State of Wisconsin
2013 – 2014 LEGISLATURE

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2013 BILL

AN ACT ***to repeal*** 107.001 (2) and 293.01 (8); ***to renumber and amend*** 30.123 (8) (c) and 87.30 (2); ***to amend*** 20.370 (2) (gh), 20.455 (1) (gh), 20.566 (7) (e), 20.566 (7) (v), 25.46 (7), 29.604 (4) (intro.), 29.604 (4) (c) (intro.), 30.025 (1e) (a), 30.025 (1m) (intro.), 30.025 (1m) (c), 30.025 (1s) (a), 30.025 (2), 30.025 (2g) (b) (intro.), 30.025 (4), 30.12 (3m) (c) (intro.), 30.133 (2), 30.19 (4) (c) (intro.), 30.195 (2) (c) (intro.), 32.02 (12), 70.375 (1) (as), 70.375 (1) (bm), 70.375 (4) (h), 70.38 (2), 70.395 (1e), 70.395 (2) (dc) 1., 70.395 (2) (dc) 2., 70.395 (2) (dc) 3., 70.395 (2) (dc) 4., 70.395 (2) (fm), 70.395 (2) (h) 1., 70.395 (2) (hg), 70.395 (2) (hr), 70.395 (2) (hw), 107.001 (1), 107.01 (intro.), 107.01 (2), 107.02, 107.03, 107.04, 107.11, 107.12, 107.20 (1), 107.20 (2), 107.30 (8), 107.30 (15), 107.30 (16), 160.19 (12), 196.491 (3) (a) 3. b., 196.491 (4) (b) 2., 281.36 (3g) (h) 2., 281.65 (2) (a), 281.75 (17) (b), 283.84 (3m), 287.13 (5) (e), 289.35, 289.62 (2) (g) 2. and 6., 292.01 (1m), chapter 293 (title), 293.01 (5), 293.01 (7), 293.01 (9), 293.01 (12), 293.01 (18), 293.01 (25), 293.21 (1) (a), 293.25 (2) (a), 293.25 (4), 293.37 (4) (b), 293.47 (1) (b),

293.50 (1) (b), 293.50 (2) (intro.), 293.50 (2) (a), 293.50 (2) (b), 293.51 (1), 293.65 (3) (a), 293.65 (3) (b), 293.86, chapter 295 (title), 295.16 (4) (f), 299.85 (7) (a) 2. and 4., 299.95, 323.60 (5) (d) 3., 706.01 (9) and 710.02 (2) (d); and ***to create*** 20.370 (2) (gi), 23.321 (2g), 25.49 (2m), 29.604 (7m), 30.025 (1e) (c), 30.025 (4m), 31.23 (3) (e), 87.30 (2) (b), 196.491 (3) (a) 3. c., 227.483 (3) (c), 238.14, 293.01 (12m), subchapter III of chapter 295 [precedes 295.40] and 323.60 (1) (gm) of the statutes; **relating to:** regulation of ferrous metallic mining and related activities, procedures for obtaining approvals from the Department of Natural Resources for the construction of utility facilities, making an appropriation, and providing penalties.

Analysis by the Legislative Reference Bureau

OVERVIEW

This bill makes changes in the laws relating to the regulation of iron mining.

IRON MINING, GENERALLY

Under current law, DNR regulates mining for metallic minerals. The laws under which DNR regulates metallic mining apply to mining for ferrous minerals (iron) and mining for nonferrous minerals, such as copper or zinc.

This bill creates new statutes for regulating iron mining and modifies the current laws regulating metallic mining so that they cover only mining for nonferrous minerals.

Under current law, a person who proposes to mine for metallic minerals must obtain a mining permit and any other permit, license, certification, or other authorization (approval) that is required under the environmental and natural resources laws, other than the mining laws, for example, wastewater discharge permits, high capacity well approvals, and permits for discharges into wetlands.

Under the bill, a person who proposes to mine for iron ore must obtain an iron mining permit. The person must obtain some of the approvals under other environmental and natural resources laws, for example, wastewater discharge permits, but the bill provides approvals specific to iron mining in lieu of some current approvals, for example, high capacity well approvals and permits for discharges into wetlands. The standards and procedures for granting, and the requirements related to, an iron mining permit and the other approvals specific to iron mining differ in some respects from the standards, procedures, and requirements under current law, as described below.

Current law requires DNR to promulgate rules specifying standards for metallic mining and for the reclamation of mining sites. The rules relating to mining must contain standards for grading and stabilization, backfilling, vegetative cover, prevention of pollution resulting from leaching of waste materials, and prevention of significant environmental pollution. The rules relating to reclamation must contain provisions for disposal of wastes in disposal facilities licensed under the solid waste laws or otherwise in an environmentally sound manner, for management of runoff so as to prevent soil erosion, flooding, and water pollution, and for minimization of disturbance to wetlands. DNR has promulgated rules on these matters.

The bill places standards for iron mining and for the reclamation of iron mining sites in the statutes, rather than requiring rule–making. The standards in the bill are similar in many respects to DNR's current rules and are less stringent in other respects.

Current law prohibits DNR from issuing a permit for metallic mining in a sulfide ore body (a mineral deposit in which metals are mixed with sulfide minerals) unless it finds, based on information provided by the applicant, that two conditions are satisfied. The first condition is that a mining operation has operated in a sulfide ore body that has a net acid generating potential for at least ten years without causing water pollution from acid drainage or the release of heavy metals. The second condition is that a mining operation that operated in a sulfide ore body that has a net acid generating potential has been closed for at least ten years without causing water pollution from acid drainage or the release of heavy metals.

Under the bill, these conditions on issuing a permit for metallic mining in a sulfide ore body do not apply to issuing a permit for iron mining.

PREAPPLICATION PROCESS

Under current law, a person who intends to apply for a permit for mining for metallic ore must notify DNR before collecting data intended to be used to support the application. DNR is required to provide public notice when it receives such a notification. After considering public comments, DNR must tell the person who filed the notice of intent what information DNR believes is needed to support an application for a mining permit. The person must submit the information as soon as it is in final form. Under this bill, these provisions do not apply to a person who intends to apply for an iron mining permit.

This bill requires a person who is contemplating an iron mining project to provide DNR with a general description of the proposed mining project. The description must include a description of the mining site, including the nature, extent, and final configuration of the proposed excavation and mining site and certain other informations including a map showing the boundaries of the area of land that will be affected by the mining project. The bill requires the person to include this information with the bulk sampling plan, described below, or if the person does not file a bulk sampling plan, with the person's notification to DNR of the person's intent to apply for an iron mining permit. The bill requires DNR to conduct a public informational hearing on a proposed mining project after receiving

the general description, either as part of the hearing on approvals required for bulk sampling or, if there is no such hearing, as a separate hearing.

This bill requires a person who intends to apply for an iron mining permit to notify DNR of that intention at least 12 months before filing the application. The bill requires DNR to meet with the applicant 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 intending to apply for an iron mining permit is aware of the approvals that the person may be required to obtain. DNR must also ensure that the person is aware of the requirements for submission of an environmental impact report and of the information DNR will require to enable it to process the application for the mining permit in a timely manner.

After the meeting, DNR must provide to the applicant any available information relevant to the potential impact of the project on threatened or endangered species and historic or cultural resources and any other information relevant to impacts that are required to be considered in the environmental impact statement.

Application for mining permit

Under current law, a person who wishes to obtain a permit for metallic mining must submit an application to DNR that includes a mining plan, a reclamation plan, information about the owners of the mining site, and information related to the failure to reclaim mining sites and to any criminal convictions for violations of environmental laws in the course of mining by persons involved in the proposed mining. The application must also include evidence that the applicant has applied for necessary approvals under applicable zoning ordinances and for any approvals issued by DNR that are necessary to conduct the mining, such as air pollution permits and wastewater discharge permits.

This bill includes similar provisions for the application for an iron mining permit, except that the applicant may provide evidence that the applicant will apply, rather than has applied, for necessary zoning approvals and for other approvals issued by DNR.

The required content of the mining plan for iron mining under the bill is similar to that required under current statutes and DNR rules. The required content of the reclamation plan for iron mining is also similar to that required under current law.

Current law requires the applicant for a metallic mining permit to show that the mining and reclamation will comply with specified minimum standards. The bill requires showings by the applicant for an iron mining permit that differ in some ways from current law. For example, current law requires a demonstration that water runoff from the mining site will be managed so as to prevent soil erosion to the extent practicable, flooding, damage to agricultural lands or livestock, damage to wild animals, pollution of ground or surface waters, and damage to public health and safety. The bill, instead, requires a showing that water runoff from an iron mining site will be managed in compliance with any approval that regulates construction site erosion control or storm water management.

PERMITTING PROCESS

Environmental impact statement

Current law requires DNR to prepare an environmental impact statement (EIS) for every proposed metallic mine. An EIS contains detailed information about the environmental impact of a proposed project, including any adverse environmental effects that cannot be avoided if the proposal is implemented, alternatives to the proposed project, the beneficial aspects of the proposal, and the economic advantages and disadvantages of the proposal. For a metallic mining project, current law requires a description of significant long–term and short–term impacts, including impacts after the mining has ended, on tourism, employment, schools, social services, the tax base, the local economy, and "other significant factors."

This bill requires DNR to prepare an EIS for every proposed iron mine. The bill requires DNR to include a description of significant impacts on most of the same matters as under current metallic mining law.

Under current law, when a person applies for a permit or other approval for which DNR is required to complete an EIS, DNR is generally authorized to require the applicant to prepare an environmental impact report (EIR) that discloses environmental impacts of the proposed project to assist DNR in preparing the EIS. Current law authorizes DNR to enter into an agreement with a person considering applying to DNR for approval of a project that is large, complex, or environmentally sensitive to provide preapplication services necessary to evaluate the environmental impact of the project and to expedite the anticipated preparation of an EIS for the project.

The bill requires the applicant for a mining permit to prepare an EIR. The bill requires the applicant for a mining permit to submit the EIR with the application for the mining permit.

Current law authorizes DNR to conduct the processes related to an EIS jointly with other agencies who have responsibilities related to a proposed project.

The bill requires DNR to conduct its environmental review process for a proposed iron mine jointly with other state agencies and requires the preparation of one joint EIS. The bill requires DNR to conduct its environmental review process jointly with any federal or local agency that consents to a joint process.

Current law requires DNR to hold at least one informational meeting on a preliminary environmental report for a mining project before it issues the EIS. This bill does not require such an informational meeting.

Mining hearing

Current law requires DNR to hold a public hearing, called a master hearing, on an application for a metallic mining permit between 120 and 180 days after it issues the EIS for the proposed mine and before it acts on the mining permit application. The hearing includes both a contested case hearing, with testimony under oath and the opportunity for cross–examination, and a public informational hearing. The law requires the hearing to cover the EIS and all other approvals issued by DNR that are required for the mining project, to the extent possible. Under current law, the provisions related to notice, hearing, and comment in the metallic mining law apply

to any other needed approval, unless the applicant fails to make an application for an approval in time for it to be considered at the master hearing.

This bill requires DNR to hold a public informational hearing for a proposed iron mining project before it acts on a mining permit application. The hearing does not include a contested case hearing. The hearing must cover the mining permit, the EIS, and all other approvals issued by DNR that are required for the mining project, unless the application for an approval is filed too late to allow the approval to be considered at the mining hearing. The bill requires DNR to take testimony at the hearing on certain issues with regard to a proposed withdrawal of groundwater or surface water including the public rights in any body of water and the related environment that may be injured by the proposed withdrawal, the public benefits provided by increased employment, economic activity, and tax revenues from the proposed mining, and the rights of competing users of the groundwater or surface water. Under the bill, the provisions related to notice, hearing, and comment in the iron mining law apply to any other required approval.

Deadline; for acting on permit application

Current law does not specify a time, after the application for a mining permit is filed, within which DNR must act on a metallic mining permit application. It does require the master hearing to be held between 120 days and 180 days after DNR issues the EIS and requires DNR to act on the permit within 90 days after the completion of the record for the public hearing.

The bill requires DNR to act on an application for an iron mining permit no more than 420 days after the application is considered to be complete unless DNR and the applicant agree to extend the deadline. The parties may agree to only one extension, which may not exceed 60 days. DNR and the applicant may agree to an extension only if an extension is necessary to allow DNR and the U.S. Army Corps of Engineers to jointly prepare the EIS or if new information or a change to the mining proposal necessitates additional time to review the application. Under the bill, if the applicant submits the application for another approval within 60 days after the application for the mining permit is considered to be complete, DNR must also act on the application for that approval by the deadline for acting on the mining permit application. If the applicant files the application for another approval more than 60 days after the application for the mining permit is considered to be complete, the deadline for DNR's action on the approval is extended by the number of days the application is late.

If DNR does not act within the deadline for acting on the application for an iron mining permit, DNR must refund the fees paid by the applicant. The bill also authorizes the applicant to bring a court action to compel DNR to act on the mining permit.

