



State of Wisconsin
2011 - 2012 LEGISLATURE



LRB-3520/1
RCT/MGG/RK/JK:kj/nn/cs:rs

2011 ASSEMBLY BILL 426

December 14, 2011 – Introduced by COMMITTEE ON JOBS, ECONOMY AND SMALL BUSINESS. Referred to Committee on Jobs, Economy and Small Business.

1 **AN ACT** *to repeal* 107.001 (2) and 293.01 (8); *to renumber and amend* 30.123
2 (8) (c) and 87.30 (2); *to amend* 20.370 (2) (gh), 20.455 (1) (gh), 20.566 (7) (e),
3 20.566 (7) (v), 29.604 (4) (intro.), 29.604 (4) (c) (intro.), 30.12 (3m) (c) (intro.),
4 30.133 (2), 30.19 (4) (c) (intro.), 30.195 (2) (c) (intro.), 44.40 (5), 70.395 (1e),
5 107.001 (1), 107.01 (intro.), 107.01 (2), 107.02, 107.03, 107.04, 107.11, 107.12,
6 107.20 (1), 107.20 (2), 107.30 (1), 107.30 (18), 107.30 (20), 160.19 (12), 196.491
7 (4) (b) 2., 281.65 (2) (a), 281.75 (17) (b), 287.13 (5) (e), 289.35, 289.62 (2) (g) 2.
8 and 6., 292.01 (1m), chapter 293 (title), 293.01 (5), 293.01 (7), 293.01 (9), 293.01
9 (12), 293.01 (18), 293.01 (25), 293.21 (1) (a), 293.25 (2) (a), 293.25 (4), 293.37 (4)
10 (b), 293.47 (1) (b), 293.50 (1) (b), 293.50 (2) (intro.), 293.50 (2) (a), 293.50 (2) (b),
11 293.51 (1), 293.65 (3) (a), 293.65 (3) (b), 293.86, chapter 295 (title), 295.16 (4)
12 (f), 299.85 (7) (a) 2. and 4., 299.95, 323.60 (5) (d) 3. and 710.02 (2) (d); and *to*
13 **create** 20.370 (2) (gi), 29.604 (7m), 31.23 (3) (e), 87.30 (2) (b), 293.01 (12m),
14 subchapter III of chapter 295 [precedes 295.40] and 323.60 (1) (gm) of the

ASSEMBLY BILL 426

1 statutes; **relating to:** regulation of ferrous metallic mining and related
2 activities, making an appropriation, and providing penalties.

Analysis by the Legislative Reference Bureau**OVERVIEW**

Under current law, the Department of Natural Resources (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 water quality certifications for 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 new approvals in lieu of some current approvals, for example, high capacity well approvals and water quality certifications for wetlands. The standards and procedures for granting, and the requirements related to, an iron mining permit and the other new approvals 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.

APPLICATION FOR MINING PERMIT

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

ASSEMBLY BILL 426

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.

This bill requires a person who is contemplating a 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 information including a map showing the boundaries of the area of land that will be affected by the mining project and the names of each owner of the mining site. 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 the intention to file the application and 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 about 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.

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 other approvals issued by DNR.

ASSEMBLY BILL 426

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.

DNR's current rules require 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 DNR's rules. For example, the rules require 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, damage to public health, and threats to public safety. The bill 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

ASSEMBLY BILL 426

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 hearing on an application for a metallic mining permit. 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 that the hearing cover the EIS and cover 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 hearing on the mining permit.

This bill requires DNR to hold a public informational hearing for a proposed iron mining project. 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. Under the bill, the provisions related to notice, hearing, and comment in the iron mining law apply to any other needed approval.

Deadlines; automatic approval

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 mining 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 360 days after the application is considered to be complete. 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 360-day deadline. 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, the application is automatically approved.

Under the bill, the application for a mining permit is considered to be complete on the 30th day after DNR receives it, unless, before that day DNR provides the applicant with written notification that the application does not include a mining plan, reclamation plan, or waste site feasibility study and plan of operation that contain the types of information required under the bill or that the applicant has not submitted an EIR. DNR may not consider the quality of the information provided in determining whether the application is complete.

ASSEMBLY BILL 426

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 other 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 mining permit if the mining operation is reasonably expected to cause any of the following: 1) 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; 2) irreparable environmental damage to lake or stream bodies despite adherence to the metallic mining laws, unless DNR has authorized the activity that causes the damage; 3) landslides or substantial deposition in stream or lake beds that cannot be feasibly prevented; or 4) the destruction or filling in of a lake bed.

The bill requires DNR to deny an application for an iron mining permit if the mining operation is reasonably expected to cause any of the following: 1) hazards resulting in irreparable damage to specified kinds of structures, such as residences, schools, or commercial buildings, 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, avoided by removal from the area of hazard, or mitigated by purchase or by obtaining the consent of the owner; or 2) irreparable environmental damage to lake or stream bodies despite adherence to the metallic mining laws, unless DNR has authorized the activity that causes the damage. As to the bases described in 3) or 4) above the bill requires DNR to deny the application unless the activity or occurrence is authorized by DNR under an applicable approval such as a wetland water quality certification, or a permit for a navigable water activity.

ASSEMBLY BILL 426

As under the current metallic mining laws, the bill requires DNR to deny a 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 will obtain all applicable zoning approvals; and 6) the waste site feasibility study and plan of operation comply with the provisions of this bill.

REVIEW OF DNR DECISIONS

Currently, any person aggrieved by a decision of DNR under the metallic mining laws may obtain a contested case administrative hearing under this state's administrative procedure laws.

Under this bill, no person is entitled to a contested case hearing on a decision by the DNR under the iron mining laws or a decision by DNR on any environmental approval needed for iron mining or bulk sampling. Judicial review of such a decision, on the administrative record before DNR, is the exclusive method for challenging the decision.

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.

ASSEMBLY BILL 426**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 to wetlands that are impacted by iron mining.

Wetland water quality certification

Under the current permitting process there are two permitting procedures for discharging dredged or fill material into a wetland depending on whether the wetland is subjected to federal jurisdiction. Under federal law, activities involving the discharge of dredged or fill material into waters subject to federal jurisdiction 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). Wetlands are usually the type of waters involved (federal wetlands). Wetlands that are exempt from federal jurisdiction are those that are nonnavigable and isolated, intrastate waters. Current state law regulates discharges and other activities in these wetlands (nonfederal wetlands).

Current law relating to wetlands also makes a distinction between wetlands that are in, or in close proximity to, an area of special natural resource interest (ASNRI wetlands) and wetlands that are outside these areas. Current law defines "an area of special natural resource interest" as being an area that has significant ecological, cultural, aesthetic, educational, recreational, or scientific values and specifically lists certain areas, including Lake Michigan and Lake Superior, state forests, and state parks.

Under current law, before ACE may issue a federal permit, DNR must issue a water quality certification that certifies that the discharge complies with state water quality standards applicable to wetlands. For a discharge into nonfederal wetlands, DNR must issue a water quality certification that certifies that the discharge complies with these water quality standards. In issuing water quality certification for both federal wetlands and nonfederal wetlands, DNR may impose conditions that must be met as part of the water quality certification.

This bill limits DNR's authority in imposing conditions for federal permits as part of the water quality certification. If DNR determines that implementation of the federal compensatory mitigation requirements will offset any significant adverse impact to the wetlands or if for federal ASNRI wetlands avoidance and minimization of adverse impacts has occurred to the extent practicable and any remaining significant adverse impacts are offset by compensation or mitigation, DNR may not impose any additional conditions. If DNR does not make this determination, DNR may impose only the conditions necessary to offset significant adverse impacts that are not offset by the federal compensatory mitigation requirements. The bill also provides that DNR may not increase the number of acres to be mitigated under the federal compensatory mitigation requirements.

For issuing a wetland water quality certification for nonfederal wetlands, if DNR determines that impacts to the wetland will be avoided or minimized to the extent practicable, any remaining impacts to nonfederal wetlands or an area of special natural resource interest, may not be used as a basis for denying certification

ASSEMBLY BILL 426

if any remaining significant adverse impacts to the wetland or an area of special natural resource interest will be offset by compensation or mitigation. Under the bill, DNR must issue water quality certification for nonfederal wetlands if DNR determines that all practicable measures will be taken to minimize the adverse impacts to wetlands and any remaining significant adverse impacts are offset through compensation or mitigation.

