(3) SCOPE; DISCHARGES; OTHER IMPACTS.** (a) *Scope.* Except as otherwise provided under this section, this section applies to wetland individual permits and any other approvals for which wetland impact evaluations are required.

(b) *Discharges of dredged or fill material.* No person may discharge dredged material or fill material associated with a mining operation or bulk sampling unless the discharge is authorized under a wetland individual permit issued under this section or under a wetland general permit issued under s. 281.36 (3g). The department may not issue a wetland individual permit unless it makes a finding under sub. (6) (a) that the discharge will comply with all applicable water quality standards. Section 281.36 (3g) and (11), and the rules promulgated under s. 281.36 (3g) and (11), apply to authorizations to proceed under general permits. Notwithstanding s. 281.36 (3g) (h) 2., a person receiving authorization to proceed under a wetland general permit for a mining activity other than bulk sampling may not proceed until a mining permit is issued.

(c) *Other impacts.* For an approval which requires a wetland impact evaluation for an activity other than a discharge of dredged material or fill material, the approval may not be issued unless the department determines that the activity will comply with all applicable water quality standards.

**(4) REVIEW BY DEPARTMENT.** (a) *Avoidance or minimization of impacts.* When applying for a wetland individual permit or for another approval for which a wetland impact evaluation is required, an applicant shall include in the application an analysis of the practicable alternatives that will avoid and minimize the adverse impacts on wetland functional values and that will not result in any other significant adverse environmental consequences.

(b) *Practicable alternatives.* The department shall review the analysis of practicable alternatives included in the application under par. (a). The department shall limit its review to those practicable alternatives that are located at the site of the discharge or other activity and that are located adjacent to that site if the applicant has demonstrated that the proposed project causing the discharge or other activity will result in a demonstrable economic public benefit.

(c) *Assessing impacts.* In its review under this subsection, the department shall consider all of the following factors when it assesses the impacts to wetland functional values:

1. The direct impacts of the proposed discharge or other activity to wetland functional values.
2. The cumulative impacts attributable to the proposed discharge or other activity that may occur to wetland functional values based on past impacts or reasonably anticipated impacts caused by similar discharges or activities in the area affected by the discharge or activity.
3. Potential secondary impacts of the proposed discharge or other activity to wetland functional values.
4. The impact on functional values resulting from the mitigation program under sub. (8).
5. The net positive or negative environmental impact of the mining operation.

(d) *Assessing impacts; geographical scope.* In its review under this subsection, the department shall evaluate whether the discharge or other activity will result in a significant adverse impact to wetland functional values by doing all of the following:

1. Comparing the functional values of the wetland with other wetlands located within the boundaries of the mining site or within the same water management unit as the mining site and with other waters of the state that are located in the same water management unit.
2. Taking into consideration the floristic province in which the mining site is located.

(e) *Method for assessing impacts.* In issuing a wetland individual permit under this section or in conducting a wetland impact evaluation, the department shall determine the impact of a proposed discharge or other activity upon the wetland functional values by using wetland ecological evaluation methods that are jointly accepted by the U.S. army corps of engineers and the department and that are appropriate to the affected wetland.

(f) *General permits.* Paragraphs (a) to (e) do not apply to authorizations to proceed under a general permit issued under s. 281.36 (3g).

**(5) WETLAND WATER QUALITY STANDARDS.** The following wetland water quality standards apply to any wetland individual permit issued under this section or to any wetland impact evaluation:

(a) Adverse impacts to the functional values and water quality of wetlands and adverse impacts to other waters of the state that are influenced by wetlands shall be minimized, and any significant adverse impacts remaining after minimization shall be subject to a mitigation program under sub. (8). For purposes of this section, functional values consist of all of the following:

1. Storm and flood water storage and retention and the moderation of water level fluctuation extremes.
2. Hydrologic functions including the maintenance of dry season streamflow, the discharge of groundwater to a wetland, the recharge of groundwater from a wetland to another area, and the flow of groundwater through a wetland.
3. Filtration or storage of sediments, nutrients, or toxic substances that would otherwise adversely impact the quality of waters of the state.
4. Shoreline protection against erosion through the dissipation of wave energy and water velocity and anchoring of sediments.
5. Habitat for aquatic organisms in the food web including fish, crustaceans, mollusks, insects, annelids, and planktonic organisms and the plants and animals upon which these aquatic organisms feed and depend upon for their needs in all life stages.
6. Habitat for resident and transient wildlife species, including mammals, birds, reptiles, and amphibians, for breeding, resting, nesting, escape cover, travel corridors, and food.
7. Recreational, cultural, educational, scientific, and natural scenic beauty values and uses.

(b) All of the following shall be minimized in order to avoid significant adverse impacts for the purpose of maintaining or enhancing the wetland functional values identified under par. (a), and any minimization of the following must be taken into account in the department's evaluation of significant adverse impacts:

1. The use of liquids, fill, or other solids or gases.
2. The presence of floating or submerged debris, oil, or other material.
3. The use of materials producing color, odor, taste, or unsightliness.
4. The presence of concentrations or combinations of substances that are toxic or harmful to human, animal, or plant life.
5. Adverse effects on hydrological conditions necessary to support the biological and physical characteristics that are naturally present in wetlands. For purposes of this subdivision, the hydrological conditions include all of the following:
  - a. Water currents and erosion and sedimentation patterns.

- b. Water temperature variations.
  - c. The chemical, nutrient, and dissolved oxygen regime of the wetland.
  - d. The movement of aquatic fauna.
  - e. The pH of the wetland.
  - f. Water levels or elevations.
6. Adverse effects on existing habitat and populations of animals and vegetation found in wetlands.

**(6) DECISION BY DEPARTMENT.** (a) The department shall make a finding that a discharge of dredged material or fill material is in compliance with all applicable water quality standards and shall issue a wetland individual permit if the department determines that all of the following apply:

1. The proposed project of which the discharge is a part represents the least environmentally damaging practicable alternative taking into consideration practicable alternatives that avoid wetland impacts.
2. All practicable measures to minimize the adverse impacts to wetland functional values will be taken.
3. The proposed discharge will not result in significant adverse impact to wetland functional values, subject to par. (b); in significant adverse impact to water quality; or in other significant adverse environmental consequences.

(b) Notwithstanding par. (a) 3., if significant adverse impacts to wetland functional values will remain after the adverse impacts have been avoided and minimized to the extent practicable, the department shall issue the permit if the department determines that the remaining impacts will be compensated for under a mitigation program under sub. (8).

(c) The department may not deny an approval for an activity for which a wetland impact evaluation is required, other than a discharge of dredged material or fill material, on the basis of the impacts from the activity on wetlands if the department determines that all of the following apply:

1. The proposed project of which the activity is a part represents the least environmentally damaging practicable alternative taking into consideration practicable alternatives that avoid wetland impacts.
2. All practicable measures to minimize the adverse impacts to wetland functional values will be taken.
3. The proposed activity will not result in significant adverse impact to wetland functional values, subject to par. (d); in significant adverse impact to water quality; or in other significant adverse environmental consequences.

(d) Notwithstanding par. (c) 3., if significant adverse impacts to wetland functional values will remain after the adverse impacts have been avoided and minimized to the extent practicable, the department may not deny the permit on the basis of the impacts from the activity on wetlands if the department determines that the remaining impacts will be compensated for under a mitigation program under sub. (8).

(e) Paragraphs (a) to (d) do not apply to authorizations to proceed under a general permit issued under s. 281.36 (3g).

**(7) FEDERAL WETLANDS.** (a) For a wetland individual permit under this section which involves a federal wetland or for any other approval for which a wetland impact evaluation for a federal wetland is required, any mitigation program submitted by the applicant under sub. (8) shall include all the federal mitigation measures proposed by the applicant. The department shall review the federal mitigation measures and shall determine whether it has reasonable assurance that these will compensate for any significant adverse impacts to wetland functional values, any significant adverse impacts to water quality, and any other significant adverse environmental consequences. The department shall recognize all federal compensatory mitigation measures as being eligible for the purpose of making this determination. If the department determines that reasonable assurance exists, the department may not impose any additional conditions on the permit or other approval.

If the department determines that reasonable assurance does not exist, it may impose conditions on the permit or other approval that are in addition to required federal compensatory mitigation measures, but such conditions shall be limited to those that are necessary to compensate for any significant adverse impacts to wetland functional values, any significant adverse impacts to water quality, and any other significant adverse environmental consequences that will remain after completion of the federal mitigation measures. Any conditions imposed by the department may be satisfied through a mitigation program as provided in sub. (8). In imposing any conditions under this paragraph, the department may not require that the number of acres to be mitigated be greater than the number that is required under federal law.

(b) A wetland individual permit issued under this section that authorizes a discharge of dredged or fill material in a federal wetland constitutes water quality certification as required by 33 USC 1341 (a). Any other approval issued by the department for which a wetland impact evaluation is required for a federal wetland constitutes water quality certification under 33 USC 1341 (a) with respect to the discharges or activities affecting the federal wetland.

**(8) MITIGATION PROGRAM.** (a) *Definition.* Notwithstanding s. 295.60 (1) (i), in this section “water basin” means the Lake Michigan basin, the Lake Superior basin, or the Mississippi River basin.

(am) *Contents.* A mitigation program to compensate for adverse impacts to functional values of wetlands shall contain proposed projects for mitigation and a schedule for implementing the projects. The department may not consider mitigation in determining whether to grant authorization to proceed under a general permit under s. 281.36 (3g). These projects may be performed by a person other than the applicant, subject to the department’s approval of the projects and schedule.