Determination of completeness

The bill requires DNR to review the application for a mining permit and, within 30 days, determine whether the application is complete. If DNR determines that the application is complete, it notifies the applicant and the date of the notification is the date on which the application is considered to be complete. If DNR determines that the application is incomplete, it notifies the applicant and may make one request for

additional information within the 30–day review period. If DNR fails to provide a notice during the 30–day review period, the application is considered to be complete at the end of that period. Within 10 days after receiving additional requested information, DNR notifies the applicant whether it has received all of the requested information. The day on which DNR sends the second notice is the day on which the application is considered to be complete. If DNR fails to provide a notice during the 10–day period, the application is considered to be complete at the end of that period.

The bill authorizes DNR to request additional information needed to process the application for a mining permit after the application is considered to be complete, but it may not delay the determination that the application is complete based on a request for additional information.

Grant or denial of mining permit

Grounds for denial

Current law requires DNR to deny an application for a metallic mining permit for a proposed surface mine if the site is unsuitable for surface mining. A site is unsuitable for surface mining if the surface mining may reasonably be expected to destroy or damage either: 1) habitats required for the survival of endangered species of vegetation or wildlife that cannot be firmly reestablished elsewhere; or 2) unique features of the land, as determined by state or federal designation, as, for example, wilderness areas, national or state parks, archaeological areas, and other lands of a type specified by DNR by rule, as unique or unsuitable for surface mining. DNR has designated more than 150 specific scientific areas for the purposes of the determination of unsuitability.

This bill requires DNR to deny an application for an iron mining permit under the same standards for unsuitability as under current law, except that archaeological areas and areas designated by DNR as being unique or unsuitable for surface mining are not considered for the purposes of determining unsuitability.

Current law requires DNR to deny an application for a metallic mining permit if the mining operation is reasonably expected to cause the destruction or filling in of a lake bed or to cause landslides or substantial deposition in stream or lake beds that cannot be feasibly prevented.

The bill requires DNR to deny an application for an iron mining permit if the mining operation is reasonably expected to cause the destruction or filling in of a lake bed, unless DNR has authorized the destruction or filling in of the lake bed under the provisions of the bill related to wetlands, navigable waters, or water withdrawals. The bill requires DNR to deny an application for an iron mining permit if the mining operation is reasonably expected to cause landslides or substantial deposition in stream or lake beds that cannot be feasibly prevented, unless DNR has authorized the landslides or substantial deposition in stream or lake beds under the provisions of the bill related to wetlands or navigable waters.

Current law requires DNR to deny an application for a mining permit if the mining operation is reasonably expected to cause hazards resulting in irreparable damage to specified kinds of structures, such as residences, schools, or commercial buildings, to public roads, or to other public property designated by DNR by rule, if

the damage cannot be prevented under the mining laws, avoided by removal from the area of hazard, or mitigated by purchase or by obtaining the consent of the owner.

The bill requires DNR to deny an application for an iron mining permit if the mining operation is reasonably expected to cause hazards resulting in irreparable, substantial physical damage to the specified kinds of structures or to public roads, but not to other public property designated by DNR by rule, if the damage cannot be prevented under the mining laws created by the bill, avoided to the extent practicable by removal from the area of hazard, or offset by purchase or by obtaining the consent of the owner.

The bill requires DNR to deny an application for an iron mining permit if the mining operation is reasonably expected to cause irreparable substantial environmental damage to lake or stream bodies despite adherence to the mining laws, unless DNR has authorized the activity that causes the damage.

As under the current metallic mining laws, the bill requires DNR to deny an iron mining permit if the applicant has violated and continues to fail to comply with this state's mining laws. As also provided under current metallic mining law, the bill contains requirements for the denial of an iron mining permit based on the failure to reclaim mining sites, and based on criminal convictions for violations of environmental laws in the course of mining, in the United States by persons involved in the proposed iron mining.

Standards for approval

Under current law, if none of the grounds for denial of the application for a metallic mining permit apply, DNR must issue the mining permit if it finds the following: 1) the mining plan and reclamation plan are reasonably certain to result in reclamation of the mining site as required by current law and DNR has approved the mining plan; 2) the proposed mining operation will comply with all applicable air, groundwater, surface water, and solid and hazardous waste management statutes and rules; 3) the proposed mine will not endanger public health, safety, or welfare; 4) the proposed mine will result in a net positive economic impact in the area expected to be most impacted by the mine; and 5) the proposed mining operation conforms with all applicable zoning ordinances.

Under this bill, the standards for approval of an iron mining permit differ in some respects from the standards under current law. Under the bill, if none of the grounds for denial of the application for an iron mining permit apply, DNR must issue an iron mining permit if it finds the following: 1) the mining plan and reclamation plan are reasonably certain to result in reclamation of the mining site as required by the provisions of this bill; 2) the applicant has committed to conducting the proposed iron mining in compliance with the mining permit and any other approvals issued by DNR; 3) the proposed iron mining is not likely to result in substantial adverse impacts to public health, safety, or welfare; 4) the proposed iron mine will result in a net positive economic impact in the area expected to be most impacted by the mine; 5) the applicant has applied for all applicable zoning approvals; 6) the waste site feasibility study and plan of operation comply with the provisions of the bill (described below) and; 7) the proposed iron mining is likely to meet or exceed regulations that apply to floodplain zoning ordinances.

Review of DNR decisions

Generally, under current law, a person aggrieved by a decision of a state agency may obtain a contested case administrative hearing under this state's administrative procedure laws. If the matter was covered in the contested case hearing conducted before DNR acts on an application for a metallic mining permit, this general right to a contested case hearing after a decision has been made does not apply.

This bill does not allow a contested case hearing on any decision by DNR related to a proposed iron mine before DNR acts on the application for the iron mining permit. Under the bill, the right to a contested case hearing applies if a person is aggrieved by a decision to grant or deny an iron mining permit or a related DNR approval or a final decision on the EIS for a proposed iron mine and the person seeking the hearing requests the hearing within 30 days after DNR issues the decision on the iron mining permit application. One consolidated hearing is held on all of the issues raised by persons requesting a hearing.

The bill requires the hearing examiner presiding over the contested case hearing to issue a final decision no more than 150 days after DNR issues its decision. If the hearing examiner does not meet this deadline, DNR's decision is affirmed. Under the bill, the hearing examiner may not issue an order prohibiting activity authorized under the DNR decision that is being reviewed in the hearing.

Under current law, if a hearing examiner finds that a claim is frivolous, the hearing examiner is required to award the successful party the costs and reasonable attorney fees that are directly attributable to responding to the claim. To find a that a claim is frivolous, the hearing examiner must find that the claim was made in bad faith, solely for the purpose of harassing or maliciously injuring another or that the party or the party's attorney knew, or should have known, that the claim was without any reasonable basis in law and could not be supported by a good faith argument for an extension, modification, or reversal of existing law.

This bill adds that a hearing examiner may find that a claim is frivolous in a proceeding relating to iron mining if the hearing examiner finds that the claim was made primarily for the purpose of causing delay to an activity authorized under an approval that is the subject of the hearing.

Current law authorizes citizen suits against a person alleged to be in violation of the metallic mining laws and against DNR when there is alleged to be a failure of DNR to perform a duty under those laws.

The bill does not provide for citizen suits related to iron mining.

Wetlands

This bill makes various changes in current law relating to iron mining and impacts to wetlands and establishes different requirements than those found under current law. All of the changes explained below regarding wetlands apply only to wetlands that are impacted by iron mining.

Overview of the wetland permitting process

Under current law, with certain exceptions, no person may discharge dredged or fill material into a wetland unless the discharged is authorized by a wetland general permit or wetland individual permit issued by DNR. DNR may not issue a

individual permit or authorize a discharge under a general permit unless DNR determines that the discharge will comply with all applicable water quality standards. Current law requires that DNR issue statewide general permits for various types of discharges. These include general permits covering discharges that affect not more than two acres of wetland and that are necessary for dewatering or for the treatment of hazardous waste or toxic pollutants provided that hazardous waste or toxic pollutants are not part of the discharge. If a person cannot, or chooses not to seek authorization to, proceed under a general permit, the person may apply for an wetland individual permit. Also, DNR may require a person to apply for an individual permit if DNR determines that additional restrictions on the discharge are required in order to assure that no significant adverse impacts to wetland functional values will occur.

Wetland water quality standards

Wetland water quality standards that are promulgated as rules by DNR require that various functional values that are provided by wetlands be protected from adverse impacts. These functional values include providing protection from flooding, recharging groundwaters, providing habitat for wildlife, and providing protection to shorelines from erosion. Current law also sets forth criteria to be used to assure the maintenance or enhancement of these functional values. These criteria include requiring that certain solids, debris, or toxic substances be absent. This bill incorporates all of the functional values and criteria that are contained in the DNR rules for water quality standards for wetlands.

Wetland individual permits

The bill creates separate provisions for issuing wetland individual permits that apply to wetlands that are affected by an iron mining operation. These provisions contain somewhat different requirements than those found under current law that are applicable to wetland individual permits in general.

Under current law and under the bill, the person applying for a wetland individual permit must include in the application for DNR's review an analysis of the practicable alternatives that will avoid and minimize the adverse impacts of the discharge on the wetland's functional values and that will not result in any other significant adverse environmental consequences. Under current law, DNR limits its review to the practicable alternatives that are located at or that are adjacent to the discharge site if the proposed project that will cause the discharge will result in a demonstrable economic public benefit, if the proposed project is for a facility that is in existence at the time the application is filed, or if the proposed project will occur in an industrial park. Under the bill, DNR limits its review of practicable alternatives only if the proposed project will result in a demonstrable economic public benefit.

Also in current law and under the bill, DNR in its review must consider the direct, secondary, and cumulative impacts that may occur to wetland functional values, the net positive or negative impact of the proposed project, and the impact that will result from the mitigation that is required (see below).

The bill also requires that, in evaluating the significant adverse impacts as part of its review, DNR must compare the functional values of the wetlands that will be impacted by the mining site with other wetlands and water bodies in the region.

Under current law, DNR may, but is not required to, issue a wetland individual permit if it finds that the proposed project represents the least environmentally damaging practicable alternative, taking into consideration practicable alternatives that avoid wetland impacts; that all practicable measures to minimize adverse impacts will be taken; and that the project will not result in significant adverse impacts to wetland functional values or to water quality or in other significant adverse environmental consequences. Under the bill, DNR must issue a wetland individual permit if it finds that the project will meet these requirements. Also, the bill specifically requires DNR to issue the permit if any significant adverse impact to wetland functional values that remains after the impacts are avoided or minimized to the extent practicable will be compensated for under a mitigation program (see below).

Other approvals that require a wetland impact evaluation

Under this bill, some of the provisions that apply to wetland individual permits apply to other DNR approvals that regulate activities affecting wetlands, other than discharges of dredged or fill material, and that require an evaluation of the impact on the wetland. Under the bill, DNR may not issue such an approval unless DNR determines that the activity will comply with all the applicable wetland water quality standards that are described above. The bill also requires DNR to go through the same process in reviewing an application for one of these other approvals as is required for wetland individual permits. After completing the reviewing process, the department may not deny the approval on the basis of the impacts from the activity on the wetland if it finds that the proposed project represents the least environmentally damaging practicable alternative, taking into consideration practicable alternatives that avoid wetland impacts; that all practicable measures to minimize adverse wetland impacts will be taken; and that the project will not result in significant adverse impacts to wetland functional values or to water quality or in other significant adverse environmental consequences. Also, the bill prohibits DNR from denying the approval permit if any significant adverse impact to wetland functional values that will remain after the impacts are avoided or minimized to the extent practicable will be compensated for under a mitigation program (see below).

Wetland general permits

Current law requires that DNR issue statewide general permits for various types of discharges of dredged and fill material into wetlands. These include general permits covering discharges that affect not more than two acres of wetland and that are necessary for dewatering or for the treatment of hazardous waste or toxic pollutants provided that hazardous waste or toxic pollutants are not part of the discharge. The general permits also include discharges that affect not more than 10,000 square feet of wetlands that are part of developments for commercial, residential, agricultural, municipal, or recreational purposes. In order to proceed with a discharge that is authorized under a general permit, a person has to give written notification to DNR not less that 30 days before beginning the discharge. If,

within 30 days after receiving the application, DNR does not either request additional information or inform the person giving notification that a wetland individual permit will be required, the person may proceed with the discharge without any further authorization from DNR.

These provisions relating to general permits also apply to discharges of dredged and fill materials into wetlands that are associated with iron mining except that a person may not proceed with a discharge until the mining permit is issued.

Discharges of dredged or fill material into wetland subject to federal jurisdiction

Under federal law, activities involving the discharge of dredged or fill material into wetlands subject to federal jurisdiction (federal wetlands) must comply with certain guidelines contained in regulations promulgated by the federal Environmental Protection Agency in order for a federal permit to be issued by the U.S. Army Corps of Engineers (ACE). Before a federal permit may be issued, DNR must issue a water quality certification. Under current law, a wetland individual or general permit issued by DNR that authorizes a discharge of dredged or fill material constitutes water quality certification for federal purposes. Under the bill, a wetland individual permit or other approval for which a wetland impact evaluation is required constitutes a federal water quality certification for a federal wetland.