The bill requires that an applicant for a wetland water quality certification for a nonfederal wetland submit a siting analysis as to various configurations for the iron mining site to DNR for review. These are limited to configurations associated with the proposed areas of iron deposits to be mined and areas contiguous to these deposits. In reviewing the analysis, DNR must recognize limitations associated with the proposed locations for iron mining, the need for waste sites and processing facilities to be contiguous to the location of the iron deposits, and the presumption that nonfederal wetlands will be impacted. If it is impracticable to avoid an impact or use of a nonfederal wetland, the applicant shall identify in the analysis the configurations that would result in impacts to the fewest acres. DNR then determines which configuration will affect the fewest acres and evaluates how that configuration will impact the functional values and water quality of the nonfederal wetland.

Wetland water quality standards

Under rules promulgated by DNR, the state wetland water quality standards require that various functional values of the 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 certifications for wetlands. The wetland water quality standards under the bill require that the impacts must be minimized and that any remaining significant impacts be offset by compensation or mitigation. The bill also requires that in evaluating the significant adverse impacts, 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.

Mitigation and compensation

Under current law, DNR is authorized, but is not required, to consider mitigation in determining whether to grant a water quality certification or other permit or approval affecting wetlands. Under current law, wetland mitigation consists of a project that restores, enhances, or creates (improves) a wetland to offset adverse impacts to other wetlands or that uses credits from a wetlands mitigation bank. A wetlands 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. Mitigation is based on a ratio of acres improved compared to the number of acres

ASSEMBLY BILL 426

adversely impacted. The bill requires DNR to consider mitigation or compensation when issuing water quality certifications for both federal and nonfederal wetlands.

Under the bill, compensation allows for the offsetting of adverse impacts to other water quality functions besides those in wetlands. Compensation may include projects such as riparian restoration projects and shoreline stabilization projects if such projects are at locations that are more than one-half mile from the mining site.

Under current law, the ratio of acres for purposes of mitigation requires that 1.5 acres of wetlands be improved to every one acre that is adversely impacted with limited exception allowing the ratio to be one acre to one acre. The bill specifies that the ratio for mitigation may not exceed 1.5 acres. Under current law, in calculating the number of credits a person will receive in implementing mitigation, each acre restored receives one credit, the range of credits for each acre enhanced is from no credits to one credit, and each acre created receives one-half credit with a limited exception. Under the bill, each acre restored, enhanced, or created receives at least one credit.

Current law prohibits DNR from considering wetlands mitigation in reviewing whether to grant a permit or other approval for a project that adversely affects an area of special natural resource interest or an ASNRI wetland. Under the bill, mitigation and compensation to offset significant adverse impacts to these areas and ASNRI wetlands are allowed.

Under current law, mitigation must occur within one-half mile of the impacted wetland (on-site). If DNR determines that it is not practicable or ecologically preferable that the mitigation occur on-site, DNR shall allow mitigation to be preformed as near as practicable to the location of the adversely impacted wetland. Under the bill, if it is not practicable or ecologically preferable to conduct compensation or mitigation at an on-site location or if there is insufficient wetland acreage on-site, off-site compensation or mitigation may be performed. This may include purchases of credits from a mitigation bank located anywhere in the state. The bill also authorizes other persons to perform compensation or mitigation, subject to DNR approval.

Exemptions

Under current law, artificial wetlands are exempt from the wetland water quality standards unless DNR determines significant functional values are present. This bill exempts these same artificial wetlands from the wetland water quality standards and eliminates the exception to the exemption for wetlands with certain significant functional values.

Under current law, certain activities in nonfederal wetlands are exempt from the water quality certification requirements for wetlands. These include maintenance of drainage and irrigation ditches, damaged parts of structures that are in bodies of waters, and maintenance of certain temporary mining roads. Under current law, these activities lose their 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 body of water. Under the bill, very similar exemptions apply to iron mining activities. However, the provision regarding losing

ASSEMBLY BILL 426

the exemption does not apply. Instead, the exemptions only apply if the person conducting the activity minimizes the adverse effect to the environment.

Other provisions

Under current law, for purposes of delineating the boundary of a wetland, DNR shall 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 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 permit holder to grant DNR an easement to ensure that an improved wetland is not destroyed or substantially degraded by subsequent owners. This bill imposes this requirement on persons who receive a water quality certification and requires DNR to suspend the certification if the permit holder fails to grant the easement 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.

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

ASSEMBLY BILL 426

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. 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 a metallic 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 on 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.

The bill does not provide a mandatory intervention boundary for an iron mining site.

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

ASSEMBLY BILL 426

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, 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 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

ASSEMBLY BILL 426

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 6) within 1,200 feet of a private or public water supply well.

This bill includes the same locational limits for an iron mining waste site, except that it does not prohibit an iron mining waste site from being located within an area designated in the statutes as being unsuitable for surface mining.

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, to demonstrate 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 and engineering plans and must submit a description of typical daily operations of the iron mining waste facility.

ASSEMBLY BILL 426***Proof of financial responsibility***

Under current law and under this bill, the operator of a mine must furnish to DNR a bond or other security in an amount sufficient to cover the cost of reclamation of the mining site.

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 obligation 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 operator of an iron mine may apply to DNR for termination of its obligation to provide proof of financial responsibility for long-term care of the mining waste facility after the facility has been closed for at least 20 years by submitting an application that demonstrates that proof of financial responsibility for long-term care is no longer necessary for adequate protection of public health or the environment. If DNR decides that additional proof of financial responsibility for long-term care is still needed, the operator may not submit another application for five years.

WATER WITHDRAWALS

Under current law, no person may withdraw water from a stream or lake without a permit (surface water withdrawal permit) issued by DNR. Current law also regulates withdrawals of groundwater. That law prohibits a property owner from withdrawing water from or constructing a well that, together with other wells on the same property, has a capacity of more than 100,000 gallons per day without an approval from DNR (high capacity well approval). DNR must review, using an environmental review process specified in DNR's rules, every application for an approval of a high capacity well that has a water loss of more than 95 percent of the amount of water withdrawn, that may have a significant environmental impact on a spring, or that is located in a groundwater protection area. A groundwater protection area is an area within 1,200 feet of certain outstanding or exceptional resource waters or certain trout streams. Current law also 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 and 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 a groundwater protection area, 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 for a new or modified surface water withdrawal permit or high capacity well approval (water loss

ASSEMBLY BILL 426

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. If DNR approves the water loss application then DNR must modify the applicant's existing surface water withdrawal permit or high capacity well approval or issue a new permit or approval that specifies certain conditions with regard to the water withdrawal.

This bill establishes different requirements for surface water and groundwater withdrawals relating to iron mining. In lieu of a surface water withdrawal permit, a high capacity well approval, and 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 or withdrawal of groundwater or the dewatering of mines that exceeds 100,000 gallons a day, must obtain a water withdrawal permit from DNR (mining water withdrawal permit). The bill specifies that a person who applies for a mining water withdrawal permit need not be a riparian (waterfront) property owner. 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 also determine which location has the fewest overall adverse environmental impacts to the extent practicable. In determining what is practicable, DNR must take into consideration the ability to implement certain conservation measures.

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; 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. The bill further provides that if the applicant cannot meet the general requirements by implementing conservation measures, DNR shall nevertheless issue the mining water withdrawal permit if DNR determines that the public benefits resulting from the iron mining operation exceed any injury to public rights in a body of water that is affected by the mining operation.

ASSEMBLY BILL 426

In making this determination, DNR is required to recognize certain factors, including the extent to which public rights in a navigable body of water may be substantially and irreparably injured by the proposed withdrawal, public benefits that may be provided, such as increased employment, from the iron mining operation, and the social benefits and costs that will result from the mining operation.

The bill authorizes DNR to impose certain reasonable conditions in the mining water withdrawal permit, but the conditions may 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 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. 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 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 obstruction to navigation, reduction to flood flow capacity, and interference with the rights of other riparian owners. The bill modifies the requirements for the purpose of issuing individual permits associated with iron mining and provides that the same requirements apply to all of these permits. Under the bill, a navigable waters 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. The bill requires that the applicant submit a plan to DNR that contains proposed measures, such as improving public rights in navigable waters, conducting mitigation or compensation, or offsetting impacts to navigable waters. After DNR reviews the application and plan, DNR must issue a permit or enter into a contract if it finds that the requirements will be met by implementing some or all of the measures.

Under current law, to qualify for some of the individual or general permits or to conduct activities under certain permit exemptions, the person must be an owner

ASSEMBLY BILL 426

of riparian property. Under the bill for purposes of iron mining, the requirement of being a riparian owner does not apply.