(b) *Option of applicant.* An applicant submitting a program under par. (am) may submit options for mitigation. These options may include any combination of the types of mitigation specified in par. (dm). In preparing the program, the applicant shall identify and consider mitigation that could be conducted within the same watershed in which the mining site is located.

(c) *Ratios for mitigation.* The amount of mitigation required may not exceed 1.5 acres of mitigation for each acre of adversely impacted wetland. For purpose of credits in a mitigation bank, each acre that is subject to mitigation shall count as at least one credit.

(d) *Sequence of mitigation.* If it is not practicable or ecologically preferable to conduct mitigation at an on-site location or if there is no on-site location that will provide sufficient wetland acreage, the department shall require that the applicant conduct mitigation within the same watershed in which the wetland to be affected is located, unless mitigation in the same watershed is not practicable or ecologically preferable. If mitigation within the same watershed is not practicable or ecologically preferable, the department shall require that the applicant conduct mitigation within the same water basin in which the wetland to be affected is located. If mitigation in the same water basin is not practicable or ecologically preferable, the applicant may conduct mitigation at a site elsewhere in the state.

(dm) *Types of mitigation.* Mitigation under a program under par. (am) may be accomplished through any of the following types:

1. Implementation of a project for mitigation by an applicant or other person approved by the department.
2. Purchase of mitigation credits from a mitigation bank for a site in a mitigation bank that is located anywhere in the state, subject to par. (e).
3. Purchase of mitigation credits from a mitigation bank established prior to February 1, 2002, if the department determines that the bank sponsor is in compliance with any applicable memorandum of understanding between the bank sponsor and the department.

4. Participation in the in lieu fee subprogram under s. 281.36 (3r) (e).

(e) *Ceded territory.* If a mining operation is located in whole or in part within the ceded territory, any mitigation, including mitigation accomplished through the purchase of mitigation bank credits and the in lieu fee subprogram that is authorized or required by the department, that will be required to compensate for adverse impacts to wetlands located in the ceded territory shall occur within the ceded territory. If the department determines under par. (d) that mitigation will occur within a certain watershed or water basin and if the watershed or water basin is not located totally in the ceded territory, the mitigation shall occur within that part of the watershed or water basin that is located in the ceded territory.

(9) **SUBSEQUENT PROTECTION FOR WETLANDS.** (a) If a wetland individual permit issued under this section, or other approval that required a wetland impact evaluation, authorizes a mitigation project, the person who is the holder of the permit or approval shall grant a conservation easement under s. 700.40 to the department or shall execute a comparable legal instrument to ensure that a wetland that is being restored, enhanced, created, or preserved will not be destroyed or substantially degraded by any subsequent proprietor of or holder of interest in the property on which the wetland is located. The department shall suspend the mining permit if the holder of the permit fails to grant the easement or execute this instrument within the time limit set forth in the mining permit. If the holder subsequently grants the conservation easement or executes the instrument, the department shall reinstate the mining permit.

(b) Notwithstanding par. (a), the department shall modify or release a conservation easement granted under par. (a) or shall void a comparable legal instrument executed under par. (a) if all of the following apply:

1. The department determines that part or all of a wetland subject to the mitigation project ceases to be a wetland.

2. The person who is required to grant the conservation easement or execute the legal instrument did not contribute to the loss of the wetland specified in subd. 1.

3. Any subsequent proprietor of or holder of interest in the property on which the wetland specified in subd. 1. is located did not contribute to the loss of the wetland.

(10) **EXEMPTIONS.** (a) *Artificial wetlands.* All of the following artificial wetlands that are associated with a mining operation or bulk sampling are exempt from the wetland individual permit and mitigation requirements under this section, from the general permit requirements under s. 281.36 (3g), and from any requirement for any other approval for which a wetland impact evaluation is required:

1. An artificial wetland that is a sedimentation or stormwater detention basin or associated conveyance feature operated and maintained only for sediment detention and flood storage purposes.

2. An artificial wetland that is an active sewage lagoon, cooling pond, waste disposal pit, fish rearing pond, or landscape pond.

3. An artificial wetland that is an actively maintained farm drainage or roadside ditch.

4. An artificial wetland as part of an active mining operation.

(b) *Other exempted activities.* All of the following activities that are associated with a mining operation or bulk sampling are exempt from the wetland individual permit and mitigation requirements under this section, from the general permit requirements under s. 281.36 (3g), and from any requirement for any other approval for which a wetland impact evaluation is required if the applicant minimizes any adverse effect on the environment as a result of any of these activities:

1. Maintenance, emergency repair, or reconstruction of damaged parts of structures that are in use in a wetland.

2. Construction or maintenance of irrigation ditches.

3. Construction or maintenance of farm roads, forest roads, or temporary mining roads that is performed in accordance with best management practices, as determined by the department.

4. Maintenance of drainage ditches.

(c) An exemption under par. (a) or (b) does not apply to a federal wetland if the exemption conflicts with 33 USC 1344.

(11) **RELATIONSHIP TO OTHER LAWS.** None of the following apply to a mining operation or bulk sampling:

(a) Section 281.36, except as otherwise specifically provided in this section.

(b) Any rule promulgated under s. 281.36, except as otherwise specifically provided in this section.

(c) Any other rule promulgated by the department that relates to wetlands that conflicts with this section.

**History:** 2013 a. 1; 2013 a. 168 s. 21; 2015 a. 196; 2019 a. 59.

**295.605 Impacts to navigable waters.** (1) **DEFINITION.** In this section, “navigable water activity” means an activity for which an approval is required under s. 30.12, 30.123, 30.19, 30.195, or 30.20.

(1m) **LIMITATION.** This section does not apply to any navigable water activity associated with a mining operation if the application for the approval for the navigable water activity is filed after the department issues a mining permit for the mining operation.

(2) **APPROVAL REQUIRED.** No person may engage in any navigable water activity associated with bulk sampling or mining unless the person has been granted an approval as provided under sub. (4).

(3) **APPLICATION; RIPARIAN STATUS.** (a) For purposes of an approval under ss. 30.12, 30.123, 30.19, 30.195, and 30.20, a person who is not the owner of a piece of riparian property may exercise a riparian right held by the owner of the piece of riparian property if any of the following apply:

1. The person leases the piece of riparian property from the owner.

2. The person holds an easement on the piece of riparian property and the easement authorizes the person to exercise that riparian right.

(b) If a person is applying for more than one approval for a navigable water activity, the person may file a single application. The application shall include any information requested by the department under s. 295.45 (3).

(4) **REQUIREMENTS.** (a) *Generally.* The department shall grant an approval for a navigable water activity if the navigable water activity meets all of the following requirements:

1. The navigable water activity will not significantly impair public rights and interests in a navigable water.

2. The navigable water activity will not significantly reduce the effective flood flow capacity of a stream.

3. The navigable water activity will not significantly affect the rights of riparian owners or the applicant obtains the consent of the riparian owners.

4. The navigable water activity will not significantly degrade water quality.

(b) *Measures.* The person applying for the approval shall submit a plan to the department containing proposed measures to meet the requirements under par. (a) and a proposed schedule for implementing the measures. The plan shall include one or more of the following measures:

1. Measures to offset significant impacts to navigable waters by providing public access to, restoring, or enlarging up to 1.5 acres, but not less than one acre, of navigable waters in exchange for each acre of navigable waters that is significantly impacted.

2. Measures to improve public rights or interests in navigable waters.

3. Measures to offset significant impacts to water quality or quantity.

4. Measures to enhance flood storage.
5. A mitigation program as provided under s. 295.60 (8).
6. Conservation measures as provided in s. 295.61.

(bg) *Measures excluded from consideration.* In determining if a navigable water activity meets the requirements under par. (a) with regard to a navigable water, the department may not consider any proposed measure under par. (b) if the navigable water is any of the following:

1. A perennial stream, if the drainage area of the portion of the stream upstream from the farthest downstream point of the navigable water activity is more than 2 square miles. In this subdivision, “perennial stream” means a stream that has a continuous flow every day of every year in which there is average precipitation.

2. A navigable water, other than a stream, that is more than 2 acres in area every day of every year in which there is average precipitation and that is not a freeze-out pond, as defined in s. 29.001 (29).

3. A class I, class II, or class III trout stream.

(bn) *Plan review; finding.* In reviewing the plan, the department may require that measures that are in addition to, or in conjunction with, one or more of the measures specified in par. (b) 1. to 6. be included in the plan. After reviewing the plan and application, if the department finds that the requirements under par. (a) will be met by implementing some or all of the measures contained in the plan, the department shall determine which measures shall be required, shall approve a schedule for implementation, and shall grant the approval.

(c) *Applicability of requirements.* The requirements that are specified in par. (a) 1. to 4. are in lieu of any requirements required for approvals under ss. 30.12 (3m) (c), 30.123 (8) (c), 30.19 (4) (c), 30.195 (2) (c), and 30.20, including those that relate to the state’s or public’s interests, and shall be used, in conjunction with the measures required under par. (b), in any evaluation by the department pursuant to 33 USC 1341.

(5) **APPROVAL CONDITIONS.** The department may impose conditions in an approval for a navigable water activity that it determines to be necessary to ensure that the navigable water activities subject to the approval meet the requirements under sub. (4) (a).