Mitigation

Under current law, mitigation is required as part of a wetland individual permit. Mitigation may be accomplished by creating, enhancing, preserving, or restoring a wetland in order to compensate for adverse impacts to other wetlands. The mitigation program established by DNR must allow as mitigation the purchasing of credits from a mitigation bank established in the state and completing actual mitigation within the same watershed as the discharge site or within one–half mile of the discharge site if not in the same watershed. A wetland mitigation bank is a system of accounting for wetland loss that includes one or more sites where wetlands are improved to provide transferable credits to be subsequently applied to offset adverse impacts to other wetlands. Current law sets a minimum ratio of at least 1.2 acres of mitigation for each acre affected by a discharge. The mitigation program may also include an in lieu fee subprogram, if one is established by DNR. The in lieu fee subprogram is a program under which payments are made to DNR or another entity for the purposes of restoring, enhancing, creating, or preserving wetlands or other water resource features. Wetlands that benefit from the in lieu fee subprogram must be open to the public for nonmotorized activities such as hunting, cross–country skiing, and hiking.

Under the bill, as under current law, mitigation may be accomplished by creating, enhancing, restoring, or preserving another wetland. Under the bill, mitigation can include a mitigation project performed by an applicant for a mining permit, purchase of mitigation credits from a mitigation bank for a site located anywhere in the state or from certain mitigation banks established before February 1, 2002. Mitigation can also include participation in the in lieu fee program as described above.

Under the bill, if is not practicable or ecologically preferable to conduct mitigation at a location on the mining site or within one–half mile of the outer boundary of the mining site (on–site location) or if there is no on–site location that will provide sufficient wetland acreage, DNR must allow the applicant to conduct mitigation at a site other than an on–site location. However, 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 required to compensate for adverse impacts to wetlands in the ceded territory shall occur within the ceded territory. The bill defines "ceded territory" to be the territory located in the state that was ceded by the Chippewa Indians to the United States in two treaties in 1837 and 1842. The bill sets a maximum ratio of 1.5 acres of mitigation for each acre of adversely impacted wetland.

The bill establishes a different procedure for reviewing mitigation measures for a federal wetland. Under the bill, DNR reviews the applicable mitigation measures under federal law and determines whether DNR has reasonable assurance that these measures 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 (significant adverse effects). If DNR determines it has reasonable assurance that the mitigation measures will compensate for these significant adverse effects, DNR may not impose any additional conditions. If DNR determines that it does not have reasonable assurance, it may impose additional conditions, but these are limited to those that are necessary to compensate for any remaining significant adverse effects. The bill also provides that DNR may not increase the number of acres to be mitigated under the federal compensatory mitigation requirements.

Exemptions

Under current law, certain activities in wetlands do not require authorization under a wetland individual permit. These activities include normal farming, silviculture, and ranching activities and certain activities related to drainage and irrigation ditches, temporary mining roads, and damaged parts of structures that are in use of a wetland. Under current law, these activities lose the exemption under certain circumstances, such as using a wetland for a use for which it was not previously used or conducting an activity that may impair the flow of a wetland. Under the bill, some of these exemptions apply to iron mining activities. However, the provision regarding losing an exemption does not apply. Instead, the exemptions only apply if the person conducting the activity minimizes the adverse effect to the environment.

Under current rules promulgated by the DNR, certain artificial wetlands are exempt from the wetland permitting requirements unless DNR determines that significant functional values are present. These exemptions include artificial wetlands that are within active nonmetallic mining operations. Under this bill, these same artificial wetlands are exempt from the wetland permitting requirements, except that the exemption for mining is limited to iron mining and the exception regarding significant functional values does not apply.

Other provisions

Under current law, for purposes of delineating the boundary of a wetland, DNR must use the procedures contained in the wetlands delineation manual published by the ACE. The bill provides that if the applicant has provided information to DNR that is identified in the manual as being sufficient for determining where a wetland is or for delineating a wetland's boundaries, DNR may visit the mining site to conduct surveys or gather site–specific data provided that DNR does not discontinue processing the application to do so.

Current law requires a person holding a wetland individual permit to grant an easement to DNR or to execute a comparable legal instrument, to ensure that a wetland that is improved under a mitigation program is not destroyed or substantially degraded by subsequent owners. Under the bill a person who is issued a wetland individual permit or other approval for which a wetland impact evaluation is required must grant such an easement or execute such an instrument, and DNR must suspend the wetland permit or approval if the permit or approval holder fails to grant the easement or execute the instrument within the time limit set forth in the mining permit.

GROUNDWATER QUALITY

Groundwater quality standards

Under current law, DNR and the Department of Health Services (DHS) establish groundwater quality standards, consisting of enforcement standards and preventive action limits, for substances that contaminate groundwater. The preventive action limit for a substance is 10 percent, 20 percent, or 50 percent of the enforcement limit depending on the type of substance.

Under this bill, the enforcement standards and preventive action limits established by DNR and DHS continue to apply to iron mining operations, but the bill changes the manner in which they apply.

Point of standards application

Current law generally requires each state regulatory agency, including DNR, to promulgate rules containing design and operational criteria for facilities and activities affecting groundwater that are designed, to the extent technically and economically feasible, to minimize the level of substances in groundwater and to maintain compliance with preventive action limits, unless compliance with the preventive action limits is not technically and economically feasible. Current law requires each regulatory agency to promulgate rules that specify the range of responses that the regulatory agency may take or that it may require the person controlling a facility or activity to take if a preventive action limit is attained or exceeded at what is called a point of standards application. Under current law and under this bill, any point at which groundwater is monitored is a point of standards application to determine whether a preventive action limit has been attained or exceeded.

Current law generally prohibits a regulatory agency from promulgating rules containing design and operational criteria that allow an enforcement standard to be exceeded at a point of standards application. Under current law and under this bill,

for determining whether an enforcement standard has been attained or exceeded, a point of standards application is any point beyond the boundary of the property on which the regulated facility or activity is located, any point of present groundwater use, and, for certain facilities, such as waste disposal facilities, any point beyond a three–dimensional design management zone (DMZ) established by DNR by rule.

Design management zone

Under DNR's rules, the horizontal dimensions of a DMZ vary depending on the type of facility. For a metallic mining waste site, the horizontal distance to the boundary of the DMZ is generally 1,200 feet from the outer waste boundary or at the boundary of the property owned or leased by the applicant, whichever distance is less. For a metallic surface mine, the horizontal distance to the boundary of the DMZ is generally 1,200 feet from the edge of the mining excavation or at the property boundary, whichever distance is less. For other mining facilities, the horizontal distance to the boundary of the DMZ is generally 150 feet from the edge of the facility or at the property boundary, whichever distance is less. Generally, the smaller the DMZ, the more likely that a preventive action limit or enforcement standard will be attained or exceeded at the boundary and the more likely that the operator will be required to implement a response.

Under this bill, for an iron mining site, the horizontal distance to the boundary of the DMZ is generally 1,200 feet from the engineered structures of a mining waste site, including any wastewater and sludge storage or treatment lagoon, the edge of the mine and adjacent mine mill and ferrous mineral processing and other facilities or at the property boundary, whichever distance is less.

Under current rules, DNR may reduce the horizontal distance to the boundary of the DMZ on a metallic mining site if certain conditions are met, but may not expand it.

Under the bill, DNR may not reduce the horizontal distance to the boundary of the DMZ on an iron mining site but may expand it by an additional 1,200 feet in any direction if DNR determines that preventive action limits and enforcement standards will be met at the boundary of the expanded DMZ and that preventive action limits and enforcement standards cannot be met at the boundary of the DMZ if it is not expanded.

Under DNR's rules, a DMZ extends vertically from the land surface through all saturated geological formations. Under the bill, the vertical distance to the boundary of the DMZ for an iron mining site extends no deeper than 1,000 feet into the Precambrian bedrock or than the final depth of the mining excavation, whichever is greater.

Mandatory intervention boundary

Currently, for metallic mining waste sites and metallic mines, in addition to the DMZ, DNR's rules provide for a mandatory intervention boundary that is 150 feet from the outer waste boundary or the edge of the mine. Under the rules, if a preventive action limit or an enforcement standard is exceeded beyond the mandatory intervention boundary, DNR must require a response by the operator.

Under the bill, the horizontal distance to the mandatory intervention boundary for an iron mining site is generally 300 feet from the outer waste boundary or the

outer edge of the excavation. The bill authorizes DNR to reduce the mandatory intervention boundary by up to 150 feet if it determines that the reduction is necessary to adequately identify and respond to potential groundwater quality issues. Under the bill, if a preventive action limit or enforcement standard is exceeded beyond the mandatory intervention boundary, DNR must require a response by the operator.

Response when preventive action limit is attained or exceeded

Under DNR's groundwater rules, when a preventive action limit is attained or exceeded at a point of standards application, DNR must determine the appropriate response, taking into consideration the response proposed by the operator. The response must be designed and implemented to minimize the concentration of the substance in groundwater at the point of standards application to the extent feasible, to regain and maintain compliance with the preventive action limit, and to ensure that the enforcement standard is not attained or exceeded at the point of standards application. DNR's rules specify a range of responses for when a preventive action limit is attained or exceeded at a point of standards application, including requiring a revision of operational procedures and requiring remedial action to restore groundwater quality.

Under the bill, when a preventive action limit is attained or exceeded at a point of standards application and the quality of groundwater is statistically significantly different from the quality of the groundwater unaffected by the iron mining, DNR must evaluate the range of responses proposed by the operator, including alternate responses to the responses specified in DNR's rules, and designate the appropriate response. DNR may determine that no response is necessary if it determines that the preventive action limit will not be attained or exceeded at any point outside the DMZ or, in some cases, if the natural concentration of the substance is above the preventive action limit.

Response when enforcement standard is attained or exceeded

Under DNR's groundwater rules, when an enforcement standard is attained or exceeded at a point of standards application for a solid or hazardous waste facility, DNR must require responses as necessary to prevent any new releases of the substance from traveling beyond the DMZ and to restore the contaminated groundwater within a reasonable period. When an enforcement standard is attained or exceeded at a point of standards application for a facility that is not a solid or hazardous waste facility, DNR must generally prohibit the activity that uses or produces the substance and require remedial actions, unless it can be shown that an alternative response will achieve compliance with the enforcement standard at the point of standards application.

Under the bill, for an iron mining operation when an enforcement standard is attained or exceeded at a point of standards application and the quality of groundwater is statistically significantly different from the quality of the groundwater unaffected by the iron mining, DNR must evaluate the operator's proposed range of responses and designate an appropriate response. DNR may not prohibit an activity or require closure of a mining waste site unless DNR determines

that no other remedial action would prevent the violation of the enforcement standard at the point of standards application.

DISPOSAL OF MINING WASTE

Approval of facility

Under current law, no person may construct or operate a solid waste disposal facility, such as a landfill, without the approval of DNR under the solid waste statutes and rules. The rules under which metallic mining waste facilities are regulated differ in some ways from the rules for other solid waste facilities.

Under this bill, the current solid waste laws do not apply to iron mining waste facilities. Instead, the standards for an iron mining waste facility are specified in the iron mining laws created in the bill and the process for approving an iron mining waste facility is part of the process for approving the iron mining permit. Under the bill, if a mining site will include a disposal facility for waste that is not mining waste, such as trash from an office or cafeteria, the current solid waste laws apply to that disposal facility.

Location of facility

Current law requires DNR to promulgate rules for the location of solid waste facilities. Unless DNR grants an exemption, as described below (in the section on exemptions), the rules prohibit the location of a mining waste site in any of the following areas: 1) within 1,000 feet of a state trunk highway, a state park or scenic easement or overlook, a scenic or wild river, or a hiking or bike trail, unless the proposed waste site is visually inconspicuous or is screened; 2) within an area designated in the statutes as being unsuitable for surface mining, such as a wilderness area, a wildlife refuge, or a state or national park; 3) within 200 feet of the property boundary; 4) within a floodplain; 5) within 300 feet of a navigable river or stream; 6) within 1,000 feet of a lake; or 7) within 1,200 feet of a private or public water supply well.

Under this bill, the limits on the location of a mining waste site do not apply to the portion of an iron mine that is backfilled with mining waste. Otherwise, the bill includes the first, third, fourth, and seventh prohibitions described above. The bill does not prohibit locating an iron mining waste site in an area designated in the statutes as being unsuitable for surface mining. (See the discussion of unsuitability under **GRANT OR DENIAL OF MINING PERMIT**, ***Grounds for denial***, above.) Also, the bill allows an activity associated with an iron mining waste site to be located within 300 feet of a navigable river or stream or within 1,000 feet of a lake if DNR approves the activity under the provisions of the bill related to wetlands, water withdrawals, or navigable waters.

Waste site feasibility study and plan of operation

The current solid waste statutes require an applicant for the approval of a solid waste disposal facility to submit a waste site feasibility study that demonstrates the suitability of the site for the disposal of solid waste and a plan of operation for the facility. DNR's rules concerning metallic mining waste facilities contain extensive requirements for the waste site feasibility study and plan of operation.