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 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 applicable to a mining permit application, a mining permit, or any other approval issued by DNR that is needed to conduct the iron mining. 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; 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 or variance 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, 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

ASSEMBLY BILL 426

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 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 does authorize 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 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.

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 wetland water quality certification, 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

ASSEMBLY BILL 426

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 if it is not possible for DNR to act on 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 60 days, it must act within 180 days.

Under current law, if a proposed state agency action, such as the issuance of a permit, authorization, or exception, will affect any site that is significant in the history, prehistory, architecture, archaeology, or culture of this state (historic property), the state agency must notify the director of the State Historical Society (SHS) or his or her designee (state historic preservation officer). If the state historic preservation officer determines that the proposed agency action will have an adverse effect on a historic property that is listed on the national or state register of historic places, the Wisconsin inventory of historic places, or SHS's list of locally designated historic places, that officer may require negotiations with the state agency to reduce that adverse effect.

The bill requires a bulk sampling plan to include: 1) a description of any adverse effects that the bulk sampling might have on any historic property or on any scenic or recreational areas; and 2) plans to avoid or minimize those adverse effects to the extent practicable. The bill also provides that if DNR determines that an applicant has taken measures to minimize the adverse effects of proposed bulk sampling on a historic property, DNR is not required to notify the state historic preservation officer, and the state historic preservation officer may not require negotiations to reduce that adverse effect. If that adverse effect cannot practicably be minimized, any negotiations between DNR and the state historic preservation officer must be completed within 60 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.

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 proposed notice. 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.

ASSEMBLY BILL 426

Under this bill, an applicant is not required to pay an application or filing fee for any approval other than a mining permit. The bill requires DNR to assess a fee equal to its costs for evaluating a mining project or \$1,100,000, 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.

Current law imposes fees on the disposal of solid waste that are called tonnage fees or tipping fees. Under the bill, the operator of a mining waste site must pay the groundwater fee, the environmental repair fee, and the 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, 50 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 50 percent of the revenue is deposited into the general fund.

OTHER***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, or 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 or floodplain 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.

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

ASSEMBLY BILL 426

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:

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

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

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

ASSEMBLY BILL 426

1 20.370 (2) (gi) *Ferrous metallic mining operations*. All moneys received under
2 subch. III of ch. 295 for the department of natural resource's operations related to
3 ferrous metallic exploration and mining.

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

5 20.455 (1) (gh) *Investigation and prosecution*. Moneys received under ss. 23.22
6 (9) (c), 49.49 (6), 100.263, 133.16, 281.98 (2), 283.91 (5), 289.96 (3) (b), 291.97 (3),
7 292.99 (2), 293.87 (4) (b), 295.19 (3) (b) 2., 295.79 (4) (b), and 299.97 (2), for the
8 expenses of investigation and prosecution of violations, including attorney fees.

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

10 20.566 (7) (e) *Investment and local impact fund supplement*. The amounts in
11 the schedule to supplement par. (v) for the purposes of ss. 70.395, 293.33 (4) and,
12 293.65 (5) (a), and 295.443.

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

14 20.566 (7) (v) *Investment and local impact fund*. From the investment and local
15 impact fund, all moneys received under s. 70.395 (1e) and (2) (dc) and (dg), less the
16 moneys appropriated under s. 20.370 (2) (gr), to be disbursed under ss. 70.395 (2) (d)
17 to (g), 293.33 (4) and, 293.65 (5) (a), and 295.443.

18 **SECTION 6.** 29.604 (4) (intro.) of the statutes is amended to read:

19 29.604 (4) PROHIBITION. (intro.) Except as provided in sub. (6r) and (7m) or as
20 permitted by departmental rule or permit:

21 **SECTION 7.** 29.604 (4) (c) (intro.) of the statutes is amended to read:

22 29.604 (4) (c) (intro.) No person may do any of the following to any wild plant
23 of an endangered or threatened species that is on public property or on property that
24 he or she does not own or lease, except in the course of forestry or agricultural

ASSEMBLY BILL 426**SECTION 7**

1 practices ~~or~~, in the construction, operation, or maintenance of a utility facility, or as
2 part of bulk sampling activities under s. 295.45:

3 **SECTION 8.** 29.604 (7m) of the statutes is created to read:

4 29.604 **(7m)** BULK SAMPLING ACTIVITIES. A person may take, transport, or
5 possess a wild animal on the department's endangered and threatened species list
6 without a permit under this section if the person avoids and minimizes adverse
7 impacts to the wild animal to the extent practicable, if the taking, transporting, or
8 possession does not result in wounding or killing the wild animal, and if the person
9 takes, transports, or possesses the wild animal for the purpose of bulk sampling
10 activities under s. 295.45.

11 **SECTION 9.** 30.12 (3m) (c) (intro.) of the statutes is amended to read:

12 30.12 **(3m)** (c) (intro.) The department shall issue an individual permit to a
13 riparian owner for a structure or a deposit pursuant to an application under par. (a)
14 if the department finds that all of the following ~~apply~~ requirements are met:

15 **SECTION 10.** 30.123 (8) (c) of the statutes is renumbered 30.123 (8) (c) (intro.)
16 and amended to read:

17 30.123 **(8)** (c) (intro.) The department shall issue an individual permit
18 pursuant to an application under par. (a) if the department finds that ~~the~~ all of the
19 following requirements are met:

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

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

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

24 **SECTION 11.** 30.133 (2) of the statutes is amended to read:

ASSEMBLY BILL 426

1 30.133 (2) This section does not apply to riparian land located within the
2 boundary of any hydroelectric project licensed or exempted by the federal
3 government, if the conveyance is authorized under any license, rule or order issued
4 by the federal agency having jurisdiction over the project. This section does not apply
5 to riparian land that is associated with an approval required for bulk sampling or
6 mining that is required under subch. III of ch. 295.

7 **SECTION 12.** 30.19 (4) (c) (intro.) of the statutes is amended to read:

8 30.19 (4) (c) (intro.) The department shall issue an individual permit pursuant
9 to an application under par. (a) if the department finds that all of the following ~~apply~~
10 requirements are met:

11 **SECTION 13.** 30.195 (2) (c) (intro.) of the statutes is amended to read:

12 30.195 (2) (c) (intro.) The department shall issue an individual permit applied
13 for under this section to a riparian owner if the department determines that all of the
14 following ~~apply~~ requirements are met:

15 **SECTION 14.** 31.23 (3) (e) of the statutes is created to read:

16 31.23 (3) (e) This subsection does not apply to a bridge that is constructed,
17 maintained, or operated in association with mining or bulk sampling that is subject
18 to subch. III of ch. 295.

19 **SECTION 15.** 44.40 (5) of the statutes is amended to read:

20 44.40 (5) This section does not apply as provided in s. 295.45 (6) or to any state
21 agency action which is subject to 16 USC 461 to 470mm.

22 **SECTION 16.** 70.395 (1e) of the statutes is amended to read:

23 70.395 (1e) DISTRIBUTION. Fifteen days after the collection of the tax under ss.
24 70.38 to 70.39, the department of administration, upon certification of the
25 department of revenue, shall transfer the amount collected in respect to mines not

ASSEMBLY BILL 426**SECTION 16**

1 in operation on November 28, 1981, to the investment and local impact fund, except
2 that the department of administration shall transfer 50 percent of the amount
3 collected from each person extracting ferrous metallic minerals to the investment
4 and local impact fund and the department of revenue shall deposit 50 percent of the
5 amount collected from any such person into the general fund.

6 **SECTION 17.** 87.30 (2) of the statutes is renumbered 87.30 (2) (a) and amended
7 to read:

8 87.30 (2) (a) ~~Every~~ Except as provided in par. (b), every structure, building, fill,
9 or development placed or maintained within any floodplain in violation of a zoning
10 ordinance adopted under this section, or s. 59.69, 61.35 or 62.23 is a public nuisance
11 and the creation thereof may be enjoined and maintenance thereof may be abated by
12 action at suit of any municipality, the state or any citizen thereof. Any person who
13 places or maintains any structure, building, fill or development within any
14 floodplain in violation of a zoning ordinance adopted under this section, or s. 59.69,
15 61.35 or 62.23 may be fined not more than \$50 for each offense. Each day during
16 which such violation exists is a separate offense.

17 **SECTION 18.** 87.30 (2) (b) of the statutes is created to read:

18 87.30 (2) (b) Paragraph (a) does not apply to a structure, building, fill, or
19 development placed or maintained as part of a mining operation covered by a mining
20 permit under s. 295.58.