(6) **RELATIONSHIP TO OTHER LAWS.** (a) Chapter 30 and any rules promulgated under that chapter apply to any navigable water activity subject to this section to the extent that they do not conflict with this section, except as provided in par. (b).

(b) Sections 30.209 and 30.2095 and any rules promulgated under those sections, do not apply to any navigable water activity that is subject to this section.

**History:** 2013 a. 1.

**295.607 Shoreland and floodplain zoning.** (1) (a) In this section:

1. “Development or construction activity” means a waste site, structure, building, fill, or other development or construction activity.

2. “Shoreland zoning ordinance” means a shoreland zoning ordinance or regulation adopted under s. 59.692, 61.351, 61.353, 62.231, 62.233, or 281.31.

(2) (a) The department may not prohibit a development or construction activity to be located in an area that would otherwise be prohibited under a shoreland zoning ordinance if the development or construction activity is authorized by the department as part of a mining operation covered by a mining permit under s. 295.58.

(b) A development or construction activity located in an area that would otherwise be prohibited under a shoreland zoning ordinance does not violate the applicable ordinance if the development or construction activity is authorized by the department as part of a mining operation covered by a mining permit under s. 295.58. No shoreland zoning variance is required for a develop-

ment or construction activity located as provided under this paragraph.

(3) A municipal floodplain zoning ordinance under s. 87.30 may not prohibit development or construction activity authorized by the department as part of a mining operation covered by a mining permit under s. 295.58, except to the extent necessary for the municipality to which the floodplain zoning ordinance applies to maintain eligibility for participation in the National Flood Insurance Program.

**History:** 2013 a. 1, 80.

**295.61 Withdrawals of surface waters and groundwater.** (1) **DEFINITIONS.** In this section:

(a) “Authorized base level of water loss” has the meaning given in s. 281.35 (1) (b).

(b) “Environmentally sound and economically feasible water conservation measures” has the meaning given in s. 281.346 (1) (i).

(c) “Great Lakes basin” has the meaning given in s. 281.35 (1) (d).

(d) “High capacity well” has the meaning given in s. 281.34 (1) (b).

(e) “Interbasin diversion” has the meaning given in s. 281.35 (1) (g).

(em) “Riparian restoration project” means a project that will restore or enhance the natural beneficial uses and value of a watercourse.

(f) “Upper Mississippi River basin” has the meaning given in s. 281.35 (1) (j).

(g) Unless the context otherwise requires, “use” includes dewatering.

(h) “Water loss” has the meaning given in s. 281.35 (1) (L).

(i) “Withdrawal” has the meaning given in s. 281.35 (1) (m).

(2) **PERMIT REQUIRED.** No person may engage in any withdrawal or use of surface water as part of a mining operation or bulk sampling, including a withdrawal or use associated with a system or plant under s. 281.41, unless the person has been issued a water withdrawal permit under this section. No person may engage in any withdrawal or use of groundwater, including a withdrawal or use associated with a system or plant under s. 281.41, as part of a mining operation or bulk sampling if the capacity and rate of withdrawal of all wells involved in the withdrawal of groundwater or in the dewatering of mines exceeds 100,000 gallons each day unless the person has been issued a water withdrawal permit under this section.

(3) **PERMIT APPLICATION.** (a) *Application.* A person applying for a water withdrawal permit is required to submit only one application. An application for a water withdrawal permit shall include any information requested by the department under s. 295.45 (3).

(am) *Applicant status.* 1. A person is not required to be the owner of a piece of riparian property in order to obtain a permit to withdraw surface water from that piece of riparian property if any of the following applies:

- a. The person leases the piece of riparian property from the owner.

- b. The person holds an easement on the piece of riparian property.

2. A person is not required to be the owner of a piece of property in order to obtain a permit to withdraw groundwater from that piece of property if any of the following applies:

- a. The person leases the piece of property from the owner.

- b. The person holds an easement on the piece of property.

- c. The person has obtained permission from the owner to withdraw groundwater from that piece of property.

(b) *Siting analysis.* If withdrawal of water at a mining operation or for bulk sampling will involve one or more high capacity wells, the department shall require an applicant for a water withdrawal permit to submit a siting analysis for the purpose of deter-

mining the location of the high capacity wells. The analysis shall include alternate proposed locations for each high capacity well. In evaluating a submitted analysis, the department shall recognize there is a need for mining waste sites and processing facilities, including wastewater and sludge storage or treatment lagoons, to be contiguous to the location of the ferrous mineral deposit, and shall allow any high capacity well to be located so that need will be met. The department shall approve the location of each high capacity well as part of the permit issued under sub. (4).

(c) *Entry to land.* After an application for a water withdrawal permit has been submitted under this section, the applicant may enter any land from which the applicant proposes to withdraw water or use water for the purpose of making any surveys required for the mining operation or bulk sampling, but no work may be commenced necessary for the mining operation or the bulk sampling until the department issues the permit under this section.

(4) PERMIT ISSUANCE. (a) *General requirements.* The department shall issue a water withdrawal permit if it determines that the withdrawal or use of the surface water or groundwater meets all of the following requirements:

1. The proposed withdrawal and uses of the water are substantially consistent with the protection of public health, safety, and welfare and will not be significantly detrimental to the public interest.

2. The proposed withdrawal and uses of the water will not have a significant adverse impact on the environment and ecosystem of the Great Lakes basin or the Upper Mississippi River basin.

3. The proposed withdrawal and use of the water will not be significantly detrimental to the quantity and quality of the waters of the state.

4. The proposed withdrawal and use of the water will not significantly impair the rights of riparian owners or the applicant obtains the consent of the riparian owners.

5. The proposed withdrawal and use of the water will not result in significant injury to public rights in navigable waters.

6. If the withdrawal or the use of the water will result in an interbasin diversion, the requirements of s. 281.35 (5) (d) 7. are met.

7. The proposed withdrawal or use of the water will comply with any requirements imposed by the department under par. (cm).

(b) *Conservation measures.* The person applying for the permit shall submit a plan to the department containing proposed conservation measures to meet the requirements under par. (a) and a proposed schedule for implementing the measures. The plan shall include one or more of the following measures:

1. Environmentally sound and economically feasible water conservation measures.

2. Restoration of hydrologic conditions and functions of the source watershed, or if the withdrawal is from a stream tributary to one of the Great Lakes, restoration of the hydrologic conditions and functions of that stream.

3. Protection of important upland groundwater recharge areas.

4. Stabilization of shorelands.

5. Restoration or enhancement of the natural beneficial uses and values of a stream or river.

6. Implementation of any feasible methods to offset impacts to water quality or quantity.

7. Supplementation of additional water to water bodies to offset lower water levels.

8. Taking steps to improve public rights or interests in navigable waters, if navigable waters are subject to the permit.

9. A mitigation program as provided in s. 295.60 (8).

10. Measures to offset significant impacts to navigable waters by providing public access to, restoring, or enlarging up to 1.5 acres of navigable waters in exchange for each acre of natural navigable waters that is significantly impacted.

11. A riparian restoration project.

12. Measures as provided in s. 295.605.

(bn) *Plan review; finding.* In reviewing the plan, the department may require that conservation measures that are in addition to, or in conjunction with, one or more of the conservation measures specified in par. (b) 1. to 12. be included in the plan. After reviewing the plan and application, if the department finds that the requirements under par. (a) will be met by implementing some or all of the conservation measures contained in the plan, the department shall determine which measures shall be required, shall approve a schedule for implementation, and shall issue the permit.

(cm) *Impacts to water supplies.* If the department determines that a proposed withdrawal or use of water will result in a significant impact to a public or private water supply, the department shall require the applicant to offset that impact in a manner approved by the department, which may include a requirement that the applicant provide a replacement water supply of similar quality or provide an increased amount of water to the water supply.

(e) *Use of waters on nonriparian property.* Water withdrawn in accordance with a water withdrawal permit may be used on nonriparian property.

(f) *Limits on permit denials.* If the department determines that one of the water withdrawal activities subject to an application for a water withdrawal permit does not meet the requirements for issuing the permit under par. (a) and will not be authorized under the permit, the failure to authorize the activity may not affect the department's determination as to whether to approve or deny the permit for other water withdrawal activities that are subject to the application.

(5) PERMIT CONDITIONS. (a) The department may impose reasonable conditions in a water withdrawal permit that, except as provided in par. (b), may not interfere with the mining operation or bulk sampling or limit the amount of water needed for the mining operation or bulk sampling and that relate to any of the following:

1. The location of the withdrawal or use.

2. The authorized base level of water loss from the withdrawal or use.

3. The dates on which or seasons during which withdrawal or use of the water may occur.

4. The purposes for the withdrawal or use of the water.

5. The amount and quality of return flow required and the place of the discharge.

6. The requirements for reporting volumes and rates of withdrawal and any other data specified by the department.

7. Any other conditions that the department determines are necessary to protect the environment and the public health, safety, and welfare and to ensure the conservation and proper management of the waters of the state.

(b) If the department determines that a high capacity well that would be covered by a water withdrawal permit may impair a privately owned high capacity well, the department shall include in the water withdrawal permit conditions that will ensure that the privately owned high capacity well will not be impaired, unless the private high capacity well owner agrees to the impairment.

(6) PERMIT MODIFICATIONS. (a) 1. An operator to whom a permit has been issued under this section may request a modification of any condition in the permit.