This bill requires an applicant for an iron mining permit to submit a waste site feasibility study and plan of operation as part of the application for the mining permit. The bill contains extensive requirements for the waste site feasibility study and plan of operation, many of which are similar to the requirements in DNR's current rules. Some of the technical requirements in the bill differ from the current rules.

The bill requires the applicant to perform analyses to assess the potential environmental impact of mining waste handling, storage, and disposal. The applicant must conduct investigations on the proposed waste site and in the laboratory to determine the characteristics of the site through measures such as soil borings and tests and determining groundwater levels and flow patterns and premining groundwater quality. The applicant must provide information about the ecosystems and climatology in the vicinity of the proposed mining waste site and about the geology, zoning, and land use in the area.

Under the bill, the applicant must submit a proposed waste site design that includes proposed methods for controlling water that has been contaminated by dissolved materials (leachate) and for controlling access to the facility; engineering plans for the iron mining waste facility; and a description of typical daily operations of the facility.

Proof of financial responsibility

Under current law and under this bill, before beginning mining the operator must furnish to DNR a bond or other security in an amount sufficient to cover the cost of reclamation of the mining site, in relation to the portion of the mining site that will be disturbed at the end of the following year.

Current law also requires the operator of a mining waste facility to provide proof of financial responsibility for the costs of the care, maintenance, and monitoring of the facility after it is closed (long–term care). The requirement to provide proof of financial responsibility for long–term care continues until DNR terminates that requirement, which it may not do until at least 40 years after closure of the mine.

Under this bill, the operator of an iron mining waste facility is also required to provide proof of financial responsibility for the costs of the long–term care of the facility. Under the bill, the requirement to provide proof of financial responsibility for long–term care of the mining waste facility terminates after 40 years.

WATER WITHDRAWALS

Under current law

There are several laws that may currently apply to withdrawals of groundwater or surface water.

Current law requires a permit (surface water withdrawal permit) issued by DNR for certain withdrawals of water from a stream or lake, including withdrawals for metallic mining. The law requires DNR to deny a surface water withdrawal permit for metallic mining if the injury to public rights caused by the withdrawal exceeds the public benefits generated by the mining or if the withdrawal would unreasonably injure rights of riparian (waterfront) property owners unless the riparian property owners consent to the proposed withdrawal. Current law also

regulates withdrawals of groundwater. The law prohibits a property owner from constructing a well that, together with other wells on the same property, has a capacity of more than 100,000 gallons per day (a high capacity well) or from engaging in the removal of more than 100,000 gallons per day of water from a mine without an approval from DNR. Current law prohibits DNR from issuing an approval for the withdrawal of groundwater for mining or for removing water from (dewatering) a mine if the withdrawal or removal would result in the unreasonable detriment of public or private water supplies or the unreasonable detriment of public rights in the waters of the state. Current law provides that if DNR determines that a proposed high capacity well may impair the water supply of a public utility, then DNR may not approve the well unless it includes certain approval conditions that will ensure that the water supply of the public utility will not be impaired. If DNR determines that a proposed high capacity well that has a water loss of 95 percent of the amount of water withdrawn, may have a significant impact on a spring, or is located in an area within 1,200 feet of certain outstanding or exceptional resource waters or certain trout streams, then DNR generally may not approve the well unless it includes certain approval conditions that will ensure that the high capacity well will not cause significant adverse environmental impact.

Current law also provides that if a person to whom DNR has issued a surface water withdrawal permit or a high capacity well approval proposes to begin a new withdrawal or increase an existing withdrawal that will result in a water loss beyond a specified threshold amount, then that person must apply to DNR for approval (water loss application). A water loss is a loss of water from the basin from which it is withdrawn as a result of interbasin diversion or consumptive use. The water loss application must contain certain information including the place and source of the proposed withdrawal, the estimated average volumes and rates of water loss, the anticipated costs of any proposed construction, and a description of the conservation practices that the applicant intends to follow. To approve a water loss application, DNR must find, among other things, that the proposed withdrawal and use of the water is consistent with the protection of public health, safety, and welfare and will not be detrimental to the public interest; that the proposed withdrawal will not have a significant detrimental effect on the quantity and quality of the waters of the state; that no public rights in navigable waters will be adversely affected; and that the applicant incorporates reasonable conservation practices. If DNR approves the water loss application, it must specify certain conditions with regard to the water withdrawal, such as the amount of water loss that is allowed and any other conditions necessary to protect the environment and public health, safety, and welfare.

Finally, the current law that implements the Great Lakes Water Resources Compact requires water use permits for certain withdrawals of groundwater or surface water.

This bill establishes different requirements for surface water and groundwater withdrawals relating to iron mining, except that the current law that implements the Great Lakes Water Resources Compact continues to apply. In lieu of a surface water withdrawal permit, an approval for a high capacity well or dewatering a mine, and

approval of a water loss application, a person who, as part of an iron mining operation or bulk sampling (explained below), engages in a surface water withdrawal, in a withdrawal of groundwater that exceeds 100,000 gallons a day, or in the dewatering of mines that exceeds 100,000 gallons a day, must obtain a water withdrawal permit from DNR (mining water withdrawal permit). This bill specifies that a person is not required to be the owner of riparian property in order to obtain a permit to withdraw surface water from that riparian property if the person leases the riparian property from the owner or holds an easement on the riparian property. The bill also specifies that 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 the person leases the piece of property from the owner, the person holds an easement on the piece of property, or the person has obtained permission from the owner to withdraw groundwater from that piece of property. If the withdrawal of water will involve one or more high capacity wells, DNR must require the applicant to submit a siting analysis that includes alternate proposed locations for each well. In evaluating the siting analysis, DNR must recognize that there is a need for mining waste sites and processing facilities to be contiguous to the location of the ferrous mineral deposits and must allow any high capacity well to be located so that need will be met. DNR must approve the location of each well as part of the process for issuing a mining water withdrawal permit.

The bill requires DNR to issue a mining water withdrawal permit if the withdrawal meets certain requirements (general requirements). Among those requirements is that the proposed withdrawal and use of the water is substantially consistent with the protection of public health, safety, and welfare and will not be significantly detrimental to the public interest; that it will not be significantly detrimental to the quantity or quality of the waters of this state; that it will not significantly impair the rights of riparian owners or the applicant obtains the consent of riparian owners; and that it will not result in significant injury to public rights in navigable waters. The bill requires that the applicant submit a plan to DNR that contains proposed conservation measures, such as mitigation, compensation, or offsetting of significant impacts to navigable waters by restoring or enlarging up to 1.5 acres of a natural navigable water in exchange for each acre of a natural navigable water that is significantly impacted (offsetting impacts to navigable waters). After DNR reviews the application and plan, DNR must issue a permit if it finds that the general requirements will be met by implementing some or all of the conservation measures.

Under the bill, if DNR determines that a high capacity well proposed by an applicant may impair a privately owned high capacity well, DNR must include conditions in the water withdrawal permit that will ensure that the privately owned well will not be impaired, unless the owner of the private well agrees to the impairment. The bill authorizes DNR to impose other reasonable conditions in the mining water withdrawal permit, as long as the conditions do not interfere with, or limit the amount of water needed for, the iron mining operation or bulk sampling. The bill also allows an iron mining operator to request a modification of any condition in the mining water withdrawal permit and establishes certain deadlines under

which DNR must approve or deny the request for modification. The bill specifies that if a request for modification results in an increase in an existing withdrawal resulting in a water loss averaging more than a specified number of gallons per day in a 30–day period, then DNR must determine whether, under its rules, it is required to prepare an environmental assessment or environmental impact statement. If so, then DNR must prepare the environmental assessment or environmental impact statement.

NAVIGABLE WATERS

Under current law, DNR regulates certain activities that occur in or near navigable waterways. In order for a person to conduct such an activity, the person may be required to obtain one or more permits from DNR. Among the permits that DNR issues are permits to place structures or deposits in navigable waters, permits to construct or maintain bridges and culverts, permits to enlarge or connect waterways, permits to change the courses of streams and rivers, and permits to remove material from beds of navigable waterways (waterway permits). Current law also requires that DNR have in place general permits for some of these activities. Under current law, some activities are exempt from these requirements.

In order to receive an individual waterway permit for the navigable waters activities regulated by DNR, the activity must meet certain requirements. These requirements vary depending on the type of permit issued, and may include requirements that address possible environmental pollution, obstruction to navigation, reduction to flood flow capacity, and interference with the rights of other riparian owners. The bill modifies certain of these requirements for the purpose of issuing individual waterway permits associated with bulk sampling or iron mining. Under the bill, in lieu of these requirements in current law, an individual waterway permit will be issued if it will not significantly impair the public's rights and interests in navigable waters, will not significantly reduce flood flow capacity, will not significantly affect riparian rights, and will not significantly degrade water quality. Requirements for issuing individual waterway permits under current law that are not modified under the bill continue to apply to the extent that they do not conflict with any other provision in the bill. The bill requires that the applicant submit a plan to DNR that contains proposed measures, such as improving public rights in navigable waters, conducting wetland mitigation, or offsetting impacts to navigable waters. After DNR reviews the application and plan, DNR must issue a permit if it finds that the requirements will be met by implementing some or all of the measures. Under current law, to qualify for some individual waterway permits or to conduct activities under certain permit exemptions, a person must be an owner of riparian property. This bill provides that for the purposes of obtaining an individual waterway permit associated with bulk sampling or iron mining, a person who is not a riparian owner may exercise a riparian right held by a riparian owner if the person exercises that right with respect to riparian property that the person leases or on which the person holds an easement.

EXEMPTIONS

Current law authorizes DNR to promulgate rules under which it may grant to an applicant for a metallic mining permit an exemption to a rule promulgated under

the solid waste, hazardous waste, or metallic mining laws, but not to a statute, if the exemption does not result in a violation of any federal or state environmental statute or endanger public health, safety, or welfare or the environment.

This bill authorizes an applicant for an iron mining permit to request an exemption from any requirement in the iron mining laws created in the bill applicable to a mining permit application, a mining permit, or any other approval issued by DNR that is needed to conduct the iron mining. The request must be submitted no more than 180 days after the application for the mining permit is considered to be complete. DNR must grant or deny the exemption within 15 days. DNR must grant the exemption if it is consistent with the purposes of the iron mining laws created in the bill; it does not violate other applicable environmental laws; and either: 1) it will not result in significant adverse environmental impacts, or 2) it will result in significant adverse environmental impacts but the applicant will offset those impacts through compensation, mitigation, or conservation measures, except that DNR may not grant the exemption if granting it would violate federal law.

Relation to other laws

Current law provides that if there is a standard under other state or federal statutes or rules that specifically regulates in whole an activity also regulated under the metallic mining law, the standard under the other statutes or rules is the controlling standard. If the other federal or state statute or rule only specifically regulates the activity in part, it is controlling as to that part.

Under this bill, if there is a conflict between a provision of the iron mining laws and a provision in another state environmental law, other than the law related to the Great Lakes Water Resources Compact, the provision in the iron mining laws controls.

Exploration

Current law requires a person who intends to engage in exploration to be licensed by DNR. Exploration is drilling to search for minerals or to establish the nature of a known mineral deposit. The law requires DNR to promulgate rules containing minimum standards for exploration and for the reclamation of exploration sites.

This bill also requires a person who intends to engage in exploration for iron ore to be licensed by DNR. The bill requires an applicant for an exploration license to file an exploration plan and a reclamation plan that include provisions related to the matters for which DNR is required to establish standards under current law. The bill contains requirements for filling drillholes once exploration has been completed that are similar to the requirements in DNR's current rules.

Under the current rules, DNR must deny the application for an exploration license if it finds that the exploration will not comply with the standards for exploration and reclamation or if the explorer is in violation of the rules.

Under the bill, DNR must deny the application for an exploration license if it concludes that, after the reclamation plan has 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. If DNR intends to deny a

license, it must notify the applicant of that intent and the reasons for the intended denial and give the applicant ten days to correct the problems with its application.

As under current DNR rules, the bill generally requires DNR to issue or deny an application for an exploration license within ten business days of receipt of the application. Under the bill, however, if DNR does not comply with that deadline, the exploration license is automatically issued.

BULK SAMPLING

Under current law, a person may not prospect for metallic ore without a prospecting permit from DNR. Prospecting is examining an area to determine the quantity and quality of metallic minerals by means other than drilling, for example, by excavating. Under current law, the process for obtaining a prospecting permit is similar to the process for obtaining a mining permit. When a person completes prospecting, the person must conduct reclamation, that is, must rehabilitate the site to either its original state or, if that is physically or economically impracticable or environmentally or socially undesirable, to a state that provides long–term environmental stability.

Under the bill, a person intending to examine an area to determine the quantity and quality of iron ore by means other than drilling is not required to obtain a prospecting license.

The bill allows a person who intends to engage in bulk sampling to file a bulk sampling plan with DNR. Bulk sampling is excavating in a potential mining site to assess the quality and quantity of iron ore deposits and to collect and analyze data to prepare the application for a mining permit or other approval. A person who files a bulk sampling plan must do all of the following:

1. Describe the bulk sampling site and the methods to be used for bulk sampling.

2. Submit a plan for controlling surface erosion that identifies how adverse impacts to plant and wildlife habitats will be avoided or minimized to the extent practicable.