21 **SECTION 19.** 107.001 (1) of the statutes is amended to read:

22 107.001 (1) "Exploration mining lease" means any lease, option to lease, option
23 to purchase or similar conveyance entered into for the purpose of determining the
24 presence, location, quality or quantity of ~~metalliferous~~ nonferrous metallic minerals
25 or for the purpose of mining, developing or extracting ~~metalliferous~~ nonferrous

ASSEMBLY BILL 426

1 metallic minerals, or both under ch. 293. Any lease, option to lease, option to
2 purchase or similar conveyance entered into by a mining company is rebuttably
3 presumed to be an exploration mining lease.

4 **SECTION 20.** 107.001 (2) of the statutes is repealed.

5 **SECTION 21.** 107.01 (intro.) of the statutes is amended to read:

6 **107.01 Rules governing mining rights.** (intro.) Where there is no contract
7 between the parties or terms established by the landlord to the contrary the following
8 rules and regulations shall be applied to mining contracts and leases for the digging
9 of ~~ores and~~ nonferrous metallic minerals:

10 **SECTION 22.** 107.01 (2) of the statutes is amended to read:

11 107.01 (2) The discovery of a crevice or range containing ~~ores or minerals~~
12 nonferrous metallic minerals shall entitle the discoverer to the ores or minerals
13 pertaining thereto, subject to the rent due the discoverer's landlord, before as well
14 as after the ~~ores or minerals~~ nonferrous metallic minerals are separated from the
15 freehold; but such miner shall not be entitled to recover any ~~ores or minerals~~
16 nonferrous metallic minerals or the value thereof from the person digging on the
17 miner's range in good faith and known to be mining thereon until the miner shall
18 have given notice of the miner's claim; and the miner shall be entitled to the ~~ores or~~
19 ~~minerals~~ nonferrous metallic minerals dug after such notice.

20 **SECTION 23.** 107.02 of the statutes is amended to read:

21 **107.02 Mining statement; penalty.** When there is no agreement between the
22 parties to any mining lease, license or permit, to mine or remove ore nonferrous
23 metallic minerals from any lands in this state, regulating the method of reporting
24 the amount of ore nonferrous metallic minerals taken, the person mining and
25 removing the ~~ore or ores~~ nonferrous metallic minerals shall keep proper and correct

ASSEMBLY BILL 426**SECTION 23**

1 books, and therefrom to make and deliver by or before the fifteenth day of each month
2 to the lessor, owner or person entitled thereto, a detailed statement covering the
3 operations of the preceding month. The statement shall show the total amount of
4 tons or pounds of each kind of ~~ore~~ nonferrous metallic minerals produced; if sold, then
5 to whom sold, giving the date of sale, date of delivery to any railroad company,
6 naming the company, and the station where delivered or billed for shipment; the
7 name and address of the purchaser; the price per ton at which sold and the total value
8 of each kind of ~~ore~~ nonferrous metallic minerals so sold. The books shall be always
9 open to any owner, lessor, licensor or stockholder, if the owner, lessor or licensor is
10 a corporation, and to any person or stockholder interested in any such mining
11 operations, for the purpose of inspection and taking copies thereof or abstracts
12 therefrom. Any person and every officer, agent or employee of any thereof, who
13 violates this section, or who makes any false or incomplete entries on any such books
14 or statements, shall be fined not less than \$100 or imprisoned in the county jail for
15 not more than 3 months or both.

16 **SECTION 24.** 107.03 of the statutes is amended to read:

17 **107.03 Conflicting claims.** In case of conflicting claims to a crevice or range
18 bearing ~~ores or~~ nonferrous metallic minerals the court may continue any action to
19 enforce a claim or grant any necessary time for the purpose of allowing parties to
20 prove up their mines or diggings if it satisfactorily appears necessary to the ends of
21 justice. In such case the court or judge may appoint a receiver and provide that the
22 mines or diggings be worked under the receiver's direction, subject to the order of the
23 court, in such manner as best ascertains the respective rights of the parties. The ~~ores~~
24 ~~or~~ nonferrous metallic minerals raised by either party pending the dispute shall be

ASSEMBLY BILL 426

1 delivered to the receiver, who may, by order of the court or judge, pay any rent or other
2 necessary expenses therefrom.

3 **SECTION 25.** 107.04 of the statutes is amended to read:

4 **107.04 Lessee's fraud; failure to work mine.** Any miner who conceals or
5 disposes of any ~~ores or~~ nonferrous metallic minerals or mines or diggings for the
6 purpose of defrauding the lessor of rent or who neglects to pay any rent on ~~ores or~~
7 nonferrous metallic minerals raised by the miner for 3 days after the notice thereof
8 and claim of the rent, shall forfeit all right to his or her mines, diggings or range; and
9 the landlord after the concealment or after 3 days have expired from the time of
10 demanding rent, may proceed against the miner to recover possession of the mines
11 or diggings in circuit court as in the case of a tenant holding over after the
12 termination of the lease. If a miner neglects to work his or her mines or diggings
13 according to the usages of miners, without reasonable excuse, he or she shall likewise
14 forfeit the mines or diggings and the landlord may proceed against the miner in like
15 manner to recover possession of the mines or diggings.

16 **SECTION 26.** 107.11 of the statutes is amended to read:

17 **107.11 Account of ore nonferrous metallic minerals received.** Every
18 person operating a metal recovery system and every purchaser of ~~ores and~~
19 nonferrous metallic minerals shall keep a substantially bound book, ruled into
20 suitable columns, in which shall be entered from day to day, as ~~ores or~~ nonferrous
21 metallic minerals are received, the following items: the day, month and year when
22 received; the name of the person from whom purchased; the name of the person by
23 whom hauled and delivered; name of the owner of the land from which the ~~ores or~~
24 nonferrous metallic minerals were obtained, or if not known, the name of the
25 diggings or some distinct description of the land. The bound book shall be kept at the

ASSEMBLY BILL 426

1 furnace or at the usual place of business of such person or purchaser or his or her
2 agent in this state, and shall be open to authorized representatives of the department
3 of revenue at reasonable times for inspection and taking extracts.

4 **SECTION 27.** 107.12 of the statutes is amended to read:

5 **107.12 Penalty.** If any person operating a metal recovery system or purchaser
6 of ores and nonferrous metallic minerals or the agent of any such person or purchaser
7 doing business fails to keep such a book or to make such entries as required under
8 s. 107.11 or unreasonably refuses to show the book for inspection or taking extracts
9 or makes false entries in the book he or she shall forfeit \$10 for each offense, one-half
10 to the use of the prosecutor; and each day such failure or refusal continues shall be
11 deemed a distinct and separate offense.

12 **SECTION 28.** 107.20 (1) of the statutes is amended to read:

13 107.20 (1) Any provision of an exploration mining lease entered into after April
14 25, 1978, granting an option or right to determine the presence, location, quality or
15 quantity of metalliferous nonferrous metallic minerals shall be limited to a term not
16 exceeding 10 years from the date on which the exploration mining lease is recorded
17 in the office of the register of deeds of the county where the property is located, except
18 that any provision of an exploration mining lease entered into after April 25, 1978,
19 granting an option or right to determine the quality and quantity of metalliferous
20 nonferrous metallic minerals under a prospecting permit shall be limited to a term
21 not exceeding 10 years from the date that the lessee applies for a prospecting permit
22 under s. 293.35, if the lessee applies for the prospecting permit within 10 years from
23 the date on which the exploration mining lease is recorded in the office of the register
24 of deeds of the county where the property is located.

25 **SECTION 29.** 107.20 (2) of the statutes is amended to read:

ASSEMBLY BILL 426

1 107.20 (2) Any provision of an exploration mining lease entered into after April
2 25, 1978, granting an option or right to develop or extract metalliferous nonferrous
3 metallic minerals shall be limited to a term not exceeding 50 years from the date on
4 which the exploration mining lease is recorded in the office of the register of deeds
5 of the county where the property is located.

6 **SECTION 30.** 107.30 (1) of the statutes is amended to read:

7 107.30 (1) “Concentrates” means the nonferrous mineral-rich, finished,
8 primary products of a concentrator.

9 **SECTION 31.** 107.30 (18) of the statutes is amended to read:

10 107.30 (18) “Refining” means the process by which ~~metal or valuable a~~
11 nonferrous metallic mineral is extracted and purified from an ore or concentrate and
12 includes but is not limited to hydrometallurgical operations such as leaching and
13 pyrometallurgical operations such as fire refining, roasting and cindering.