2. If the request for a modification under subd. 1. does not result in an increase in an existing withdrawal resulting in a water loss averaging more than 2,000,000 gallons per day in any 30-day period above the operator's authorized base level of water loss, within 30 days of receiving the request the department shall approve the request and amend the permit to incorporate the modification.

3. a. If the request for a modification under subd. 1. results in an increase in an existing withdrawal resulting in a water loss

averaging more than 2,000,000 gallons per day in any 30-day period above the operator's authorized base level of water loss, the department shall determine, using the environmental review process under s. 1.11, whether it is required to prepare an environmental assessment or environmental impact statement and, if so, shall prepare an environmental assessment or an environmental impact statement. If the department determines, using the environmental review process under s. 1.11, that the operator must prepare an environmental impact report, the department may only request information in the environmental impact report that relates to decisions that the department makes under this section related to the permit and the department shall limit its analysis to an evaluation of the request for the modification.

b. The department shall publish a class 1 notice, under ch. 985, and shall publish notice on the department's Internet site, of the availability of information about a request to which this subdivision applies, its proposed decision on the request, the opportunity to comment within 30 days after the date of the publication of the notice, and the opportunity to request a public informational hearing. The department shall also provide the notice to the applicant, the persons specified in s. 30.18 (4) (a), and if the modification involves a structure through which water transferred from the Great Lakes basin would be returned to the source watershed through a stream tributary to one of the Great Lakes, the governing body of each city, village, and town through which the stream flows or that is adjacent to the stream downstream from the point at which the water would enter the stream. The department's notice to interested persons under this subd. 3. b. may be given through an electronic notification system established by the department. The date on which the department first publishes notice on its Internet site shall be considered the date of the publication of the notice required to be published under this subd. 3. b.

c. Within 180 days of receiving a request to which this subdivision applies, the department shall approve or deny as provided in sub. (4) the request and, if it approves the request, shall amend the permit to incorporate the modification.

(b) 1. The department may propose modifications to any of the conditions in the water withdrawal permit that it determines to be necessary to ensure compliance with the standards in sub. (4). If it proposes a modification, the department shall determine, using the environmental review process under s. 1.11, whether it is required to prepare an environmental assessment or environmental impact statement and, if so, shall prepare an environmental assessment or an environmental impact statement. If the department determines, using the environmental review process under s. 1.11, that the operator must prepare an environmental impact report, the department may only request information in the environmental impact report that relates to decisions that the department makes under this section related to the permit and the department shall limit its analysis to an evaluation of the proposed modification.

2. The department shall publish a class 1 notice, under ch. 985, and shall publish notice on the department's Internet site, of the availability of information about a proposed modification under this paragraph, the opportunity to comment within 30 days after the date of the publication of the notice, and the opportunity to request a public informational hearing. The department shall also provide the notice to the applicant, the persons specified in s. 30.18 (4) (a), and if the modification involves a structure through which water transferred from the Great Lakes basin would be returned to the source watershed through a stream tributary to one of the Great Lakes, the governing body of each city, village, and town through which the stream flows or that is adjacent to the stream downstream from the point at which the water would enter the stream. The department's notice to interested persons under this subdivision may be given through an electronic notification system established by the department. The date on which the department first publishes notice on its Internet site shall be con-

sidered the date of the publication of the notice required to be published under this subdivision.

3. The department may not impose the modification until after the end of the public comment period under subd. 2.

4. Any modified condition under this paragraph may not interfere with the mining operation or limit the amount of water needed for the mining operation if the holder of the water withdrawal permit is implementing any conservation measures that are applicable under the permit.

(7) RELATIONSHIP TO OTHER LAWS. None of the following apply to water withdrawal or use that is associated with mining operations or bulk sampling:

(a) Sections 30.18, 281.34, and 281.35 and any rules promulgated under those sections, except as specifically provided in this section.

(b) Any provision of ch. NR 812, Wis. Adm. Code, that conflicts with this section, except that s. NR 812.08, Wis. Adm. Code, does not apply to water withdrawal or use that is associated with mining operations or bulk sampling.

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

(b) A person claiming damage to the quantity or quality of the person's private water supply caused by bulk sampling or mining may file a complaint with the department and, if there is a need for an immediate alternative source of water, with the city, village, or town 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 bulk sampling or mining is interrelated to the condition giving rise to the complaint, it shall schedule a hearing.

(c) The city, village, or town in which is located the private water supply that is the subject of a complaint under par. (a) shall, upon request, supply necessary amounts of water to replace the water formerly obtained from the damaged private supply. Responsibility to supply water begins at the time the complaint is filed and ends 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 bulk sampling 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 city, village, or town 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 the person's 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 bulk sampling 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 department shall change the dollar amount under this paragraph annually, beginning with 1978, 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 bulk sampling or mining is not the cause of any damage, reimbursement to the city, village, or town 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 mining permit or any approval required for bulk sampling.

(9) **COSTS REIMBURSED.** (a) Costs incurred by a city, village, or town in monitoring the effects of bulk sampling or mining on surface water and groundwater resources, in providing water to persons claiming damage to private water supplies under sub. (8) (c), or in retaining legal counsel or technical consultants to represent and assist the city, village, or town appearing at the hearing under sub. (8) (b) are reimbursable through the investment and local impact fund under s. 15.435.

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

(c) If an order under sub. (8) (d) requiring the operator to provide water or to reimburse the city, village, or town 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 city, village, or town pending the final decision to be reimbursed from the investment and local impact fund under s. 15.435.

**History:** 2013 a. 1.

**295.62 Mining waste site construction and completion reports.** (1) An operator shall construct a mining waste site substantially in accordance with the approved mining waste site feasibility study and plan of operation.

(2) The operator shall inspect the mining waste site before it is used and ensure that all associated structures are in substantial compliance with the mining waste site feasibility study and plan of operation. The operator shall have a professional engineer, registered as such under ch. 443, document mining waste site construction and render an opinion as to whether the mining waste site has been constructed in substantial conformance with the mining waste site feasibility study and plan of operation. The engineer may use aerial or ground photographs to document the inspection, but photographs do not in themselves constitute compliance with this subsection. The operator shall maintain a complete file describing the items inspected and their condition.

(3) An operator shall notify the department in writing when the mining waste site has been constructed in substantial compliance with the mining waste site feasibility study and plan of operation.

(4) (a) Within 5 business days of receipt of written notice from an operator that the mining waste site has been constructed in substantial compliance with the mining waste site feasibility study and plan of operation, the department shall either review and inspect the mining waste site to ensure that it was constructed according to the approved mining waste site feasibility study and plan of operation or notify the operator that the department will not conduct a review and inspection before disposal of mining waste in the mining waste site. Within 3 business days of any review and inspection, the department shall notify the operator that the mining waste site may be used for the disposal of mining waste or identify all steps that must be completed to bring the mining waste site into substantial compliance with the mining waste site feasibility study and plan of operation. After the operator completes the steps, the operator shall notify the department that the steps have been completed.

(b) An operator may dispose of mining waste in a mining waste site after one of the following occurs:

1. The operator receives notice from the department under par. (a) that the department will not conduct a review and inspection before disposal of mining waste in the mining waste site.

2. The operator receives notice from the department under par. (a) that the mining waste site may be used for the disposal of mining waste.

3. The operator provides notice to the department under par. (a) that any steps required by the department to be completed under par. (a) have been completed.

**History:** 2013 a. 1.

**295.63 Modifications; reporting.** (1) (a) An operator at any time may request a change to a mining permit, the mining plan, the reclamation plan, or the mining waste site feasibility study and plan of operation for any mining site that the operator owns or leases, or request cancellation of the mining permit for any or all of the unmined part of a mining site. The operator shall submit an application for the change or cancellation in the form of a letter giving notice to the department of the proposed change or cancellation and shall identify in the letter the tract of land to be affected by a change in the mining plan, reclamation plan, or mining waste site feasibility study and plan of operation or to be removed from the permitted mining site.

(b) The department shall grant a request under par. (a) unless it determines that the requested change makes it impossible for the permit holder to substantially comply with the approved mining plan, reclamation plan, or mining waste site feasibility study and plan of operation. If the department determines that the requested change would make substantial compliance impossible, it shall follow the procedure in sub. (3).

(c) If the request under par. (a) 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 other security posted for 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. The department may not approve the removal of land where mining has occurred from a permitted mining site, or release that land from the bond or other security under this subsection, unless the operator has completed reclamation to the satisfaction of the department.

(2) The operator shall furnish the department with a report for each mining site within 30 days after the end of every 12-month period after issuance of the mining 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, describing any reclamation work accomplished, or experimental reclamation work performed, during the preceding year. The operator shall include in the reports an annual plan map, color-coded and with a legend, showing all of the following, as of December 31 of the previous year, or as near to December 31 of the previous year as mining operations permit:

(a) Location and boundary of the mining area.

(b) Any mine mill.

(c) Any open pit.

(d) Stockpiles of overburden.

(e) Stockpiles of waste rock.

(f) Ferrous ore stockpiles.

(g) Streams, lakes, and reservoirs.

(h) Tailings basins.

(i) Roads.

(j) Sequential numbers or letters or other method, as approved by the department, permanently assigned to portions of the mining site that have been abandoned before abandonment of the entire mining operation.

(k) Changes in the surface area disturbed by mining during the preceding year, indicated by vertical crosshatching or other method approved by the department.