3. Submit a plan for revegetation, but not for reclamation, that describes how adverse environmental impacts will be avoided or minimized to the extent practicable, how the site will be revegetated and stabilized, and how adverse impacts to plant and wildlife habitats will be avoided or minimized to the extent practicable.

4. Describe any known adverse environmental impacts that are likely to be caused by bulk sampling and how those impacts will be avoided or minimized to the extent practicable.

5. A description of any adverse effects that the bulk sampling might have on any historic property or on any scenic or recreational areas and plans to avoid or minimize those adverse effects to the extent practicable.

The bill requires DNR, within 14 days of receipt of a bulk sampling plan, to identify in writing any kind of approval that DNR issues that is needed to conduct the proposed bulk sampling, such as a wastewater discharge permit or a permit for a discharge into wetlands, and any waivers, exemptions, or exceptions to those approvals that may be available.

The bill requires a person who has submitted a bulk sampling plan to submit all applications for approvals and for waivers, exemptions, or exceptions to approvals for the bulk sampling at one time.

The bill specifies deadlines for DNR to act on approvals needed to conduct bulk sampling that would not otherwise apply to those types of approvals. When a person who files a bulk sampling plan applies for an approval or a waiver, exemption, or exception to an approval, the application is considered to be complete on the 30th day after DNR receives the application, unless before that day DNR informs the person that the application is not complete. Once an application is considered to be complete, DNR must act within 30 days on an application for a waiver, exemption, or exception to an approval, for a determination that an activity is below the threshold that requires an approval, or for a determination of eligibility for coverage under a general permit or a registration permit. For other approvals, DNR must act within 60 days after the application is considered to be complete, except that DNR must act on an approval for an individual permit, such as a wastewater discharge permit, for which federal law requires an opportunity for public comment or the ability to request a hearing before issuance of the permit within 180 days.

DNR is not required to prepare an environmental impact statement for proposed bulk sampling. Also, the bill requires DNR to act on any required construction site erosion control or storm water management approval, even if DNR has authorized a local program to issue approvals for construction site erosion control or stormwater management. This bill does not allow a contested case hearing on any approval needed to conduct bulk sampling.

FEES

Under current law, a person who gives notice of intent to apply for a metallic mining permit must pay a fee established by DNR by rule designed to cover the costs incurred by DNR in connection with the proposed mining during the year following receipt of the notice of intent. The person must also pay fees for any approvals other than the mining permit that are needed to conduct the mining. The law requires DNR to annually compare the fees paid by an applicant with the costs incurred by DNR in connection with the proposed mining. If the costs incurred by DNR exceed the fees paid, the person must pay a fee equal to the difference.

Under this bill, an applicant is required to pay a mining permit application fee, but is not required to pay an application or filing fee for any other approval, except for an application fee for an approval for a water diversion for which review by the other parties to the Great Lakes Water Resources Compact is required. The bill requires DNR to assess a mining permit application fee equal to its costs for evaluating a mining project or $2,000,000, whichever is less. An applicant must pay $100,000 with the bulk sampling plan or, if no bulk sampling plan is filed, with the notice of intent to file a mining permit application and then must make $250,000 payments when DNR shows that the previous payments have been fully allocated against actual costs. In addition to these fees, if DNR contracts with a consultant to assist in preparation of the EIS and awards that contract on the basis of competitive bids, the applicant must pay the full costs under the contract.

Current law imposes fees on the disposal of solid waste, commonly called tipping fees. Of those fees, under the bill, the operator of a mining waste site must pay the groundwater fee, the environmental repair fee, and the solid waste facility siting board fee but is not subject to the recycling fee.

NET PROCEEDS OCCUPATION TAX

Under current law, the state imposes a net proceeds occupation tax on the mining of metallic minerals in this state. The tax is based, generally, on a percentage of net income from the sale of ore or minerals after certain mining processes have been applied to the ore or minerals.

Under current law, the revenue collected from the net proceeds occupation tax is deposited into the investment and local impact fund. The fund is managed by the local impact fund board. The revenue is then, generally, distributed to the counties and municipalities in which metallic minerals are being mined.

Under the bill, 60 percent of the revenue collected from the net proceeds occupation tax on extracting ferrous metallic minerals in this state is deposited into the investment and local impact fund and 40 percent of the revenue is deposited into the economic development fund.

The bill provides that when the revenue that is deposited into the economic development fund is appropriated to the Wisconsin Economic Development Corporation (WEDC), WEDC must use the revenue to make grants and loans to businesses in this state, giving preference to businesses in an area affected by iron mining.

Under current law, in addition to paying the net proceeds occupation tax, a person who intends to apply for a mining permit must make three payments of $50,000 each to the investment and local impact fund. The bill increases the payments to $75,000 each.

OTHER

Procedures for utility facility approvals

Under current law, with certain exceptions, a person may not begin the construction of certain utility facilities before the Public Service Commission (PSC) has issued to the person either a certificate of public convenience and necessity (CPCN) or a certificate authorizing the person to transact public utility business (PSC certificate). Current law also provides that a utility facility that is required to obtain a PSC certificate and that is required to obtain one or more permits from the Department of Natural Resources (DNR), such as a permit allowing the placement of a structure in navigable waters, must use a procedure that requires the utility facility to submit only one application to DNR for all of the required DNR permits (combined permit procedure) rather than submitting separate applications to DNR for each permit. Current law also specifies that the applicant under the combined permit procedure must submit the combined application for permits to DNR at the same time that the applicant files an application for a PSC certificate.

This bill makes the combined permit procedure optional for an applicant proposing to construct a utility facility for iron mining activities and allows the applicant to submit separate applications to DNR for each required permit. Under the bill, if the utility facility does not use the combined permit procedure, it is not

required to file a DNR permit application at the same time that it files an application for a PSC certificate.

Current law requires a person proposing to construct a large electric generating facility or high–voltage transmission line (facility) to provide DNR with an engineering plan or project plan for the facility at least 60 days before filing an application with PSC for a CPCN. Within 30 days thereafter, DNR must provide the person with a listing of each DNR approval that appears to be required for the construction or operation of the facility. Current law requires the person to file the application for these approvals within 20 days after receiving the listing from DNR. This bill eliminates this 20–day deadline for a person proposing to construct a facility for iron mining activities and also specifies that the person must only apply for those approvals identified in the listing that are applicable.

Shoreland and floodplain zoning

Current law prohibits locating a solid waste facility in an area that is covered by a shoreland or floodplain zoning ordinance unless the facility is authorized under a permit issued by DNR. This bill requires DNR to specify in the permit the authorized location, height, and size of the facility that may be located in the area. This bill also specifies that DNR may not prohibit a waste site, structure, building, fill, or other development or construction activity (activity) to be located in an area that would otherwise be prohibited under a shoreland zoning ordinance if the activity is authorized by DNR as part of a mining operation covered by an iron mining permit.

Current law provides that a structure, building, fill, or development (structure) that is placed or maintained in a floodplain in violation of a floodplain zoning ordinance is a public nuisance and provides that any person placing or maintaining the structure may be subject to a fine. The bill specifies that these provisions do not apply to a structure placed or maintained as part of a mining operation covered by an iron mining permit issued by DNR, except to the extent necessary for the municipality to which the ordinance applies to maintain eligibility for participation in the National Flood Insurance Program.

Local impact committees

Current law authorizes a local or tribal government likely to be substantially affected by proposed metallic mining to establish a local impact committee for purposes that include facilitating communications with the mining company, reviewing and commenting on reclamation plans, and negotiating an agreement between the local or tribal government and the mining company. The law requires the mining company to appoint a person to be the liaison with the local impact committee and requires the mining company to make reasonable efforts to design and carry out mining operations in harmony with community development objectives. Under some circumstances, a local impact committee may receive funding from the investment and local impact fund board.

This bill provides for local impact committees for proposed iron mines in a manner similar to the manner in which those committees are established under current law.

Rights and conditions relating to mining contracts and leases

Current law establishes certain rights and imposes certain conditions with respect to contracts or leases that authorize a person to dig for ores and minerals, including the conditions under which a miner may retain ore and minerals discovered on the land, a miner's obligation to keep and to provide certain records concerning mine operations, and the consequences to a miner who conceals or disposes of any ores or minerals for the purpose of defrauding a lessor. Current law also establishes a maximum term for exploration mining leases with regard to minerals that contain metals.

This bill limits these current law provisions to mining activities relating to nonferrous metallic mining.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 20.370 (2) (gh) of the statutes is amended to read:

20.370 **(2)** (gh) ~~*Mining*~~ — *Nonferrous metallic mining regulation and administration.* The amounts in the schedule for the administration, regulation and enforcement of nonferrous metallic mining exploration, prospecting, mining and mine reclamation activities under ch. 293. All moneys received under ch. 293 shall be credited to this appropriation.

SECTION 2. 20.370 (2) (gi) of the statutes is created to read:

20.370 **(2)** (gi) *Ferrous metallic mining operations.* All moneys received under subch. III of ch. 295 for the department of natural resource's operations related to ferrous metallic exploration and mining.

SECTION 3. 20.455 (1) (gh) of the statutes is amended to read:

20.455 **(1)** (gh) *Investigation and prosecution.* Moneys received under ss. 23.22 (9) (c), 49.49 (6), 100.263, 133.16, 281.98 (2), 283.91 (5), 289.96 (3) (b), 291.97 (3),

292.99 (2), 293.87 (4) (b), 295.19 (3) (b) 2., 295.79 (4) (b), and 299.97 (2), for the expenses of investigation and prosecution of violations, including attorney fees.

SECTION 4. 20.566 (7) (e) of the statutes is amended to read:

20.566 **(7)** (e) *Investment and local impact fund supplement.* The amounts in the schedule to supplement par. (v) for the purposes of ss. 70.395, 293.33 (4) ~~and~~, 293.65 (5) (a), 295.443, and 295.61 (9) (a) and (c).

SECTION 5. 20.566 (7) (v) of the statutes is amended to read:

20.566 **(7)** (v) *Investment and local impact fund.* From the investment and local impact fund, all moneys received under s. 70.395 (1e) and (2) (dc) and (dg), less the moneys appropriated under s. 20.370 (2) (gr), to be disbursed under ss. 70.395 (2) (d) to (g), 293.33 (4) ~~and~~, 293.65 (5) (a), 295.443, and 295.61 (9) (a) and (c).

SECTION 6. 23.321 (2g) of the statutes is created to read:

23.321 **(2g)** SERVICES FOR MINING OPERATIONS. In addition to those persons authorized to request a wetland identification or confirmation under sub. (2) (b) or (c), a holder of an easement may request such an identification or confirmation if the identification or confirmation is associated with an application for a wetland individual permit or other approval for which a wetland impact evaluation is required and that is subject to s. 295.60.

SECTION 7. 25.46 (7) of the statutes is amended to read:

25.46 **(7)** The fees imposed under s. 289.67 (1) for environmental management, except that ~~for each ton of waste~~, of the fees imposed under s. 289.67 (1) (cp) or (cv), $3.20 for each ton of waste is for nonpoint source water pollution abatement.

SECTION 8. 25.49 (2m) of the statutes is created to read:

25.49 **(2m)** The moneys transferred under s. 70.395 (1e).

SECTION 9. 29.604 (4) (intro.) of the statutes is amended to read:

29.604 **(4)** PROHIBITION. (intro.) Except as provided in sub. (6r) and (7m) or as permitted by departmental rule or permit:

SECTION 10. 29.604 (4) (c) (intro.) of the statutes is amended to read:

29.604 **(4)** (c) (intro.) No person may do any of the following to any wild plant of an endangered or threatened species that is on public property or on property that he or she does not own or lease, except in the course of forestry or agricultural practices ~~or~~, in the construction, operation, or maintenance of a utility facility, or as part of bulk sampling activities under s. 295.45:

SECTION 11. 29.604 (7m) of the statutes is created to read:

29.604 **(7m)** BULK SAMPLING ACTIVITIES. A person may take, transport, or possess a wild animal on the department's endangered and threatened species list without a permit under this section if the person avoids and minimizes adverse impacts to the wild animal to the extent practicable, if the taking, transporting, or possession does not result in wounding or killing the wild animal, and if the person takes, transports, or possesses the wild animal for the purpose of bulk sampling activities under s. 295.45.

SECTION 12. 30.025 (1e) (a) of the statutes is amended to read:

30.025 **(1e)** (a) Except as provided in ~~par.~~ pars. (b) and (c), this section applies to a proposal to construct a utility facility if the utility facility is required to obtain, or give notification of the wish to proceed under, one or more permits.

SECTION 13. 30.025 (1e) (c) of the statutes is created to read:

30.025 **(1e)** (c) This section does not apply to a proposal to construct a utility facility for ferrous mineral mining and processing activities governed by subch. III of ch. 295, unless the person proposing to construct the utility facility elects to proceed in the manner provided under this section.