14 **SECTION 32.** 107.30 (20) of the statutes is amended to read:

15 107.30 (20) “Smelting” means any metallurgical operation in which nonferrous
16 metal is separated by fusion from those impurities with which it may be chemically
17 combined or physically mixed such as in ores.

18 **SECTION 33.** 160.19 (12) of the statutes is amended to read:

19 160.19 (12) The requirements in this section shall not apply to rules governing
20 an activity regulated under ch. 293 or subch. III of ch. 295, or to a solid waste facility
21 regulated under subch. III of ch. 289 which is part of an activity regulated under ch.
22 293 or subch. III of ch. 295, except that the department may promulgate new rules
23 or amend rules governing this type of activity, practice or facility if the department
24 determines that the amendment or promulgation of rules is necessary to protect
25 public health, safety or welfare.

ASSEMBLY BILL 426**SECTION 34**

1 **SECTION 34.** 196.491 (4) (b) 2. of the statutes is amended to read:

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

10 **SECTION 35.** 281.65 (2) (a) of the statutes is amended to read:

11 281.65 (2) (a) “Best management practices” means practices, techniques or
12 measures, except for dredging, identified in areawide water quality management
13 plans, which are determined to be effective means of preventing or reducing
14 pollutants generated from nonpoint sources, or from the sediments of inland lakes
15 polluted by nonpoint sources, to a level compatible with water quality objectives
16 established under this section and which do not have an adverse impact on fish and
17 wildlife habitat. The practices, techniques or measures include land acquisition,
18 storm sewer rerouting and the removal of structures necessary to install structural
19 urban best management practices, facilities for the handling and treatment of
20 milkhouse wastewater, repair of fences built using grants under this section and
21 measures to prevent or reduce pollutants generated from mine tailings disposal sites
22 for which the department has not approved a plan of operation under s. 289.30 or s.
23 295.51.

24 **SECTION 36.** 281.75 (17) (b) of the statutes is amended to read:

ASSEMBLY BILL 426

1 281.75 (17) (b) This section does not apply to contamination which is
2 compensable under subch. II of ch. 107 or s. 293.65 (4) or to contamination arising
3 out of mining operations governed by subch. III of ch. 295.

4 **SECTION 37.** 287.13 (5) (e) of the statutes is amended to read:

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

10 **SECTION 38.** 289.35 of the statutes is amended to read:

11 **289.35 Shoreland and floodplain zoning.** Solid waste facilities are
12 prohibited within areas under the jurisdiction of shoreland and floodplain zoning
13 regulations adopted under ss. 59.692, 61.351, 62.231 ~~and~~, 87.30, and 281.31, except
14 that the department may issue permits authorizing facilities in such areas. If the
15 department issues a permit under this section, the permit shall specify the location,
16 height, or size of the solid waste facility authorized under the permit.

17 **SECTION 39.** 289.62 (2) (g) 2. and 6. of the statutes are amended to read:

18 289.62 (2) (g) 2. For nonhazardous tailing solids ~~or for nonacid producing~~
19 ~~taconite tailing solids~~, 0.2 cent per ton.

20 6. For nonhazardous waste rock ~~or for nonacid producing taconite waste rock~~,
21 0.1 cent per ton.

22 **SECTION 40.** 292.01 (1m) of the statutes is amended to read:

23 292.01 (1m) “Approved mining facility” has the meaning given in s. 289.01 (4)
24 and includes a mining waste site as defined in s. 295.41 (31).

25 **SECTION 41.** Chapter 293 (title) of the statutes is amended to read:

CHAPTER 293**NONFERROUS METALLIC MINING**

SECTION 42. 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 43. 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 44. 293.01 (8) of the statutes is repealed.

SECTION 45. 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

ASSEMBLY BILL 426

1 prospecting, including commercial extraction, agglomeration, beneficiation,
2 construction of roads, removal of overburden and the production of refuse.

3 **SECTION 46.** 293.01 (12) of the statutes is amended to read:

4 293.01 (12) "Mining site" means the surface area disturbed by a mining
5 operation, including the surface area from which the nonferrous metallic minerals
6 or refuse or both have been removed, the surface area covered by refuse, all lands
7 disturbed by the construction or improvement of haulageways, and any surface areas
8 in which structures, equipment, materials and any other things used in the mining
9 operation are situated.

10 **SECTION 47.** 293.01 (12m) of the statutes is created to read:

11 293.01 (12m) "Nonferrous metallic mineral" means an ore or other earthen
12 material to be excavated from the natural deposits on or in the earth for its metallic
13 content but not primarily for its iron oxide content.

14 **SECTION 48.** 293.01 (18) of the statutes is amended to read:

15 293.01 (18) "Prospecting" means engaging in the examination of an area for the
16 purpose of determining the quality and quantity of nonferrous metallic minerals,
17 other than for exploration but including the obtaining of ~~an ore~~ a nonferrous metallic
18 mineral sample, by such physical means as excavating, trenching, construction of
19 shafts, ramps and tunnels and other means, other than for exploration, which the
20 department, by rule, identifies, and the production of prospecting refuse and other
21 associated activities. "Prospecting" shall not include such activities when the
22 activities are, by themselves, intended for and capable of commercial exploitation of
23 the underlying nonferrous ore body. However, the fact that prospecting activities and
24 construction may have use ultimately in mining, if approved, shall not mean that
25 prospecting activities and construction constitute mining within the meaning of sub.

ASSEMBLY BILL 426

1 (9), provided such activities and construction are reasonably related to prospecting
2 requirements.

3 **SECTION 49.** 293.01 (25) of the statutes is amended to read:

4 293.01 (25) "Refuse" means all waste soil, rock, mineral, liquid, vegetation and
5 other material, except merchantable by-products, directly resulting from or
6 displaced by the prospecting or mining and from the cleaning or preparation of
7 nonferrous metallic minerals during prospecting or mining operations, and shall
8 include all waste materials deposited on or in the prospecting or mining site from
9 other sources.

10 **SECTION 50.** 293.21 (1) (a) of the statutes is amended to read:

11 293.21 (1) (a) "Driller" means a person who performs core, rotary, percussion
12 or other drilling involved in exploration for nonferrous metallic minerals.

13 **SECTION 51.** 293.25 (2) (a) of the statutes is amended to read:

14 293.25 (2) (a) *Applicability.* Except as provided under par. (b), ss. 293.21 and
15 293.81 and rules promulgated under those sections apply to radioactive waste site
16 exploration, to activities related to radioactive waste site exploration and to persons
17 engaging in or intending to engage in radioactive waste site exploration or related
18 activities in the same manner as those sections and rules are applicable to
19 nonferrous metallic mineral exploration, to activities related to nonferrous metallic
20 mineral exploration and to persons engaging in or intending to engage in nonferrous
21 metallic mineral exploration or related activities.

22 **SECTION 52.** 293.25 (4) of the statutes is amended to read:

23 293.25 (4) REGULATION OF EXPLORATION AND RELATED PROVISIONS. Sections
24 293.13, 293.15 (1) to (12), 293.85, 293.87 and 293.89 and rules promulgated under
25 those sections apply to radioactive waste site exploration, to activities related to

ASSEMBLY BILL 426

1 radioactive waste site exploration and to persons engaging in or intending to engage
2 in radioactive waste site exploration or related activities in the same manner as
3 those sections and rules are applicable to nonferrous metallic mineral exploration,
4 to activities related to nonferrous metallic mineral exploration and to persons
5 engaging in or intending to engage in nonferrous metallic mineral exploration or
6 related activities.

7 **SECTION 53.** 293.37 (4) (b) of the statutes is amended to read:

8 293.37 (4) (b) If the department finds that the anticipated life and total area
9 of a nonferrous metallic mineral deposit are of sufficient magnitude that reclamation
10 of the mining site consistent with this chapter requires a comprehensive plan for the
11 entire affected area, it shall require an operator to submit with the application for
12 a mining permit, amended mining site or change in mining or reclamation plan, a
13 comprehensive long-term plan showing, in detail satisfactory to the department, the
14 manner, location and time for reclamation of the entire area of contiguous land which
15 will be affected by mining and which is owned, leased or under option for purchase
16 or lease by the operator at the time of application. Where a nonferrous metallic
17 mineral deposit lies on or under the lands of more than one operator, the department
18 shall require the operators to submit mutually consistent comprehensive plans.

19 **SECTION 54.** 293.47 (1) (b) of the statutes is amended to read:

20 293.47 (1) (b) “Geologic information” means information concerning
21 descriptions of an a nonferrous ore body, descriptions of reserves, tonnages and
22 grades of nonferrous ore, descriptions of a drill core or bulk sample including
23 analysis, descriptions of drill hole depths, distances and similar information related
24 to the nonferrous ore body.