(L) Anticipated changes in the surface area disturbed by mining during the current year, indicated by horizontal crosshatching or other method approved by the department.

(m) Elevations of stockpiles and tailings basins.

(n) Drainage on and away from the surface area disturbed by mining, showing directional flow of water in drainage ways, natural watercourses, and streams, intermittent and flowing, including discharge from the mining.

(o) The name of the geologist, engineer, or surveyor responsible for the preparation of the map.

(p) The date the map was prepared.

**(2m)** Annually, the department shall review the bond or other security under s. 295.59 (1) to ascertain its adequacy. If the department after review determines that the amount of the bond or other security should be changed, it shall notify the permit holder of the necessary changes. If the permit holder does not seek a contested case hearing under s. 295.77 (3) within 30 days, the changes are considered to be accepted.

**(3)** If the department finds that a change requested under sub. (1) (a) would make substantial compliance with the approved mining plan, reclamation plan, or mining waste site feasibility study and plan of operation impossible or it finds, based on a review conducted no more frequently than every 5 years, that because of changing conditions, including changes in reclamation costs or reclamation technology, the reclamation plan for a mining site is no longer sufficient to reasonably provide for reclamation of the mining site consistent with this subchapter, it shall require the operator to submit an amended mining plan, reclamation plan, or mining waste site feasibility study and plan of operation and applications for amending any approval associated with the proposed amendments to the mining plan, reclamation plan, or mining waste site feasibility study and plan of operation. The public notice, public comment, and public hearing procedures in s. 295.57 apply to amended plans and applications under this subsection. The department shall approve or deny the amended mining plan, reclamation plan, or mining waste site feasibility study and plan of operation in accordance with s. 295.58, within 30 days following the close of the public comment period. The applicant may continue to operate under the existing mining permit until the amended mining permit is issued or denied.

**History:** 2013 a. 1.

**295.635 Required mining waste site inspections, record keeping, reporting, and responses.** (1) DEFINITIONS. In this section:

(a) “Active dam” means a dam and associated settling area into which tailings or wastewater are being introduced or that has not been reclaimed in a manner approved by the department.

(b) “Inactive dam” means a dam and associated settling area that is no longer being used for disposal of tailings or wastewater and that has been reclaimed in a manner approved by the department.

**(2) GENERAL.** The operator shall, at least monthly, visually inspect all of the following and record observations in a mining waste site operating log:

(a) The active portions of the mining waste site for possible damage or structural weakening.

(b) Mining waste handling and monitoring equipment and readings, to ensure normal operation and measurements.

(c) Fences or barriers around the mining waste site, for possible damage.

(d) The buffer area around the mining waste site, for possible environmental damage related to its operation.

**(3) ACTIVE DAMS.** The operator shall, at least monthly, inspect active dams and record the findings in the mining waste site operating log. The operator shall record at least all of the following findings:

(a) Condition of vegetation on the dam and within 50 feet from the outside base.

(b) Piezometric levels within the mass of the dam.

(c) Condition of soil surfaces on the top and slopes of the dam and within 50 feet from the outside base.

(d) Condition of drainage ditches near the base of the dam.

(e) Liquid surface level and amount of freeboard.

(f) Condition of spillways, conduits, and water level control structures.

**(4) INACTIVE DAMS.** The operator shall inspect inactive dams quarterly and record the findings in the mining waste site operating log. The operator shall record at least all of the following findings:

(a) Condition of soil surfaces on the top and slopes of the dam and within 50 feet from the outside base.

(b) Piezometric levels within the mass of the dam if that instrumentation has been determined to be necessary or is required in the long-term care provisions of the mining waste site feasibility study and plan of operation.

(c) Condition of spillways, conduits, and water level control structures.

**(5) DEFECTIVE CONDITIONS OF DAMS POSING RISK OF ADVERSE IMPACT.** When a defective condition that poses a significant risk of adverse impact to the environment is found during an inspection of a dam, the operator shall ensure that it is recorded and corrected at the earliest practicable time. At the earliest practicable time, the operator shall make a written report to the department of the condition and the actions proposed and taken for its correction. Within 5 business days of receipt of a written report, the department may confirm the correction of the condition and specify any necessary additional corrective action. An operator shall consider any of the following items as indicating a condition that requires prompt investigation and that may require corrective action:

(a) Seepage on the outer face of the dam accompanied by boils, sand cones, or deltas.

(b) Silt accumulations, boils, deltas, or cones in the drainage ditches at the base of the dam.

(c) Cracking of soil surface on the top or either face of the dam.

(d) Bulging of the outside face of the dam.

(e) Seepage, damp areas, or boils in the vicinity of, or erosion around, a conduit through the dam.

(f) Any shrinkage of the top or faces of the dam.

**(6) POTENTIAL DEFECTS OF DAMS.** All of the following conditions indicate potential defects and the operator shall closely check them on subsequent inspections for an active dam and conduct an intermediate inspection if they exist for an inactive dam:

(a) Patches of overgrown vegetation on the outside face or close to the base of the dam.

(b) Surface erosion, gulying, or wave erosion on the inside of the dam.

(c) Surface erosion, gulying, or damp areas on the outside of the dam, including the berm and the area within 50 feet from the outside base.

(d) Erosion below any conduit.

(e) Wet areas or soggy soil on the outside of, or in natural soil below, the dam.

**(7) RECORD KEEPING RELATED TO DAMS.** (a) The operator shall retain all records relating to dam monitoring, analytical, and verification activities and data, including all original strip chart recordings and instrumentation, calibration, and maintenance records, until termination of operator responsibility, except to the extent that copies of those records have previously been provided to the department.

(b) The operator shall maintain in a permanent file all of the following construction records pertaining to any dam in case they are needed for future reference:

1. Aerial photos of the construction site before construction.

2. Construction drawings and modifications of the drawings.

3. Construction specifications and modifications of the specifications.

4. Results of all soil tests on foundations and fill materials.

5. Logs of borings and engineering geology reports.

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6. Copies of construction progress inspections pertinent to core trench, toe drain, internal drains, and other significant phases of the structure including, at the option of the operator, photographs of various structural items.

7. Aerial photos of the entire dam taken within 90 days after all construction is completed.

8. A description of and justification for all deviations or variances from the construction plans and specifications.

**(8) RESPONSES TO UNPLANNED EVENTS.** If a mining waste site has an accidental or emergency discharge, a fire, an explosion, or other unplanned or unpredicted event that is likely to damage human health or the environment, the operator shall follow the procedures set forth in the contingency plan under s. 295.51 (6) (f) and shall report the incident to the department and to county, town, and tribal governmental agencies immediately after the operator has discovered the event.

**(9) ANNUAL REPORT.** The operator shall submit to the department an annual summary report concerning the mining waste site containing all of the following:

(a) Statistical summaries of annual and cumulative data.

(b) A comparison of the summaries under par. (a) to mining waste characterization, leachate characterizations, effluent predictions, and baseline water quality and background water quality data as contained in the approved mining waste site feasibility study and plan of operation.

(c) The results of verification procedures and a presentation of the error associated with each parameter reported.

(d) Information from monitoring wells that have not been affected, including a discussion of whether the baseline values should be modified due to natural variability and what the new values should be.

**(10) APPLICABILITY.** This section does not apply to a surface mine that is backfilled with mining waste.

History: 2013 a. 1.

**295.64 Mining site monitoring; general.** **(1) GENERAL.** The department, as a condition of a mining permit, shall require the operator to perform adequate monitoring of environmental changes during the course of the mining and for the additional period of time that is necessary to satisfactorily complete reclamation and completely release the operator from any bonds or other security required. The department may monitor environmental changes concurrently with the operator and for an additional period after the security is released.

**(2) ANALYSES.** (a) The department shall review baseline water quality data with respect to groundwater and monitoring data associated with the mine, mining waste sites, and sites for the disposal of wastes that are not mining wastes at the time of each review of the mining permit or reclamation plan under s. 295.63 (3) and when the operator requests a modification of the mining permit or reclamation plan.

(b) An operator shall have bacteriological analyses of water samples and all radiological analyses associated with the mining site performed by the state laboratory of hygiene or at a laboratory certified or approved by the department of health services. An operator shall have other laboratory tests the results of which are submitted to the department under this subchapter performed by a laboratory certified or registered under s. 299.11, except that this requirement does not apply to any of the following:

1. Physical testing of soil.
2. Air quality tests.
3. Tests for hydrogen ion concentration (pH).
4. Tests for chlorine residual.
5. Tests for temperature.

History: 2013 a. 1.

**295.643 Mining waste site monitoring.** **(1) GENERAL.** The department may require the monitoring of groundwater, sur-

face water, leachate, or other physical features associated with a mining waste site.

**(2) PHYSICAL FEATURES.** The department may require the monitoring of air quality, berms, embankments, vegetation growth, and drainage control structures associated with the mining waste site. The department may require monitoring of other chemical or biological conditions, if the department determines that the monitoring is necessary to assess the impact of the mining waste site on critical aquatic and terrestrial ecosystems.

**(3) MONITORING WELLS AND OTHER DEVICES.** (a) The department shall require the installation of groundwater monitoring wells at a mining waste site. The department may require installation of leachate monitoring wells, lysimeters, moisture probes, and similar devices and associated water quality sampling and analysis programs to detect the effects of leachate on groundwater.