SECTION 14. 30.025 (1m) (intro.) of the statutes is amended to read:

30.025 **(1m)** PREAPPLICATION PROCESS. (intro.) Before filing ~~an~~ a combined application ~~under this section~~ for permits under sub. (1s) with the department in lieu of separate applications, a person proposing to construct a utility facility shall notify the department of the intention to file ~~an~~ a combined application under sub. (1s). After receiving such notice, the department shall confer with the person, in cooperation with the commission, 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:

SECTION 15. 30.025 (1m) (c) of the statutes is amended to read:

30.025 **(1m)** (c) The timing of information submissions that the person will be required to provide in order to enable the department to participate in commission review procedures and to process the combined application for permits in a timely manner.

SECTION 16. 30.025 (1s) (a) of the statutes is amended to read:

30.025 **(1s)** (a) Any person proposing to construct a utility facility to which this section applies shall, in lieu of separate application for permits, submit one combined application for permits together with any additional information required by the department. The combined application for permits shall be filed with the department at the same time that an application for a certificate is filed with the commission under s. 196.49 or in a manner consistent with s. 196.491 (3) and shall include the detailed information that the department requires to determine whether ~~an~~ a combined application for permits is complete and to carry out its obligations under sub. (4). The department may require supplemental information to be furnished thereafter.

SECTION 17. 30.025 (2) of the statutes is amended to read:

30.025 **(2)** HEARING. Once the applicant meets the requirements of sub. (1s) (a), the department may schedule the matter for a public hearing. Notice of the hearing shall be given to the applicant and shall be published as a class 1 notice under ch. 985 and as a notice on the department's Internet Web site. The department may give such further notice as it deems proper, and shall give notice to interested persons requesting same. The department's notice to interested persons may be given through an electronic notification system established by the department. Notice of a hearing under this subsection published as a class 1 notice, as a notice on the department's Internet Web site, and through the electronic notification system established by the department shall include the time, date, and location of the hearing, the name and address of the applicant, a summary of the subject matter of the combined application for permits, and information indicating where a copy of the combined application for permits may be viewed on the department's Internet Web site. The summary shall contain a brief, precise, easily understandable, plain language description of the subject matter of the application. One copy of the combined application for permits shall be available for public inspection at the office of the department, at least one copy in the regional office of the department, and at least one copy at the main public library, of the area affected. Notwithstanding s. 227.42, the hearing shall be an informational hearing and may not be treated as a contested case hearing nor converted to a contested case hearing.

SECTION 18. 30.025 (2g) (b) (intro.) of the statutes is amended to read:

30.025 **(2g)** (b) (intro.) The department shall participate in commission investigations or proceedings under s. 196.49 or 196.491 (3) with regard to any proposed utility facility ~~that is subject to this section~~ for which a combined

application for permits is filed under sub. (1s). In order to ensure that the commission's decision is consistent with the department's responsibilities, the department shall provide the commission with information that is relevant to only the following:

SECTION 19. 30.025 (4) of the statutes is amended to read:

30.025 **(4)** PERMIT CONDITIONS. The permit may be issued, or the authority to proceed under a permit may be granted, upon stated conditions deemed necessary to assure compliance with the criteria designated under sub. (3). The department shall grant or deny the combined application for ~~a permit~~ permits for the utility facility within 30 days of the date on which the commission issues its decision under s. 196.49 or 196.491 (3).

SECTION 20. 30.025 (4m) of the statutes is created to read:

30.025 **(4m)** PROCEDURE FOR A SINGLE PERMIT APPLICATION. A person proposing to construct a utility facility that is related to mining, as defined in s. 295.41 (26), and for which not more than one permit is required, may submit an application for that single permit with the department in the same manner as a combined application for permits may be submitted under sub. (1s). If the applicant elects to submit the application in the same manner as a combined application for permits, the procedures under this section that apply to a combined application for permits shall apply to that application for a single permit.

SECTION 21. 30.12 (3m) (c) (intro.) of the statutes is amended to read:

30.12 **(3m)** (c) (intro.) The department shall issue an individual permit to a riparian owner for a structure or a deposit pursuant to an application under par. (a) if the department finds that all of the following ~~apply~~ requirements are met:

SECTION 22. 30.123 (8) (c) of the statutes is renumbered 30.123 (8) (c) (intro.) and amended to read:

30.123 **(8)** (c) (intro.) The department shall issue an individual permit pursuant to an application under par. (a) if the department finds that ~~the~~ all of the following requirements are met:

1. The bridge or culvert will not materially obstruct navigation~~,~~.

2. The bridge or culvert will not materially reduce the effective flood flow capacity of a stream~~, and~~.

3. The bridge or culvert will not be detrimental to the public interest.

SECTION 23. 30.133 (2) of the statutes is amended to read:

30.133 **(2)** This section does not apply to riparian land located within the boundary of any hydroelectric project licensed or exempted by the federal government, if the conveyance is authorized under any license, rule or order issued by the federal agency having jurisdiction over the project. This section does not apply to riparian land that is associated with an approval required for bulk sampling or mining that is required under subch. III of ch. 295.

SECTION 24. 30.19 (4) (c) (intro.) of the statutes is amended to read:

30.19 **(4)** (c) (intro.) The department shall issue an individual permit pursuant to an application under par. (a) if the department finds that all of the following ~~apply~~ requirements are met:

SECTION 25. 30.195 (2) (c) (intro.) of the statutes is amended to read:

30.195 **(2)** (c) (intro.) The department shall issue an individual permit applied for under this section to a riparian owner if the department determines that all of the following ~~apply~~ requirements are met:

SECTION 26. 31.23 (3) (e) of the statutes is created to read:

31.23 **(3)** (e) This subsection does not apply to a bridge that is constructed, maintained, or operated in association with mining or bulk sampling that is subject to subch. III of ch. 295.

SECTION 27. 32.02 (12) of the statutes is amended to read:

32.02 **(12)** Any person operating a plant which creates waste material which, if released without treatment would cause stream pollution, for the location of treatment facilities. This subsection does not apply to a person ~~licensed~~ with a permit under ch. 293 or subch. III of ch. 295.

SECTION 28. 70.375 (1) (as) of the statutes is amended to read:

70.375 **(1)** (as) "Mine" means an excavation in or at the earth's surface made to extract metalliferous minerals for which a permit has been issued under s. 293.49 or 295.58.

SECTION 29. 70.375 (1) (bm) of the statutes is amended to read:

70.375 **(1)** (bm) "Mining–related purposes" means activities which are directly in response to the application for a mining permit under s. 293.37 or 295.47; directly in response to construction, operation, curtailment of operation or cessation of operation of a metalliferous mine site; or directly in response to conditions at a metalliferous mine site which is not in operation. "Mining–related purposes" also includes activities which anticipate the economic and social consequences of the cessation of mining. "Mining–related purposes" also includes the purposes under s. 70.395 (2) (g).

SECTION 30. 70.375 (4) (h) of the statutes is amended to read:

70.375 **(4)** (h) The cost of premiums for bonds required under s. 293.51, 295.45 (5), or 295.59.

SECTION 31. 70.38 (2) of the statutes is amended to read:

70.38 **(2)** COMBINED REPORTING. If the same person extracts metalliferous minerals from different sites in this state, the net proceeds for each site for which a permit has been issued under s. 293.49 or 295.58 shall be reported separately for the purposes of computing the amount of the tax under s. 70.375 (5).

SECTION 32. 70.395 (1e) of the statutes is amended to read:

70.395 **(1e)** DISTRIBUTION. Fifteen days after the collection of the tax under ss. 70.38 to 70.39, the department of administration, upon certification of the department of revenue, shall transfer the amount collected in respect to mines not in operation on November 28, 1981, to the investment and local impact fund, except that the department of administration shall transfer 60 percent of the amount collected from each person extracting ferrous metallic minerals to the investment and local impact fund and 40 percent of the amount collected from any such person to the economic development fund.

SECTION 33. 70.395 (2) (dc) 1. of the statutes is amended to read:

70.395 **(2)** (dc) 1. Each person intending to submit an application for a mining permit under s. 293.37 or 295.47 shall pay ~~$50,000~~ $75,000 to the department of revenue for deposit in the investment and local impact fund at the time that the person notifies the department of natural resources under s. 293.31 (1) or 295.465 of that intent.

SECTION 34. 70.395 (2) (dc) 2. of the statutes is amended to read:

70.395 **(2)** (dc) 2. A person making a payment under subd. 1. shall pay an additional ~~$50,000~~ $75,000 upon notification by the board that the board has distributed 50% of the payment under subd. 1.

SECTION 35. 70.395 (2) (dc) 3. of the statutes is amended to read:

70.395 **(2)** (dc) 3. A person making a payment under subd. 2. shall pay an additional ~~$50,000~~ $75,000 upon notification by the board that the board has distributed all of the payment under subd. 1. and 50% of the payment under subd. 2.

SECTION 36. 70.395 (2) (dc) 4. of the statutes is amended to read:

70.395 **(2)** (dc) 4. Six months after the signing of a local agreement under s. 293.41 or 295.443 for the proposed mine for which the payment is made, the board shall refund any funds paid under this paragraph but not distributed under par. (fm) from the investment and local impact fund to the person making the payment under this paragraph.

SECTION 37. 70.395 (2) (fm) of the statutes is amended to read:

70.395 **(2)** (fm) The board may distribute a payment received under par. (dc) to a county, town, village, city, tribal government or local impact committee authorized under s. 293.41 (3) or 295.443 only for legal counsel, qualified technical experts in the areas of transportation, utilities, economic and social impacts, environmental impacts and municipal services and other reasonable and necessary expenses incurred by the recipient that directly relate to the good faith negotiation of a local agreement under s. 293.41 or 295.443 for the proposed mine for which the payment is made.

SECTION 38. 70.395 (2) (h) 1. of the statutes is amended to read:

70.395 **(2)** (h) 1. Distribution shall first be made to those municipalities in which metalliferous minerals are extracted or were extracted within 3 years previous to December 31 of the current year, or in which a permit has been issued under s. 293.49 or 295.58 to commence mining;

SECTION 39. 70.395 (2) (hg) of the statutes is amended to read:

70.395 **(2)** (hg) The board shall, by rule, establish fiscal guidelines and accounting procedures for the use of payments under pars. (d), (f), (fm) and (g), sub. (3) and ~~s.~~ ss. 293.65 (5) and 295.61 (9).

SECTION 40. 70.395 (2) (hr) of the statutes is amended to read:

70.395 **(2)** (hr) The board shall, by rule, establish procedures to recoup payments made, and to withhold payments to be made, under pars. (d), (f), (fm) and (g), sub. (3) and ~~s.~~ ss. 293.65 (5) and 295.61 (9) for noncompliance with this section or rules adopted under this section.

SECTION 41. 70.395 (2) (hw) of the statutes is amended to read:

70.395 **(2)** (hw) A recipient of a discretionary payment under par. (f) or (g), sub. (3) or ~~s.~~ ss. 293.65 (5) and 295.61 (9) or any payment under par. (d) that is restricted to mining–related purposes who uses the payment for attorney fees may do so only for the purposes under par. (g) 6. and for processing mining–related permits or other approvals required by the municipality. The board shall recoup or withhold payments that are used or proposed to be used by the recipient for attorney fees except as authorized under this paragraph. The board may not limit the hourly rate of attorney fees for which the recipient uses the payment to a level below the hourly rate that is commonly charged for similar services.

SECTION 42. 87.30 (2) of the statutes is renumbered 87.30 (2) (a) and amended to read:

87.30 **(2)** (a) ~~Every~~ Except as provided in par. (b), every structure, building, fill, or development placed or maintained within any floodplain in violation of a zoning ordinance adopted under this section, or s. 59.69, 61.35 or 62.23 is a public nuisance and the creation thereof may be enjoined and maintenance thereof may be abated by action at suit of any municipality, the state or any citizen thereof. Any person who

places or maintains any structure, building, fill or development within any floodplain in violation of a zoning ordinance adopted under this section, or s. 59.69, 61.35 or 62.23 may be fined not more than $50 for each offense. Each day during which such violation exists is a separate offense.

SECTION 43. 87.30 (2) (b) of the statutes is created to read:

87.30 **(2)** (b) Paragraph (a) does not apply to a structure, building, fill, or development placed or maintained as part of a mining operation covered by a mining permit under s. 295.58 except to the extent that regulation of the placement or maintenance of the structure, building, fill, or development is required for compliance with a floodplain zoning ordinance as provided under s. 295.607 (3).

SECTION 44. 107.001 (1) of the statutes is amended to read:

107.001 **(1)** "Exploration mining lease" means any lease, option to lease, option to purchase or similar conveyance entered into for the purpose of determining the presence, location, quality or quantity of ~~metalliferous~~ nonferrous metallic minerals or for the purpose of mining, developing or extracting ~~metalliferous~~ nonferrous metallic minerals, or both under ch. 293. Any lease, option to lease, option to purchase or similar conveyance entered into by a mining company is rebuttably presumed to be an exploration mining lease.

SECTION 45. 107.001 (2) of the statutes is repealed.