25 **SECTION 55.** 293.50 (1) (b) of the statutes is amended to read:

ASSEMBLY BILL 426

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

3 **SECTION 56.** 293.50 (2) (intro.) of the statutes is amended to read:

4 293.50 (2) (intro.) Beginning on May 7, 1998, the department may not issue a
5 permit under s. 293.49 for the purpose of the mining of a sulfide ore body until all of
6 the following conditions are satisfied:

7 **SECTION 57.** 293.50 (2) (a) of the statutes is amended to read:

8 293.50 (2) (a) The department determines, based on information provided by
9 an applicant for a permit under s. 293.49 and verified by the department, that a
10 mining operation has operated in a sulfide ore body which, together with the host
11 nonferrous rock, has a net acid generating potential in the United States or Canada
12 for at least 10 years without the pollution of groundwater or surface water from acid
13 drainage at the tailings site or at the mine site or from the release of heavy metals.

14 **SECTION 58.** 293.50 (2) (b) of the statutes is amended to read:

15 293.50 (2) (b) The department determines, based on information provided by
16 an applicant for a permit under s. 293.49 and verified by the department, that a
17 mining operation that operated in a sulfide ore body which, together with the host
18 nonferrous rock, has a net acid generating potential in the United States or Canada
19 has been closed for at least 10 years without the pollution of groundwater or surface
20 water from acid drainage at the tailings site or at the mine site or from the release
21 of heavy metals.

22 **SECTION 59.** 293.51 (1) of the statutes is amended to read:

23 293.51 (1) Upon notification that an application for a prospecting or mining
24 permit has been approved by the department but prior to commencing prospecting
25 or mining, the operator shall file with the department a bond conditioned on faithful

ASSEMBLY BILL 426

1 performance of all of the requirements of this chapter and all rules adopted by the
2 department under this chapter. The bond shall be furnished by a surety company
3 licensed to do business in this state. In lieu of a bond, the operator may deposit cash,
4 certificates of deposit or government securities with the department. Interest
5 received on certificates of deposit and government securities shall be paid to the
6 operator. The amount of the bond or other security required shall be equal to the
7 estimated cost to the state of fulfilling the reclamation plan, in relation to that
8 portion of the site that will be disturbed by the end of the following year. The
9 estimated cost of reclamation of each prospecting or mining site shall be determined
10 by the department on the basis of relevant factors including, but not limited to,
11 expected changes in the price index, topography of the site, methods being employed,
12 depth and composition of overburden and depth of nonferrous metallic mineral
13 deposit being mined.

14 **SECTION 60.** 293.65 (3) (a) of the statutes is amended to read:

15 293.65 (3) (a) An approval under s. 281.34 is required to withdraw groundwater
16 for prospecting or mining or to dewater mines if the capacity and rate of withdrawal
17 of all wells involved in the withdrawal of groundwater or the dewatering of mines
18 exceeds 100,000 gallons each day. A permit under s. 283.31 is required to discharge
19 pollutants resulting from the dewatering of mines.

20 **SECTION 61.** 293.65 (3) (b) of the statutes is amended to read:

21 293.65 (3) (b) The department may not issue an approval under s. 281.34 if the
22 withdrawal of groundwater for prospecting or mining purposes or the dewatering of
23 mines will result in the unreasonable detriment of public or private water supplies
24 or the unreasonable detriment of public rights in the waters of the state. No
25 withdrawal of groundwater for prospecting or mining purposes or the dewatering of

ASSEMBLY BILL 426**SECTION 61**

1 mines may be made to the unreasonable detriment of public or private water supplies
2 or the unreasonable detriment of public rights in the waters of the state.

3 **SECTION 62.** 293.86 of the statutes is amended to read:

4 **293.86 Visitorial powers of department.** Any duly authorized officer,
5 employee or representative of the department may enter and inspect any property,
6 premises or place on or at which any prospecting or ~~metallie~~ mining operation or
7 facility is located or is being constructed or installed at any reasonable time for the
8 purpose of ascertaining the state of compliance with this chapter and chs. 281, 285,
9 289 to 292, ~~295~~ and 299, subchs. I and II of ch. 295, and rules adopted pursuant
10 thereto. No person may refuse entry or access to any such authorized representative
11 of the department who requests entry for purposes of inspection, and who presents
12 appropriate credentials, nor may any person obstruct, hamper or interfere with any
13 such inspection. The department shall furnish to the prospector or operator, as
14 indicated in the prospecting or mining permit, a written report setting forth all
15 observations, relevant information and data which relate to compliance status.

16 **SECTION 63.** Chapter 295 (title) of the statutes is amended to read:

17 **CHAPTER 295**

18 **NONMETALLIC MINING RECLAMATION;**

19 **OIL AND GAS;**

20 **FERROUS METALLIC MINING**

21 **SECTION 64.** 295.16 (4) (f) of the statutes is amended to read:

22 295.16 (4) (f) Any mining operation, the reclamation of which is required in a
23 permit obtained under ch. 293 or subch. III of ch. 295.

24 **SECTION 65.** Subchapter III of chapter 295 [precedes 295.40] of the statutes is
25 created to read:

ASSEMBLY BILL 426**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, sulfite 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 mining operations.

(5) That the provisions in ch. 293, 2009 stats., are a deterrent to ferrous mining in this state and are not necessary to ensure that ferrous mining will be conducted in an environmentally sound manner.

(6) That simplifying and shortening the permitting process for ferrous metallic mineral mining when compared to nonferrous metallic mineral mining, as Minnesota and Michigan have done, will encourage ferrous metallic 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 areas of

ASSEMBLY BILL 426

1 special natural resource interest and to wetlands, including wetlands located within
2 areas of special natural resource interest and that, therefore, the use of wetlands for
3 bulk sampling and mining activities, including the disposal or storage of mining
4 wastes or materials, or the use of other lands for mining activities that would have
5 a significant adverse impact on wetlands, is presumed to be necessary.

6 **295.41 Definitions.** In this subchapter:

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

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

12 (3) "Approval" means any permit, license, certification, contract, or other
13 authorization that the department issues, or any other action by the department,
14 that is required for exploration, to engage in bulk sampling at a bulk sampling site,
15 or to construct or operate a mining site, including any action required for any of the
16 following:

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

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

21 (c) The withdrawal of land designated as managed forest land under subch. VI
22 of ch. 77 and any modification of, or amendment to, a managed forest land
23 management plan necessitated by the withdrawal of the land.

ASSEMBLY BILL 426

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

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

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

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

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

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

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

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

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

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

ASSEMBLY BILL 426

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

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

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

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

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

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

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

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

18 **(23)** “Groundwater quality standards” means numerical values consisting of
19 enforcement standards and preventive action limits contained in Table 1 of s. NR
20 140.10, and Table 2 of s. NR 140.12, Wis. Adm. Code, and any preventive action limits
21 for indicator parameters identified under s. NR 140.20 (2).

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

ASSEMBLY BILL 426

1 **(25)** “Merchantable by-product” means all waste soil, rock, mineral, liquid,
2 vegetation, and other material directly resulting from or displaced by the mining,
3 cleaning, or preparation of minerals, during mining operations, that are determined
4 by the department to be marketable upon a showing of marketability made by the
5 operator, accompanied by a verified statement by the operator of his or her intent to
6 sell the material within 3 years from the time it results from or is displaced by
7 mining.

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

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

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

18 **(29)** “Mining site” means the surface area disturbed by mining, including the
19 surface area from which the ferrous minerals or refuse or both have been removed,
20 the surface area covered by refuse, all lands disturbed by the construction or
21 improvement of haulageways, and any surface areas in which structures,
22 equipment, materials, and any other things used in the mining are situated.

23 **(30)** “Mining waste” means tailings, waste rock, mine overburden, waste
24 treatment sludges, or other discarded material, including solid, liquid, semi-solid,
25 or contained gaseous material, resulting from mining or from the cleaning or

ASSEMBLY BILL 426

1 preparation of ferrous minerals during mining operations, except that “mining
2 waste” does not include topsoil and mine overburden intended to be returned to the
3 mining site or used in the reclamation process and that is placed on the mining site
4 for those purposes, as provided for in the approved mining plan, and does not include
5 merchantable by-products.