(b) The department shall determine the required number of groundwater monitoring wells based on the size of the mining waste site, the design of the mining waste site, the types of mining waste, and the hydrologic and geologic setting of the mining waste site. The department shall ensure that the number of wells is adequate to yield samples representative of the groundwater quality both up gradient and down gradient of the mining waste site.

(c) An operator shall construct all monitoring wells in accordance with ch. NR 141, Wis. Adm. Code, and in such a manner as to prevent, to the extent practicable, the exchange of water between aquifers.

**(4) DESTRUCTION OF MONITORING DEVICES.** (a) If for any reason a monitoring well or other monitoring device associated with a mining waste site is destroyed or otherwise fails to function properly, the operator shall notify the department in writing within 5 days of discovering the destruction or malfunction.

(b) The operator shall either restore the monitoring well or other device or properly abandon it and replace it with a functioning device within 60 days of notifying the department under par. (a) unless the department notifies the operator otherwise in writing within 30 days of receiving notice from the operator.

**(5) SAMPLING OTHER WELLS.** The department may require an operator to sample public or private wells as part of a regular monitoring program or to determine the extent of groundwater contamination associated with a mining waste site. If the owner of a well does not authorize access for sampling, the operator shall promptly notify the department.

**(6) REQUIRED MONITORING AND ANALYSIS.** (a) An operator shall monitor groundwater at locations identified in the waste site feasibility study and plan of operation on a quarterly basis, during March, June, September, and December, unless the department agrees to an alternate schedule. The department may base an alternate schedule on the hydrogeologic system's characteristics, such as flow velocity and stratigraphy, and on fluctuations in quality as determined through background water quality or baseline water quality sampling and mining waste type. The operator shall analyze for the parameters listed in the approved waste site feasibility study and plan of operation.

(b) An operator shall use the methods for groundwater and surface water sample collection, preservation, and analysis that are specified in the approved mining waste site facility study and plan of operation.

**(7) WATER ELEVATION MEASUREMENTS.** The operator shall make water elevation measurements on a quarterly basis.

**(8) OPERATIONS REPORT.** The department may require an operator to submit an operations report to assess the effectiveness and environmental acceptability of mining waste site operations. The operator may include in the report a discussion of confinement of the active fill area and an analysis of leachate and other monitoring, surface water control and erosion control, revegetation, settlement, volume of the mining waste site utilized, leachate quantity and quality, slope stability, equipment performance, volume and type of waste disposed of, and other relevant parameters.

(9) **REPORTS OF MONITORING DATA.** The operator shall forward to the department, within 60 days after sampling, 3 copies of the monitoring data required by this section to be collected during each quarter.

**History:** 2013 a. 1.

**295.645 Groundwater quality, monitoring, and response. (1) DEFINITIONS.** In this section:

(a) “Alternative concentration limit” means the concentration of a substance in groundwater established by the department to replace a groundwater quality standard when the department grants an exemption.

(b) “Statistically significantly different” means an amount of change determined by the use of statistical tests for measuring significance at the 95 percent confidence level.

(2) **DESIGN MANAGEMENT ZONE.** (a) Notwithstanding the rule-making authority in s. 160.21 (2) and except as provided under par. (b), for the purposes of ch. 160, the horizontal distance to the boundary of the design management zone for a mining operation is 1,200 feet from the limits of the engineered structures of the mining waste site, including any wastewater and sludge storage or treatment lagoons, the edge of the mine, and the adjacent mine mill and ferrous mineral processing facilities or at the boundary of the property owned or leased by the applicant or on which the applicant holds an easement, whichever distance is less.

(b) When issuing or modifying a mining permit or issuing or reissuing any other approval, the department may reduce the design management zone by a horizontal distance of not more than 600 feet. The department may not reduce the design management zone unless the department determines that preventive action limits and enforcement standards or alternative concentration limits will be met at the boundary of the reduced design management zone. The department shall consider the following factors in determining whether to reduce the design management zone:

1. Nature, thickness, and permeability of unconsolidated materials, including topography.
2. Nature and permeability of bedrock.
3. Groundwater depth, flow direction, and velocity.
4. Waste volume, type, and characteristics.
5. Contaminant mobility.
6. Distances to the property boundary and surface waters.
7. Engineering design of the facility.
8. Life span of the facility.
9. Present and anticipated uses of land and groundwater.
10. Potential abatement options if an enforcement standard is exceeded.

(c) Notwithstanding the rule-making authority in s. 160.21 (2), for the purposes of ch. 160, the vertical distance to the boundary of the design management zone for a mining site, including any mining waste site, extends no deeper than 1,000 feet into the Precambrian bedrock or than the final depth of the mining excavation, whichever is greater.

(d) An operator shall monitor groundwater quality at locations approved by the department along the boundary of the design management zone and within the design management zone.

(3) **POINT OF STANDARDS APPLICATION.** (a) Any point at which groundwater is monitored is a point of standards application to determine whether a preventive action limit or an alternative concentration limit to a preventive action limit has been attained or exceeded for an activity regulated under a mining permit or another approval related to the mining operation. Any of the following is a point of standards application to determine whether an enforcement standard or an alternative concentration limit to an enforcement standard has been attained or exceeded for an activity regulated under a mining permit or another approval related to the mining operation:

1. Any point of present groundwater use.

2. Any point beyond the boundary of the property on which the activity is conducted, subject to par. (b).

3. Any point that is within the boundary of the property on which the activity is conducted but is beyond the design management zone, subject to par. (b).

(b) No point at a depth of greater than 1,000 feet into the Precambrian bedrock or than the final depth of the mining excavation, whichever is greater, is a point of standards application under this subsection.

(c) Section 160.21 (2) does not apply to an activity regulated under this subchapter.

(4) **CHANGE IN GROUNDWATER QUALITY.** If the analysis of samples collected through monitoring indicates that the quality of groundwater is statistically significantly different from either baseline water quality or background water quality and the evaluation of the data shows a reasonable probability that without intervention groundwater quality standards or alternative concentration limits will be attained or exceeded, the operator shall do all of the following:

(a) Notify the department within 10 days after the operator receives the results of the analysis of the samples.

(b) Determine, if possible, the cause of the difference in water quality, such as a spill, a design failure, or an improper operational procedure.

(c) Determine the extent of groundwater contamination or the potential for groundwater contamination.

(d) Implement the applicable portions of the approved contingency plan.

(5) **RESPONSE CONCERNING PREVENTIVE ACTION LIMITS.** In accordance with s. NR 140.24 (1) to (5), Wis. Adm. Code, the department shall evaluate the range of responses proposed by the operator when a preventive action limit or an alternative concentration limit to a preventive action limit is attained or exceeded and the analysis of samples indicates that the quality of groundwater is statistically significantly different from either baseline water quality or background water quality at a point of standards application. In designating the appropriate response, the department shall evaluate the operator’s proposed range of responses, including any alternate responses to those identified in s. NR 140.24, Wis. Adm. Code. For any alternate responses, the department shall consider the technical and economic feasibility of alternate responses, the practicality of stopping the further release of the substance, and the risks and benefits of continued mining operations. The department shall designate the appropriate response, except that, notwithstanding s. 160.21 (3) and the rule-making authority under s. 160.21 (1), the department may not prohibit a practice or activity or require closure and abandonment of a mining waste site, including any wastewater and sludge storage or treatment lagoon, unless it has followed the procedures in s. 295.78 and satisfies the requirements of s. 160.23 (4) and (6). The department may determine that no response is necessary and that an exemption is not required when the requirements of s. NR 140.24 (5) (a) or (b), Wis. Adm. Code are met.

(6) **RESPONSE CONCERNING ENFORCEMENT STANDARDS.** (a) In accordance with s. NR 140.26 (1) and (2), Wis. Adm. Code, the department shall evaluate the range of responses proposed by the operator based on the responses listed in Table 6 of s. NR 140.26, Wis. Adm. Code, when an enforcement standard or an alternative concentration limit to an enforcement standard is attained or exceeded and the analysis of samples indicates that the quality of groundwater is statistically significantly different from either baseline water quality or background water quality at a point of standards application. In designating the appropriate response, the department shall evaluate the operator’s proposed range of responses against those identified in Table 6 of s. NR 140.26, Wis. Adm. Code. The department shall designate the appropriate response, except that, notwithstanding ss. 160.21 (3) and 160.25 (1) (a) and the rule-making authority under s. 160.21 (1), the department may not prohibit a practice or activity or require clo-

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sure and abandonment of a mining waste site, including any wastewater and sludge storage or treatment lagoon, unless it has followed the procedures in s. 295.78 and all of the following apply:

1. The department bases its decision upon reliable test data.
2. The department determines, to a reasonable certainty, by the greater weight of the credible evidence, that no other remedial action would prevent the violation of the enforcement standard at the point of standards application.
3. The department establishes the basis for the boundary and duration of the prohibition.
4. The department ensures that any prohibition imposed is reasonably related in time and scope to maintaining compliance with the enforcement standard at the point of standards application.
5. If the substance involved is naturally occurring, unless the substance involved is carcinogenic, teratogenic, or mutagenic in humans, the department considers the existence of the background concentration of the substance in evaluating response options to the noncompliance with the enforcement standard or alternative concentration limit for that substance and determines that the proposed prohibition will result in the protection of or substantial improvement in groundwater quality notwithstanding the background concentrations of the substance.

(b) The department may only require a remedial action to be taken if the remedial action is reasonably related in time and scope to the substance, activity, or practice that caused the enforcement standard or alternative concentration limit to an enforcement standard to be attained or exceeded and the quality of groundwater to be statistically significantly different from either baseline water quality or background water quality at the point of standards application.