SECTION 46. 107.01 (intro.) of the statutes is amended to read:

107.01 Rules governing mining rights. (intro.) Where there is no contract between the parties or terms established by the landlord to the contrary the following rules and regulations shall be applied to mining contracts and leases for the digging of ~~ores and~~ nonferrous metallic minerals:

SECTION 47. 107.01 (2) of the statutes is amended to read:

107.01 **(2)** The discovery of a crevice or range containing ~~ores or minerals~~ nonferrous metallic minerals shall entitle the discoverer to the ~~ores or minerals~~ nonferrous metallic minerals pertaining thereto, subject to the rent due the discoverer's landlord, before as well as after the ~~ores or minerals~~ nonferrous metallic minerals are separated from the freehold; but such miner shall not be entitled to recover any ~~ores or minerals~~ nonferrous metallic minerals or the value thereof from the person digging on the miner's range in good faith and known to be mining thereon until the miner shall have given notice of the miner's claim; and the miner shall be entitled to the ~~ores or minerals~~ nonferrous metallic minerals dug after such notice.

SECTION 48. 107.02 of the statutes is amended to read:

107.02 Mining statement; penalty. When there is no agreement between the parties to any mining lease, license or permit, to mine or remove ~~ore~~ nonferrous metallic minerals from any lands in this state, regulating the method of reporting the amount of ~~ore~~ nonferrous metallic minerals taken, the person mining and removing the ~~ore or ores~~ nonferrous metallic minerals shall keep proper and correct books, and therefrom to make and deliver by or before the fifteenth day of each month to the lessor, owner or person entitled thereto, a detailed statement covering the operations of the preceding month. The statement shall show the total amount of tons or pounds of each kind of ~~ore~~ nonferrous metallic minerals produced; if sold, then to whom sold, giving the date of sale, date of delivery to any railroad company, naming the company, and the station where delivered or billed for shipment; the name and address of the purchaser; the price per ton at which sold and the total value of each kind of ~~ore~~ nonferrous metallic minerals so sold. The books shall be always open to any owner, lessor, licensor or stockholder, if the owner, lessor or licensor is a corporation, and to any person or stockholder interested in any such mining

operations, for the purpose of inspection and taking copies thereof or abstracts therefrom. Any person and every officer, agent or employee of any thereof, who violates this section, or who makes any false or incomplete entries on any such books or statements, shall be fined not less than $100 or imprisoned in the county jail for not more than 3 months or both.

SECTION 49. 107.03 of the statutes is amended to read:

107.03 Conflicting claims. In case of conflicting claims to a crevice or range bearing ~~ores or~~ nonferrous metallic minerals the court may continue any action to enforce a claim or grant any necessary time for the purpose of allowing parties to prove up their mines or diggings if it satisfactorily appears necessary to the ends of justice. In such case the court or judge may appoint a receiver and provide that the mines or diggings be worked under the receiver's direction, subject to the order of the court, in such manner as best ascertains the respective rights of the parties. The ~~ores or~~ nonferrous metallic minerals raised by either party pending the dispute shall be delivered to the receiver, who may, by order of the court or judge, pay any rent or other necessary expenses therefrom.

SECTION 50. 107.04 of the statutes is amended to read:

107.04 Lessee's fraud; failure to work mine. Any miner who conceals or disposes of any ~~ores or~~ nonferrous metallic minerals or mines or diggings for the purpose of defrauding the lessor of rent or who neglects to pay any rent on ~~ores or~~ nonferrous metallic minerals raised by the miner for 3 days after the notice thereof and claim of the rent, shall forfeit all right to his or her mines, diggings or range; and the landlord after the concealment or after 3 days have expired from the time of demanding rent, may proceed against the miner to recover possession of the mines or diggings in circuit court as in the case of a tenant holding over after the

termination of the lease. If a miner neglects to work his or her mines or diggings according to the usages of miners, without reasonable excuse, he or she shall likewise forfeit the mines or diggings and the landlord may proceed against the miner in like manner to recover possession of the mines or diggings.

SECTION 51. 107.11 of the statutes is amended to read:

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

SECTION 52. 107.12 of the statutes is amended to read:

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

SECTION 53. 107.20 (1) of the statutes is amended to read:

107.20 **(1)** Any provision of an exploration mining lease entered into after April 25, 1978, granting an option or right to determine the presence, location, quality or quantity of ~~metalliferous~~ nonferrous metallic minerals shall be limited to a term not exceeding 10 years from the date on which the exploration mining lease is recorded in the office of the register of deeds of the county where the property is located, except that any provision of an exploration mining lease entered into after April 25, 1978, granting an option or right to determine the quality and quantity of ~~metalliferous~~ nonferrous metallic minerals under a prospecting permit shall be limited to a term not exceeding 10 years from the date that the lessee applies for a prospecting permit under s. 293.35, if the lessee applies for the prospecting permit within 10 years from the date on which the exploration mining lease is recorded in the office of the register of deeds of the county where the property is located.

SECTION 54. 107.20 (2) of the statutes is amended to read:

107.20 **(2)** Any provision of an exploration mining lease entered into after April 25, 1978, granting an option or right to develop or extract ~~metalliferous~~ nonferrous metallic minerals shall be limited to a term not exceeding 50 years from the date on which the exploration mining lease is recorded in the office of the register of deeds of the county where the property is located.

SECTION 55. 107.30 (8) of the statutes is amended to read:

107.30 **(8)** "Mining" or "mining operation" ~~has the meaning set forth in s. 293.01 (9)~~ means all or part of the process involved in the mining of metallic minerals, other than for exploration or prospecting, including commercial extraction, agglomeration, beneficiation, construction of roads, removal of overburden, and the production of refuse.

SECTION 56. 107.30 (15) of the statutes is amended to read:

107.30 **(15)** "Prospecting" ~~has the meaning set forth in s. 293.01 (18)~~ means engaging in the examination of an area for the purpose of determining the quality and quantity of minerals, other than for exploration but including the obtaining of an ore sample, by such physical means as excavating, trenching, construction of shafts, ramps, and tunnels and other means, other than for exploration, which the department of natural resources, by rule, identifies, and the production of prospecting refuse and other associated activities. "Prospecting" does not include such activities when the activities are, by themselves, intended for and capable of commercial exploitation of the underlying ore body. The fact that prospecting activities and construction may have use ultimately in mining, if approved, does not mean that prospecting activities and construction constitute mining within the meaning of sub. (8), provided such activities and construction are reasonably related to prospecting requirements.

SECTION 57. 107.30 (16) of the statutes is amended to read:

107.30 **(16)** "Prospecting site" ~~has the meaning set forth in s. 293.01 (21)~~ means the lands on which prospecting is actually conducted as well as those lands on which physical disturbance will occur as a result of such activity.

SECTION 58. 160.19 (12) of the statutes is amended to read:

160.19 **(12)** The requirements in this section shall not apply to rules governing an activity regulated under ch. 293 or subch. III of ch. 295, or to a solid waste facility regulated under subch. III of ch. 289 which is part of an activity regulated under ch. 293 or subch. III of ch. 295, except that the department may promulgate new rules or amend rules governing this type of activity, practice or facility if the department

determines that the amendment or promulgation of rules is necessary to protect public health, safety or welfare.

SECTION 59. 196.491 (3) (a) 3. b. of the statutes is amended to read:

196.491 **(3)** (a) 3. b. ~~Within~~ Except as provided under subd. 3. c., within 20 days after the department provides a listing specified in subd. 3. a. to a person, the person shall apply for the permits and approvals identified in the listing. The department shall determine whether an application under this subd. 3. b. is complete and, no later than 30 days after the application is filed, notify the applicant about the determination. If the department determines that the application is incomplete, the notice shall state the reason for the determination. An applicant may supplement and refile an application that the department has determined to be incomplete. There is no limit on the number of times that an applicant may refile an application under this subd. 3. b. If the department fails to determine whether an application is complete within 30 days after the application is filed, the application shall be considered to be complete. The department shall complete action on an application under this subd. 3. b. for any permit or approval that is required prior to construction of a facility within 120 days after the date on which the application is determined or considered to be complete.

SECTION 60. 196.491 (3) (a) 3. c. of the statutes is created to read:

196.491 **(3)** (a) 3. c. The 20–day deadline specified in subd. 3. b. for applying for the applicable permits and approvals specified in the listing provided by the department does not apply to a person proposing to construct a utility facility for ferrous mineral mining and processing activities governed by subch. III of ch. 295.

SECTION 61. 196.491 (4) (b) 2. of the statutes is amended to read:

196.491 **(4)** (b) 2. The person shows to the satisfaction of the commission that the person reasonably anticipates, at the time that construction of the equipment or facilities commences, that on each day that the equipment and facilities are in operation the person will consume no less than 70% of the aggregate kilowatt hours output from the equipment and facilities in manufacturing processes at the site where the equipment and facilities are located <u>or in ferrous mineral mining and processing activities governed by subch. III of ch. 295 at the site where the equipment and facilities are located</u>.

SECTION 62. 227.483 (3) (c) of the statutes is created to read:

227.483 **(3)** (c) If the proceeding relates to mining for ferrous minerals, as defined in s. 295.41 (18), that the petition, claim, or defense was commenced, used, or continued primarily for the purpose of causing delay to an activity authorized under a license that is the subject of the hearing.

SECTION 63. 238.14 of the statutes is created to read:

238.14 Business development grants and loans. When funds described in s. 25.49 (2m) are appropriated to the corporation, the corporation shall use the funds to make grants and loans to businesses in this state, and the corporation shall give preference for grants and loans to businesses located in an area affected by mining for ferrous minerals.

SECTION 64. 281.36 (3g) (h) 2. of the statutes is amended to read:

281.36 **(3g)** (h) 2. If, within 30 days after an application under subd. 1. is received by the department, the department does not either request additional information or inform the applicant that a wetland individual permit will be required as provided in par. (i), the discharge shall be considered to be authorized under the wetland general permit and the applicant may proceed without further notice,

hearing, permit, or approval if the discharge is carried out in compliance with all of the conditions of the general permit, except as provided in s. 295.60 (3) (b).

SECTION 65. 281.65 (2) (a) of the statutes is amended to read:

281.65 **(2)** (a) "Best management practices" means practices, techniques or measures, except for dredging, identified in areawide water quality management plans, which are determined to be effective means of preventing or reducing pollutants generated from nonpoint sources, or from the sediments of inland lakes polluted by nonpoint sources, to a level compatible with water quality objectives established under this section and which do not have an adverse impact on fish and wildlife habitat. The practices, techniques or measures include land acquisition, storm sewer rerouting and the removal of structures necessary to install structural urban best management practices, facilities for the handling and treatment of milkhouse wastewater, repair of fences built using grants under this section and measures to prevent or reduce pollutants generated from mine tailings disposal sites for which the department has not approved a plan of operation under s. 289.30 or s. 295.51.

SECTION 66. 281.75 (17) (b) of the statutes is amended to read:

281.75 **(17)** (b) This section does not apply to contamination which is compensable under subch. II of ch. 107 or s. 293.65 (4) or 295.61 (8).

SECTION 67. 283.84 (3m) of the statutes is amended to read:

283.84 **(3m)** A person engaged in mining, as defined in s. 293.01 (9) or 295.41 (26), prospecting, as defined in s. 293.01 (18), bulk sampling, as defined in s. 295.41 (7), or nonmetallic mining, as defined in s. 295.11 (3), may not enter into an agreement under sub. (1).

SECTION 68. 287.13 (5) (e) of the statutes is amended to read:

287.13 **(5)** (e) Solid waste produced by a commercial business or industry which is disposed of or held for disposal in an approved facility, as defined under s. 289.01 (3), or a mining waste site, as defined in s. 295.41 (31), covered by a mining permit under s. 295.58, owned, or leased by the generator and designed and constructed for the purpose of accepting that type of solid waste.

SECTION 69. 289.35 of the statutes is amended to read:

289.35 Shoreland and floodplain zoning. Solid waste facilities are prohibited within areas under the jurisdiction of shoreland and floodplain zoning regulations adopted under ss. 59.692, 61.351, 62.231 ~~and~~, 87.30, and 281.31, except that the department may issue permits authorizing facilities in such areas. If the department issues a permit under this section, the permit shall specify the location, height, and size of the solid waste facility authorized under the permit.

SECTION 70. 289.62 (2) (g) 2. and 6. of the statutes are amended to read:

289.62 **(2)** (g) 2. For nonhazardous tailing solids ~~or for nonacid producing taconite tailing solids~~, 0.2 cent per ton.

6. For nonhazardous waste rock ~~or for nonacid producing taconite waste rock~~, 0.1 cent per ton.

SECTION 71. 292.01 (1m) of the statutes is amended to read:

292.01 **(1m)** "Approved mining facility" has the meaning given in s. 289.01 (4) and includes a mining waste site, as defined in s. 295.41 (31).