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

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

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

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

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

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

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

ASSEMBLY BILL 426

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

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

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

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

11 **(42)** “Related person” means any person that owns or operates a mining site
12 in the United States and that is one of the following when an application for a mining
13 permit is submitted to the department:

14 (a) The parent corporation of the applicant.

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

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

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

ASSEMBLY BILL 426

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

4 **(46)** “Unsuitable” means that the land proposed for mining is not suitable for
5 mining because the mining activity will more probably than not destroy or
6 irreparably damage any of the following:

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

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

14 1. Wilderness areas.

15 2. Wild and scenic rivers.

16 3. National or state parks.

17 4. Wildlife refuges and areas.

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

19 **(46m)** “Wastewater and sludge storage or treatment lagoon” means a
20 man-made containment structure that is constructed primarily of earthen
21 materials, that is for the treatment or storage of wastewater, storm water, or sludge,
22 and that is not a land disposal system, as defined in s. NR 140.05 (11), Wis. Adm.
23 Code.

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

ASSEMBLY BILL 426

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

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

4 **295.43 Responsibilities related to mining.** The department shall serve as
5 the central unit of state government to ensure that the impact from mining and
6 reclamation on the air, lands, waters, plants, fish, and wildlife in this state will be
7 minimized and mitigated to the extent practicable. The administration of
8 occupational health and safety laws and rules that apply to mining remain
9 exclusively the responsibility of the department of safety and professional services.
10 The powers and duties of the geological and natural history survey under s. 36.25 (6)
11 remain exclusively the responsibility of the geological and natural history survey.
12 Nothing in this section prevents the department of safety and professional services
13 and the geological and natural history survey from cooperating with the department
14 in the exercise of their respective powers and duties.

15 **295.44 Exploration. (1) DEFINITIONS.** In this section:

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

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

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

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

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

ASSEMBLY BILL 426

1 (f) "Dump bailer" means a cylindrical container with a valve that empties the
2 contents of the container at the bottom of a drillhole.

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

5 (h) "Exploration" means the on-site geologic examination from the surface of
6 an area by core, rotary, percussion, or other drilling, where the diameter of the hole
7 does not exceed 18 inches, for the purpose of searching for ferrous minerals or
8 establishing the nature of a known ferrous mineral deposit, including associated
9 activities such as clearing and preparing sites or constructing roads for drilling.
10 "Exploration" does not include drilling for the purpose of collecting soil samples or
11 for determining radioactivity by means of placement of devices that are sensitive to
12 radiation.

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

15 (j) "Neat cement grout" means a mixture consisting of type A portland cement
16 and water.

17 (k) "Termination" means the filling of drillholes and the reclamation of a
18 drilling site.

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

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

ASSEMBLY BILL 426

- 1 1. A description of the site where the exploration will take place and a map of
2 that area showing the locations of the exploration.
- 3 2. A description of the means and method that will be used for the exploration.
- 4 3. A description of the grading and stabilization of the excavation, sides, and
5 benches that will be conducted.
- 6 4. A description of how the grading and stabilization of any deposits of refuse
7 will be conducted.
- 8 5. A description of how any diversion and drainage of water from the
9 exploration site will be conducted.
- 10 6. A description of how any backfilling will be conducted.
- 11 7. A description of how any pollutant-bearing minerals or materials will be
12 covered.
- 13 8. A description of how the topsoils will be removed and stockpiled or how other
14 measures will be taken to protect topsoils before exploration.
- 15 9. A description of how vegetative cover will be provided.
- 16 10. A description of how any water impoundment will be accomplished.
- 17 11. Identification of the means and method that will be used to prevent
18 significant environmental pollution to the extent practicable.
- 19 (b) A reclamation plan, designed to minimize adverse effects to the
20 environment to the extent practicable, that includes all of the following:
 - 21 1. A description of how all toxic and hazardous wastes and other solid waste
22 will be disposed of in solid or hazardous waste disposal facilities licensed under ch.
23 289 or 291 or otherwise in an environmentally sound manner.
 - 24 2. A description of how topsoil will be preserved for purposes of future use in
25 reclamation.

ASSEMBLY BILL 426

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

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

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

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

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

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

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

18 **(2m)** CONFIDENTIALITY. The department shall protect as confidential any
19 information, other than effluent data, contained in an application for an exploration
20 license, upon a showing that the information is entitled to protection as a trade
21 secret, as defined in s. 134.90 (1) (c), and any information relating to the location,
22 quality, or quantity of a ferrous mineral deposit, to production or sales figures, or to
23 processes or production unique to the applicant or that would tend to adversely affect
24 the competitive position of the applicant if made public.

ASSEMBLY BILL 426

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

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

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

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

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

ASSEMBLY BILL 426

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

10 (b) An application for an exploration license is considered to be
11 administratively complete on the day that it is submitted, unless, before the 10th
12 business day after receiving the application, the department provides the applicant
13 with written notification that the application is not administratively complete. The
14 department may determine that an application is not administratively complete only
15 if the application does not include an exploration plan; a reclamation plan; an
16 exploration license fee; a bond; a certificate of insurance; or a copy of the applicant's
17 most recent annual report to the federal securities and exchange commission on form
18 10-K, or, if this is not available, a report of the applicant's current assets and
19 liabilities or other data necessary to establish that the applicant is competent to
20 conduct exploration in this state. The department may not consider the quality of
21 the information provided. In a notice provided under this paragraph, the
22 department shall identify what is missing from the application.

23 (c) If the department provides notification, in compliance with par. (b), that an
24 application is not administratively complete, the department shall issue the
25 exploration license or provide the notice required under par. (f) of intent not to issue

ASSEMBLY BILL 426

1 the license within 7 business days of receipt of the missing item, unless the
2 application is for an upcoming license year. If the application is for an upcoming
3 license year, the department shall issue the exploration license or provide the notice
4 required under par. (f) of intent not to issue the exploration license within 7 business
5 days of receipt of the missing item or on the next July 1, whichever is later.

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

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

16 (f) Before denying an application, the department shall provide the applicant
17 with written notification of its intent not to issue the exploration license, setting
18 forth all of the reasons for its intent not to issue the exploration license, including
19 reference to competent evidence supporting its position. The department shall
20 provide the person with an opportunity to correct any deficiencies in the exploration
21 plan or restoration plan within 10 business days. If the person amends the
22 exploration plan or reclamation plan and corrects the deficiencies, the department
23 shall issue the exploration license within 10 business days of receipt of the amended
24 exploration plan or reclamation plan, unless the application is for an upcoming
25 license year. If an application is for an upcoming license year, the department shall

ASSEMBLY BILL 426

1 issue the exploration license within 10 business days of receipt of the amended
2 exploration plan or reclamation plan or on the next July 1, whichever is later. If the
3 department determines that the deficiencies have not been corrected, it shall deny
4 the application, in writing, setting forth all of the reasons for its determination,
5 including reference to competent evidence supporting the determination.

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

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

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

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

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

ASSEMBLY BILL 426

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

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

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

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

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

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

ASSEMBLY BILL 426

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

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

7 1. A renewal fee of \$150.

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

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

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

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

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

21 (c) An application for renewal of an exploration license is considered to be
22 administratively complete on the day that it is submitted, unless, before the 10th
23 business day after receiving the application, the department provides the explorer
24 with written notification that the application is not administratively complete. The
25 department may determine that an application is not administratively complete only

ASSEMBLY BILL 426

1 if the application does not include a renewal fee; a bond; a certificate of insurance;
2 a copy of the applicant's most recent annual report to the federal securities and
3 exchange commission on form 10-K, or, if this is not available, a report of the
4 applicant's current assets and liabilities or other data necessary to establish that the
5 applicant is competent to conduct exploration in this state; or either a statement that
6 no changes are being proposed to the exploration plan and reclamation plan
7 previously approved by the department or a new exploration plan or reclamation
8 plan if the applicant proposes to make changes. The department may not consider
9 the quality of any information provided. In a notice provided under this paragraph,
10 the department shall identify what is missing from the application.

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

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

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

23 (g) Before denying an application, the department shall provide the person who
24 submitted the application with written notification of its intent not to renew the
25 exploration license, setting forth all of the reasons for its intent not to renew the

ASSEMBLY BILL 426

1 exploration license, including reference to competent evidence supporting its
2 position. The department shall provide the person with an opportunity to correct any
3 deficiencies in the exploration plan or restoration plan within 10 business days. If
4 the person amends the exploration plan or reclamation plan and corrects the
5 deficiencies, the department shall renew the exploration license within 10 business
6 days of receipt of the amended exploration plan or reclamation plan. If the
7 department determines that the deficiencies have not been corrected, it shall deny
8 the application, in writing, setting forth all of the reasons for its determination,
9 including reference to competent evidence supporting the determination.