(c) If nitrates or any substance of welfare concern attains or exceeds an enforcement standard and if the analysis of samples indicates that the quality of groundwater is statistically significantly different from either baseline or background water quality, then the department shall evaluate whether the enforcement standard was attained or exceeded in whole or in part due to high background water quality concentrations of the substance and whether the additional concentrations represent a public welfare concern before it designates the appropriate response and, notwithstanding ss. 160.21 (3) and 160.25 (1) (a) and the rule-making authority under s. 160.21 (1), the department may not prohibit a practice or activity or require closure and abandonment of a mining waste site, including any wastewater and sludge storage or treatment lagoon, unless it has followed the procedures in s. 295.78 and par. (a) 1. to 4. apply.

(d) If compliance with an enforcement standard is achieved at a point of standards application, then sub. (5) applies.

**(6m) MANDATORY INTERVENTION BOUNDARY FOR MINING WASTE SITE AND MINE.** (a) Except as provided under par. (am), the horizontal distance to the mandatory intervention boundary for a mining waste site is 300 feet from the outer waste boundary or the outer edge of the excavation, unless the boundary of the design management zone is within 600 feet of the outer waste boundary or the outer edge of the excavation, in which case the mandatory intervention boundary is one-half the distance from the outer waste boundary or the outer edge of the excavation to the boundary of the design management zone.

(am) The department may reduce the mandatory intervention boundary under par. (a) by a horizontal distance of up to 150 feet if the department determines that the reduction is necessary to adequately identify and respond to potential groundwater quality issues.

(b) An operator shall monitor groundwater quality at locations approved by the department along the mandatory intervention boundary, except for any portion of the mandatory intervention boundary that is within another mandatory intervention boundary, and within the mandatory intervention boundary. When approv-

ing locations for monitoring, the department shall ensure that duplicative monitoring is not required within overlapping mandatory intervention boundaries.

(c) 1. Notwithstanding sub. (5), if a preventive action limit or an enforcement standard has been exceeded beyond the mandatory intervention boundary, the department shall require a response in accordance with s. NR 140.24, Wis. Adm. Code, except that s. NR 140.24 (5), Wis. Adm. Code, does not apply.

2. If sampling results indicate that an enforcement standard or a preventive action limit has been exceeded within, but not beyond, the mandatory intervention boundary and a comparison of sampling results to the results of modeling indicates that the sampling results are consistent with the design and expected performance of the mining waste site, the operator may recommend a no response action, and the department may approve a no response action if that is authorized under s. NR 140.24 (5), Wis. Adm. Code.

**(7) ENVIRONMENTAL ANALYSIS NOT REQUIRED.** An action under sub. (5) or (6) with respect to a specific site does not constitute a major state action under s. 1.11 (2).

**(8) EXEMPTIONS TO GROUNDWATER QUALITY STANDARDS.** When issuing or modifying a mining permit or issuing or reissuing any other approval, the department may grant an exemption from a groundwater quality standard and establish an alternative concentration limit to a groundwater quality standard.

**(9) APPLICABILITY OF OTHER LAW.** Chapter NR 140, Wis. Adm. Code, applies to mining operations and mining sites, including mining waste sites, only to the extent that it does not conflict with this section.

History: 2013 a. 1.

**295.65 Successors.** (1) 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 subchapter as to the mining operation and transfer the mining permit and any approvals under ss. 295.60, 295.605, and 295.61 to the successor operator if all of the following apply:

(a) The successor operator agrees to comply with the requirements of this subchapter.

(b) The successor operator discloses whether it has forfeited any performance security because of noncompliance with any mining laws within the previous 10 years, posts any bond or other security required under s. 295.59, and assumes all responsibilities of all applicable approvals granted to the predecessor operator.

(2) The department is not required to prepare an environmental impact statement or an environmental assessment for the purposes of this section.

History: 2013 a. 1.

**295.66 Cessation of mining or reclamation.** If there is a cessation of mining or reclamation for 30 days or more that is not set forth in either the mining plan or the reclamation plan, the operator shall notify the department of the cessation within 48 hours of the cessation of mining and shall begin stabilization of the mining site. The department may require the operator to provide technical, engineering, and any other information that the operator believes shows that its actions to stabilize the mining site are adequate. If the department determines, after reviewing the information provided by the operator, that the proposed stabilization of the mining site will result in a substantial adverse impact to the environment, the department shall order the operator to begin 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 do not constitute a cessation of mining.

History: 2013 a. 1.

**295.67 Determination of abandonment of mining.**

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

(2) Abandonment of mining does not occur if all of the following apply:

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

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

(c) The mining site is maintained in an environmentally stable manner during the cessation of mining.

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

History: 2013 a. 1.

**295.68 Certificates of completion and release of security.**

(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 or not less than one year after notification to the department by the operator of the completion of the reclamation plan as to a portion of the mining site, if the department finds that the operator has completed reclamation of any portion of the mining site in accordance with the reclamation plan and this subchapter, 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 or other security provided under s. 295.59 (1) to an amount equal to the estimated cost of reclamation of the portion of the mining site that 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 the operator to maintain a bond or other security under s. 295.59 (1) equal to at least 10 percent of the cost to the state of reclamation of the entire mining site, except that if the mining site in the mining plan is less than 10 acres, the department may release the bond or other security after issuance of the certificate of completion for the entire mining site.

(4) After 10 years after the issuance of a certificate or certificates of completion for the entire mining site, the department shall release the remaining bond or other security provided under s. 295.59 (1) if the department finds that the reclamation plan has been complied with.

History: 2013 a. 1.

**295.69 Termination of proof of financial responsibility for long-term care of mining waste site.**

(1) One year after closure, and annually thereafter until the department terminates the obligation to maintain proof of financial responsibility for long-term care of a mining waste site under sub. (2) (c), an operator who has carried out all necessary long-term care during the preceding year, may apply to the department for a reduction in the amount of the proof of financial responsibility provided under s. 295.59 (2m) equal to the costs of long-term care for that year. The operator shall provide an itemized list of costs incurred. If the department determines that the costs incurred are in accordance with the long-term care requirements in the approved waste site feasibility study and plan of operation and that adequate funds exist to complete required long-term care for the remainder of the 40-year period on which the amount of the proof of financial responsibility was originally determined, the department shall

authorize in writing a reduction in the amount of proof of financial responsibility provided. The department shall make its determinations within 90 days of an application.

(2) (a) An operator may apply to the department for termination of its obligation to maintain proof of financial responsibility for long-term care of the mining waste site under s. 295.59 (2m) at any time after the mining waste site has been closed for 20 years by submitting an application that demonstrates that continuation of the obligation to maintain proof of financial responsibility for long-term care is not necessary for adequate protection of public health or the environment. The burden is on the operator to prove by a preponderance of the evidence that continuation of the obligation to maintain proof of financial responsibility for long-term care is not necessary for adequate protection of public health or the environment.

(b) Within 30 days of receiving an application under par. (a), the department shall provide notice to the public of the application for termination of the obligation to maintain proof of financial responsibility for long-term care. In the notice, the department shall invite the submission of written comments by any person on the application within 30 days of the date of the publication of the notice. The department shall provide the notice by publishing a class 1 notice under ch. 985 in the official newspaper designated under s. 985.04 or 985.05 or, if none exists, in a newspaper likely to give notice in the area of the mining waste site, and shall publish notice on the department's Internet site. The date on which the department first publishes the notice on its Internet site shall be considered the date of the publication of the notice required to be published under this paragraph. The department shall also send the notice to the operator.

(c) Within 120 days of the date of the publication of the notice under par. (b), the department shall determine either that proof of financial responsibility for long-term care of the mining waste site is no longer required, in which case the applicant is relieved of the responsibility of providing proof of financial responsibility for long-term care, or that proof of financial responsibility for long-term care of the mining waste site is still required, in which case the applicant may not submit another application under par. (a) until at least 5 years have elapsed since the previous application.

History: 2013 a. 1.

**295.695 Inspections by the department.**

(1) Any duly authorized officer, employee, or representative of the department who has received the safety training under 30 CFR 48.31 may enter and inspect any property, premises, or place on or at which any mining operation or facility is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with this subchapter and the provisions of chs. 281, 283, 285, 289, 291, 292, and 299 and rules promulgated under those chapters that are applicable to the mining operation. No person may refuse entry or access to any authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials.

(2) No person may obstruct, hamper, or interfere with any inspection authorized in sub. (1).

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

History: 2013 a. 1.

**295.73 Fees.** (1) (a) Except as provided in par. (b), an applicant for a mining permit is not required to pay any application or filing fee for any approval other than a mining permit, notwithstanding any fee required under ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291, or rules promulgated under those chapters.

(b) An applicant for a mining permit shall pay any fee required under s. 281.343 (3) (c) 1.

(3) (a) The department shall assess an applicant a fee equal to its costs, other than costs of a contract under par. (d), for evaluating

the mining project, including the costs for consultants retained by the department to evaluate the application for the mining permit and the application for any other approval, or \$2,000,000, whichever is less.

(b) The applicant shall pay the fees under par. (a) as follows:

1. One hundred thousand dollars shall be paid at the time that the bulk sampling plan is filed under s. 295.45 or at the time that the notice of the intention to file a mining permit application is filed, whichever is first.