SECTION 72. Chapter 293 (title) of the statutes is amended to read:

CHAPTER 293

NONFERROUS METALLIC MINING

SECTION 73. 293.01 (5) of the statutes is amended to read:

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

SECTION 74. 293.01 (7) of the statutes is amended to read:

293.01 **(7)** "Merchantable by–product" means all waste soil, rock, mineral, liquid, vegetation and other material directly resulting from or displaced by the mining, cleaning or preparation of nonferrous metallic minerals during mining operations which are determined by the department to be marketable upon a showing of marketability made by the operator, accompanied by a verified statement by the operator of his or her intent to sell such material within 3 years from the time it results from or is displaced by mining. If after 3 years from the time merchantable by–product results from or is displaced by mining such material has not been transported off the mining site, it shall be considered and regulated as refuse unless removal is continuing at a rate of more than 12,000 cubic yards per year.

SECTION 75. 293.01 (8) of the statutes is repealed.

SECTION 76. 293.01 (9) of the statutes is amended to read:

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

SECTION 77. 293.01 (12) of the statutes is amended to read:

293.01 **(12)** "Mining site" means the surface area disturbed by a mining operation, including the surface area from which the nonferrous metallic minerals or refuse or both have been removed, the surface area covered by refuse, all lands disturbed by the construction or improvement of haulageways, and any surface areas in which structures, equipment, materials and any other things used in the mining operation are situated.

SECTION 78. 293.01 (12m) of the statutes is created to read:

293.01 **(12m)** "Nonferrous metallic mineral" means an ore or other earthen material to be excavated from the natural deposits on or in the earth for its metallic content but not primarily for its iron oxide content.

SECTION 79. 293.01 (18) of the statutes is amended to read:

293.01 **(18)** "Prospecting" means engaging in the examination of an area for the purpose of determining the quality and quantity of nonferrous metallic minerals, other than for exploration but including the obtaining of ~~an ore~~ a nonferrous metallic mineral sample, by such physical means as excavating, trenching, construction of shafts, ramps and tunnels and other means, other than for exploration, which the department, by rule, identifies, and the production of prospecting refuse and other associated activities. "Prospecting" shall not include such activities when the activities are, by themselves, intended for and capable of commercial exploitation of the underlying nonferrous ore body. However, the fact that prospecting activities and construction may have use ultimately in mining, if approved, shall not mean that prospecting activities and construction constitute mining within the meaning of sub. (9), provided such activities and construction are reasonably related to prospecting requirements.

SECTION 80. 293.01 (25) of the statutes is amended to read:

293.01 **(25)** "Refuse" means all waste soil, rock, mineral, liquid, vegetation and other material, except merchantable by–products, directly resulting from or displaced by the prospecting or mining and from the cleaning or preparation of nonferrous metallic minerals during prospecting or mining operations, and shall include all waste materials deposited on or in the prospecting or mining site from other sources.

SECTION 81. 293.21 (1) (a) of the statutes is amended to read:

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

SECTION 82. 293.25 (2) (a) of the statutes is amended to read:

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

SECTION 83. 293.25 (4) of the statutes is amended to read:

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

to activities related to nonferrous metallic mineral exploration and to persons engaging in or intending to engage in nonferrous metallic mineral exploration or related activities.

SECTION 84. 293.37 (4) (b) of the statutes is amended to read:

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

SECTION 85. 293.47 (1) (b) of the statutes is amended to read:

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

SECTION 86. 293.50 (1) (b) of the statutes is amended to read:

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

SECTION 87. 293.50 (2) (intro.) of the statutes is amended to read:

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

SECTION 88. 293.50 (2) (a) of the statutes is amended to read:

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

SECTION 89. 293.50 (2) (b) of the statutes is amended to read:

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

SECTION 90. 293.51 (1) of the statutes is amended to read:

293.51 **(1)** Upon notification that an application for a prospecting or mining permit has been approved by the department but prior to commencing prospecting or mining, the operator shall file with the department a bond conditioned on faithful performance of all of the requirements of this chapter and all rules adopted by the department under this chapter. The bond shall be furnished by a surety company licensed to do business in this state. In lieu of a bond, the operator may deposit cash,

certificates of deposit or government securities with the department. Interest received on certificates of deposit and government securities shall be paid to the operator. The amount of the bond or other security required shall be equal to the estimated cost to the state of fulfilling the reclamation plan, in relation to that portion of the site that will be disturbed by the end of the following year. The estimated cost of reclamation of each prospecting or mining site shall be determined by the department on the basis of relevant factors including, but not limited to, expected changes in the price index, topography of the site, methods being employed, depth and composition of overburden and depth of nonferrous metallic mineral deposit being mined.

SECTION 91. 293.65 (3) (a) of the statutes is amended to read:

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

SECTION 92. 293.65 (3) (b) of the statutes is amended to read:

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

SECTION 93. 293.86 of the statutes is amended to read:

293.86 Visitorial powers of department. Any duly authorized officer, employee or representative of the department may enter and inspect any property, premises or place on or at which any prospecting or ~~metallic~~ mining operation or facility is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and chs. 281, 285, 289 to 292, ~~295~~ and 299, subchs. I and II of ch. 295, and rules adopted pursuant thereto. No person may refuse entry or access to any such authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials, nor may any person obstruct, hamper or interfere with any such inspection. The department shall furnish to the prospector or operator, as indicated in the prospecting or mining permit, a written report setting forth all observations, relevant information and data which relate to compliance status.

SECTION 94. Chapter 295 (title) of the statutes is amended to read:

CHAPTER 295

NONMETALLIC MINING RECLAMATION;

OIL AND GAS;

FERROUS METALLIC MINING

SECTION 95. 295.16 (4) (f) of the statutes is amended to read:

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

SECTION 96. Subchapter III of chapter 295 [precedes 295.40] of the statutes is created to read:

CHAPTER 295

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.

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) "Approval" means 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:

(a) 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.

(b) The withdrawal of land entered as forest cropland under s. 77.10.

(c) 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) "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.

(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).

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.

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 drillhole.

(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 subds. 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 it's 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.

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).

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.

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 preapplication 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.

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.

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.

(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.

(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.

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, 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.

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.

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, the method in federal environmental protection agency publication EPA 600/2–78–054, 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 100 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 subds. 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 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.

(j) The final slopes of the completed mining waste site will be no less than 20 percent and 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.

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 150.21 (3), 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 150.22 (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.

(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 150.30, 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 150.24 and 150.25, Wis. Adm. Code, do not apply with respect to a mining project. The rest of ch. 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.

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 one of the following applies:

1. The exemption will not result in significant adverse environmental impacts.

2. The exemption will result in significant adverse environmental impacts, but 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.

(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.

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 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 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) and (d) 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), 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) Except as provided in par. (c) if an applicant files an application for an approval other than a mining permit more than 60 days after the day on which the application for the mining permit is administratively complete under sub. (2), the

deadline for acting on the application is extended beyond the deadline under sub. (7) (a), including any extension agreed to by the applicant, by the number of days beyond the 60th day after the day on which the application for the mining permit is administratively complete that the applicant files the application for the approval.

(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. 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, 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.

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 regulations that apply to municipal floodplain zoning ordinances contained in the uniform rules promulgated by the department for preparation and implementation of municipal floodplain zoning ordinances.

4. That the proposed mining is not likely 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.

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 mining 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.

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.

(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 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 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, 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. If the department determines that reasonable assurance does not exist, it may impose conditions on the permit 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 that 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) *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. (a) may submit options for mitigation. These options may include any combination of the types of mitigation specified in par. (d). 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; types 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 allow the

applicant to conduct mitigation at a site other than an on–site location, subject to par. (e). Mitigation under a program under par. (a) 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, if such a subprogram is established 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.

(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.

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.

(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 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.

(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.

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, 62.231, 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 development 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.

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 determining 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 considered 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.

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.

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.

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, gullying, or wave erosion on the inside of the dam.

(c) Surface erosion, gullying, 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.

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.

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.

295.643 Mining waste site monitoring. (1) GENERAL. The department may require the monitoring of groundwater, surface 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.

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 expand the design management zone by a horizontal distance of up to an additional 1,200 feet in any direction as provided in this paragraph, but not beyond the boundary of the property owned or leased by the applicant or on which the applicant holds an easement. The department may not expand the design management zone unless the applicant demonstrates all of the following:

1. That preventive action limits and enforcement standards or alternative concentration limits cannot be met at the boundary of the design management zone if it is not expanded.

2. That preventive action limits and enforcement standards or alternative concentration limits will be met at the boundary of the expanded design management zone.

(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.

(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 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 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 approving 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.

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.

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.

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.

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.

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.

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.

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.

(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).

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).

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, in the circuit

court for the county in which the majority of the proposed mining site is located, 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).

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.

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.

SECTION 97. 299.85 (7) (a) 2. and 4. of the statutes are amended to read:

299.85 **(7)** (a) 2. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969,

29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b) 1., 295.37 (2), 295.79 (2) and (4), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if a regulated entity that qualifies under sub. (2) for participation in the Environmental Compliance Audit Program corrects violations that it discloses in a report that meets the requirements of sub. (3) within 90 days after the department receives the report that meets the requirements of sub. (3), the regulated entity may not be required to forfeit more than $500 for each violation, regardless of the number of days during which the violation continues.

4. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b) 1., 295.37 (2), 295.79 (2) and (4), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if the department approves a compliance schedule under sub. (6) and the regulated entity corrects the violations according to the compliance schedule, the regulated entity may not be required to forfeit more than $500 for each violation, regardless of the number of days during which the violation continues.

SECTION 98. 299.95 of the statutes is amended to read:

299.95 Enforcement; duty of department of justice; expenses. The attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except ss. 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan approvals, permits, and water quality certifications of the department, except those promulgated or issued under ss. 285.57, 285.59, and 299.64 and except as provided in ss. 285.86 and 299.85 (7) (am). ~~The~~ Except as provided in s. 295.79 (1), the circuit court for Dane county or for any other county where a violation occurred in whole or in part has jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan approval, permit, or certification by injunctional and other relief appropriate for enforcement. For purposes of this proceeding where chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan approval, permit or certification prohibits in whole or in part any pollution, a violation is considered a public nuisance. The department of natural resources may enter into agreements with the department of justice to assist with the administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid to the department of justice under these agreements shall be credited to the appropriation account under s. 20.455 (1) (k).

SECTION 99. 323.60 (1) (gm) of the statutes is created to read:

323.60 **(1)** (gm) "Minerals" mean unbeneficiated metallic ore but does not include mineral aggregates such as stone, sand, and gravel.

SECTION 100. 323.60 (5) (d) 3. of the statutes is amended to read:

323.60 **(5)** (d) 3. All facilities with 10 or more employees in major group classifications 10 to 13 in the standard industrial classification manual, 1987 edition, published by the U.S. office of management and budget, at which a toxic chemical is used at or above an applicable threshold quantity, except that compliance

with the toxic chemical release form requirements under this subdivision is not required for the placement of a toxic chemical in a storage or disposal site or facility that is located at a facility with a permit under ch. 293 or a mining permit under subch. III of ch. 295 if the toxic chemical consists of or is contained in merchantable by–products, as defined in s. 293.01 (7) or 295.41 (25), minerals ~~as defined in s. 293.01 (8),~~ or refuse, as defined in s. 293.01 (25) or 295.41 (41).

SECTION 101. 706.01 (9) of the statutes is amended to read:

706.01 **(9)** "Mining company" means any person or agent of a person who has a prospecting permit under s. 293.45 or a mining permit under s. ~~293.45 or~~ 293.49 or 295.58.

SECTION 102. 710.02 (2) (d) of the statutes is amended to read:

710.02 **(2)** (d) An exploration mining lease as defined in s. 107.001 (1) and land used for mining and associated activities under chs. 293 and 295.

SECTION 103. Nonstatutory provisions.

(1) RULES.

(a) The department of natural resources shall promulgate rules revising chapters NR 130, 131, 132, and 182, Wisconsin Administrative Code, that are in effect on the effective date of this paragraph and revising any other rules promulgated under section 293.13 (1) (a) of the statutes that are in effect on the effective date of this paragraph to clarify that chapters NR 130, 131, 132, and 182, Wisconsin Administrative Code, and any other rules promulgated under section 293.13 (1) (a) of the statutes do not apply to ferrous metallic mining.

(b) The department of natural resources shall promulgate rules revising chapters NR 500 to 555 and 660 to 679, Wisconsin Administrative Code, that are in effect on the effective date of this paragraph and revising any other rules

promulgated under sections 289.05 and 289.06 (1) of the statutes that are in effect on the effective date of this paragraph so that the rules are consistent with subchapter III of chapter 295, of the statutes, as created by this act.

(c) The department of natural resources shall promulgate rules revising any rules of the department that are in effect on the effective date of this paragraph, in addition to the rules under paragraphs (a) and (b), that provide exemptions for nonferrous mining or associated activities to provide the same exemptions for ferrous mining and associated activities.

(d) The department of natural resources shall present the statement of scope of the rules required under paragraphs (a) to (c) to the governor for approval under section 227.135 (2) of the statutes no later than the 30th day after the effective date of this paragraph. The department of natural resources shall submit in proposed form the rules required under paragraphs (a) to (c) to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 5th month beginning after the governor approves the statement of scope of the rules.

(END)