2. Two hundred fifty thousand dollars when the department provides cost information demonstrating that the payment under subd. 1. has been fully allocated against actual costs.

3. Two hundred fifty thousand dollars when the department provides cost information demonstrating that the payment under subd. 2. has been fully allocated against actual costs.

4. Two hundred fifty thousand dollars when the department provides cost information demonstrating that the payment under subd. 3. has been fully allocated against actual costs.

5. Two hundred fifty thousand dollars when the department provides cost information demonstrating that the payment under subd. 4. has been fully allocated against actual costs.

6. Two hundred fifty thousand dollars when the department provides cost information demonstrating that the payment under subd. 5. has been fully allocated against actual costs.

7. Two hundred fifty thousand dollars when the department provides cost information demonstrating that the payment under subd. 6. has been fully allocated against actual costs.

8. Two hundred fifty thousand dollars when the department provides cost information demonstrating that the payment under subd. 7. has been fully allocated against actual costs.

9. One hundred fifty thousand dollars when the department provides cost information demonstrating that the payment under subd. 8. has been fully allocated against actual costs.

(c) After the department approves or denies the application for a mining permit or, if the applicant withdraws the application for a mining permit, after the applicant withdraws the application, the department shall refund to the applicant any amount paid by the applicant under par. (a) but not fully allocated against the department's actual costs.

(d) In addition to the fees under par. (a), if the department contracts under s. 295.53 (1) with a consultant to assist in preparation of an environmental impact statement and awards the contract on the basis of competitive bids, the applicant shall pay the full costs as provided in the contract.

(e) In addition to the fees under par. (a), the department may assess an applicant a fee equal to the department's costs in providing wetland determinations and wetland boundary delineations under s. 295.60 (2).

(4) Subchapter VI of ch. 289 does not apply to mining waste disposed of in a mining waste site covered by a mining permit, except that an operator shall pay the fees specified in ss. 289.63 (4), 289.64 (3), and 289.67 (1) (d).

History: 2013 a. 1.

**295.75 Effect of other laws.** (1) Except as provided in sub. (2), if there is a conflict between a provision in this subchapter and a provision in ch. 23, 29, 30, 31, 160, 169, 281, 283, 285, 289, or 291 or in a rule promulgated under one of those chapters, the provision in this subchapter controls.

(2) (a) If there is a conflict between a provision in this subchapter and a provision in s. 281.343, the provision in s. 281.343 controls.

(b) If there is a conflict between a provision in this subchapter and a provision in s. 281.346, the provision in s. 281.346 controls, except as provided in s. 295.57 (9) (a).

History: 2013 a. 1.

**295.77 Review.** (1) LIMITS ON CONTESTED CASE HEARINGS. No person is entitled to a contested case hearing on a decision by the department on an exploration license or an approval that is required before bulk sampling may be implemented. No person is entitled to a contested case hearing on a decision by the department on a mining permit application or any other approval, except as provided in subs. (2) and (3).

(2) CONTESTED CASE HEARINGS; AFTER INITIAL MINING PERMIT DECISION OR DECISION ON AMENDED PLAN. (a) *Entitlement.* 1. A person is entitled to a contested case hearing on a decision by the department related to a mining permit for a proposed mining operation, including a decision related to the environmental impact statement for the proposed mining operation, or on any decision that is related to an approval associated with the proposed mining operation and that is issued no later than the day on which the department issues its decision on the application for the mining permit, only if the person is entitled to a contested case hearing on the decision under s. 227.42 and the person requests the hearing within 30 days after the department issues the decision to approve or deny the application for the mining permit.

2. A person is entitled to a contested case hearing on a decision by the department related to an amended mining plan, reclamation plan, or mining waste site feasibility study and plan of operation required under s. 295.63 (3) or to any amendment to an approval associated with the amended mining plan, reclamation plan, or mining waste site feasibility study and plan of operation only if the person is entitled to a contested case hearing on the decision under s. 227.42 and the person requests the hearing within 30 days after the department issues the decision to approve or deny the amended mining plan, reclamation plan, or mining waste site feasibility study and plan of operation.

3. All issues raised by all persons requesting a contested case hearing in accordance with subd. 1. or 2. in connection with the same mining operation shall be considered in one contested case hearing.

(b) *Deadline for decision.* 1. The hearing examiner presiding over a contested case hearing under this subsection shall issue a final decision on the case no more than 150 days after the department issues the decision to grant or deny the mining permit or to approve or deny the amended mining plan, reclamation plan, or mining waste site feasibility study and plan of operation.

2. If the hearing examiner does not issue a final decision by the deadline under subd. 1., the decision of the department being reviewed by the hearing examiner is affirmed.

(c) *Restriction on orders.* The hearing examiner presiding over a contested case hearing under this subsection may not issue an order prohibiting activity authorized under a decision of the department that is being reviewed in the contested case hearing.

(d) *Judicial review.* A person seeking judicial review of the decision in a contested case hearing under this subsection shall comply with the requirements for service and filing in s. 227.53 (1) (a) and shall commence the action no more than 30 days after service of the decision or, if the hearing examiner does not issue a final decision by the deadline under par. (b) 1., no more than 30 days after that deadline.

(3) CONTESTED CASE HEARINGS ON OTHER DECISIONS. A person is entitled to a contested case hearing on a decision by the department related to a mining operation that is issued after the department issues the decision to approve the application for the mining permit for the mining operation, other than a decision described in sub. (2) (a) 2., if the person is entitled to a contested case hearing under s. 227.42 and complies with the requirements for service and filing in s. 227.53 (1) (a).

(4) Notwithstanding s. 227.53 (1) (a) 3., any person seeking judicial review of the decision on a contested case under sub. (2) or (3) or of any decision of the department under this subchapter shall bring the action in the circuit court for the county in which

the majority of the bulk sampling site or mining site is located or in which the majority of the exploration will occur.

History: 2013 a. 1.

**295.78 Mining and reclamation; orders.** (1) (a) If the department finds a violation of law or any unapproved deviation from the mining plan, reclamation plan, or mining waste site feasibility study and plan of operation at a mining site under a mining permit, the department shall do one of the following:

1. Issue an order requiring the operator to comply with the law, mining plan, reclamation plan, or mining waste site feasibility study and plan of operation within a specified time.

2. Require the alleged violator to appear before the department for a hearing and answer the department's charges.

3. Request the department of justice to initiate action under s. 295.79.

(b) 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) 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. If after the hearing the department finds that no violation has occurred, it shall rescind its order.

(d) If an operator fails to comply with an order issued under par. (a) 1. within the time for compliance specified in the order, the department shall suspend the mining permit until the operator fully complies with the order, except that if the operator seeks review of the order under s. 295.77 (3), mining may continue until the final disposition of the action, except as provided under sub. (4).

(e) The department shall inform the department of justice of a suspension under par. (d) within 14 days. After receiving notice of a suspension, the department of justice may commence an action under s. 295.79.

(2) If reclamation of a mining site is not proceeding in accordance with the reclamation plan and the operator has not begun to rectify deficiencies within the time specified in an order, or if the reclamation is not properly completed in conformance with the reclamation plan within one year after completion or abandonment of mining on any portion of the mining site, unless because of 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 the actions that are necessary for the reclamation of mined areas. The operator is liable for the cost to the state of reclamation conducted under this subsection.

(3) The department shall cancel all other 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. The department may not issue any mining permit for that mining site or any other mining site in this state to an operator who refused to reclaim the mining site in compliance with the reclamation plan.

(4) 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, the department

may request the department of justice to institute an action in circuit court of the county in which the mine is located for a restraining order or injunction or other appropriate remedy to stop mining until the immediate and substantial threat is eliminated.

(5) Section 281.346 (7m) does not apply to a water withdrawal associated with a mining operation for which a mining permit has been issued.

History: 2013 a. 1.

**295.79 Enforcement; penalties.** (1) The department of justice shall enforce this subchapter and any order issued under this subchapter. The circuit court of the county where the violation occurred has jurisdiction to enforce this subchapter or any orders issued under this subchapter, by injunction or other appropriate relief.

(2) (a) Any person who authorizes or engages in mining without a mining permit and written authorization to mine under s. 295.59 (3) shall forfeit all profits obtained from those illegal activities and not more than \$5,000 for each day during which the mine was in operation.

(b) A person to whom par. (a) applies is also liable to the department for the full cost of reclaiming the affected area of land and any damages caused by the mining.

(c) If the violator of par. (a) is a corporation, limited liability company, partnership, or association, any officer, director, member, manager, or partner who knowingly authorizes, supervises, or contracts for mining is also subject to the penalties in this subsection.

(3) Any person who makes or causes to be made in an application or report required by this subchapter a statement known to the person to be false or misleading in any material respect or who refuses to submit information required by a mining permit or by this subchapter 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 mining permit and the mining permit would not have been issued had the false or misleading statement not been made, the court may revoke the mining permit. If any violation under this subsection is repeated the court may revoke the mining permit.

(4) (a) Any person who commits a violation of this subchapter or any permit or order issued under this subchapter, except for the violations enumerated in subs. (2) and (3), shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each day of continued violation is a separate offense, except that no forfeiture may be imposed during the time that continued mining is authorized under s. 295.63 (3). 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. These moneys shall be credited to the appropriation account under s. 20.455 (1) (gh).

(5) Any person having an interest that is or may be adversely affected may intervene as a matter of right, in any enforcement action brought under this section.

History: 2013 a. 1.