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

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

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

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

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

ASSEMBLY BILL 426

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

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

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

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

ASSEMBLY BILL 426

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

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

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

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

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

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

23 **(12) EXEMPTION.** This section does not apply to an operator with a mining
24 permit who is engaged in exploration activities on lands included in a mining plan

ASSEMBLY BILL 426

1 and reclamation plan, if the mining plan or reclamation plan contains provisions
2 relating to termination of the exploration activities.

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

6 **295.443 Local impact committee; local agreement.** (1) A county, town,
7 village, city, or tribal government likely to be substantially affected by potential or
8 proposed mining may designate an existing committee, or establish a committee, for
9 purposes of:

10 (a) Facilitating communications between operators and itself.

11 (b) Analyzing implications of mining.

12 (c) Reviewing and commenting on reclamation plans.

13 (d) Developing solutions to mining-induced growth problems.

14 (e) Recommending priorities for local action.

15 (f) Formulating recommendations to the investment and local impact fund
16 board regarding distribution of funds under s. 70.395 (2) (g) related to mining for
17 ferrous minerals.

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

19 **(1m)** A county, town, village, city, or tribal government that requires an
20 operator to obtain an approval or permit under a zoning or land use ordinance and
21 a county, town, village, or city in which any portion of a proposed mining site is
22 located may, individually or in conjunction with other counties, towns, villages,
23 cities, or tribal governments, enter into one or more agreements with an operator for
24 the development of a mining operation. The local agreement may include any of the
25 following:

ASSEMBLY BILL 426

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

3 (b) The duration of the agreement.

4 (c) The uses permitted on the land.

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

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

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

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

13 (h) Other provisions determined to be reasonable and necessary by the parties
14 to the agreement.

15 **(2)** A county, town, village, city, or tribal government affected in common with
16 another county, town, village, city, or tribal government by a proposed or existing
17 mine may cooperatively designate or establish a joint committee, but may also
18 maintain a separate committee under sub. (1). Committees under this section may
19 include representatives of affected units of government, business, and industry,
20 manpower, health, protective or service agencies, school districts, or environmental
21 and other interest groups or other interested parties.

22 **(3)** Persons applying for an exploration license under s. 295.44 shall thereafter
23 appoint a liaison person to any committee established under sub. (1) or (2), and shall
24 provide such reasonable information as is requested by the committee. Operators
25 and persons applying for an exploration license under s. 295.44 shall thereafter

ASSEMBLY BILL 426

1 make reasonable efforts to design and operate mining operations in harmony with
2 community development objectives.

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

16 **295.45 Bulk sampling plan. (1)** A person who intends to engage in bulk
17 sampling may file a bulk sampling plan with the department. The collection of data
18 under a bulk sampling plan may include sampling and analysis related to
19 geophysical, geochemical, groundwater, and surface water conditions, as well as any
20 other data or studies necessary to prepare an application for a mining permit,
21 including the mining plan, reclamation plan, mining waste site feasibility study and
22 plan of operation, or any other approval required for the proposed mining.

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

24 (a) A description and map of the bulk sampling site, including the number of
25 acres in the site, the number of acres of land that will be disturbed, if any, associated

ASSEMBLY BILL 426**SECTION 65**

1 with each bulk sampling location, and the locations and types of sampling or studies
2 to be conducted at each bulk sampling location.

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

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

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

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

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

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

23 **(2m)** The department shall protect as confidential any information, other than
24 effluent data, contained in a bulk sampling plan and in any application for an
25 approval that is required before the bulk sampling may be implemented, upon a

ASSEMBLY BILL 426

1 showing that the information is entitled to protection as a trade secret, as defined in
2 s. 134.90 (1) (c), and any information relating to the location, quality, or quantity of
3 a ferrous mineral deposit, to production or sales figures, or to processes or production
4 unique to the applicant or that would tend to adversely affect the competitive
5 position of the applicant if made public.

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

14 **(3e)** If a storm water discharge permit under s. 283.33 (1) (a) or a water quality
15 certification under rules promulgated under subch. II of ch. 281 to implement 33
16 USC 1341 (a) is required before bulk sampling may be implemented, the person filing
17 the bulk sampling plan may apply for and be issued the permit or certification.

18 **(3m)** The department shall act on any required construction site erosion
19 control and storm water management approval, notwithstanding any authorization
20 by the department of a local program to administer construction site erosion control
21 and storm water management requirements.

22 **(3s)** An applicant shall submit all of the following at the same time:

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

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

ASSEMBLY BILL 426**SECTION 65**

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

2 (3).

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

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

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

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

21 **(5)** (a) A person who intends to engage in bulk sampling shall submit with the
22 bulk sampling plan a bond in the amount of \$5,000 that is conditioned on faithful
23 performance of the requirements of this section, that is issued by a surety company
24 licensed to do business in this state, and that provides that the bond may not be

ASSEMBLY BILL 426

1 canceled by the surety, except after not less than 90 days' notice to the department
2 in writing by registered or certified mail.

3 (b) If the surety for a bond submitted under par. (a) issues a cancellation notice,
4 the person who filed the bulk sampling plan shall deliver a replacement bond at least
5 30 days before the expiration of the 90-day notice period. If the person fails to submit
6 a replacement bond, the person may not engage in bulk sampling until the person
7 submits a replacement bond.

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

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

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

21 **(6)** (a) If the department determines that proposed bulk sampling will have an
22 adverse effect, as defined in s. 44.31 (1), on a historic property, as defined in s. 44.31
23 (3), that is a listed property, as defined in s. 44.31 (4), that is on the Wisconsin
24 inventory of historic places, as defined in s. 44.31 (12), or that is on the list of locally
25 designated historic places under s. 44.45, but that the applicant is taking measures

ASSEMBLY BILL 426

1 to minimize that adverse effect, no notice to the state historic preservation officer
2 under s. 44.40 (1) or negotiations between the department and state historic
3 preservation officer under s. 44.40 (3) are required.

4 (b) If an adverse effect described in par. (a) cannot practicably be minimized,
5 any negotiations between the department and state historic preservation officer
6 shall be concluded no later than 60 days after the date on which the application for
7 the approval that authorizes the bulk sampling activity that will have an adverse
8 effect is considered to be complete under sub. (4).

9 (7) Notwithstanding any provision in ch. 23, 29, 30, 169, 281, 283, 285, 289, or
10 291 or a rule promulgated under those chapters applicable to an approval identified
11 under sub. (3), all of the following apply:

12 (a) When considering an application for an approval identified under sub. (3),
13 the department shall recognize the fixed location of the metallic mineral deposits,
14 the water needs inherent in mining, and the need for mining waste sites and
15 processing facilities, including wastewater and sludge storage or treatment lagoons,
16 to be contiguous to the location of the ferrous mineral deposits.

17 (b) When issuing an approval, the department shall require the bulk sampling
18 activity for which the approval is issued to be conducted at locations that result in
19 the fewest overall adverse environmental impacts, to the extent practicable.

20 (8) In determining whether to approve or deny an application for an approval
21 identified under sub. (3), the department shall consider the site-specific erosion
22 control plan, the revegetation plan, and any compensation or mitigation under s.
23 295.60, any measures under s. 295.605, or any conservation measures under s.
24 295.61 that the applicant proposes to take.

ASSEMBLY BILL 426

1 **(9)** Notwithstanding any inconsistent period in ch. 23, 29, 30, 169, 281, 283,
2 285, 289, or 291 or in a rule promulgated under those chapters that is applicable to
3 an approval identified under sub. (3), the department shall approve or deny the
4 application within 30 days after the day on which the application is considered to be
5 complete under sub. (4) if any of the following apply:

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

9 (b) The application is for a determination of eligibility for coverage under a
10 general permit or a registration permit.

11 **(10)** (a) Notwithstanding any inconsistent period in ch. 23, 29, 30, 169, 281,
12 283, 285, 289, or 291 or in a rule promulgated under those chapters that is applicable
13 to an approval identified under sub. (3), the department shall approve or deny any
14 application for an approval identified under sub. (3) to which sub. (9) does not apply
15 within 60 days after the date on which the application is considered to be complete
16 under sub. (4), unless the application is for an individual permit for which federal law
17 requires the opportunity for public comment or the ability to request a public hearing
18 prior to issuance of the approval.

19 (b) The department shall publish a class 1 notice, under ch. 985, that describes
20 the availability of information concerning the activity for which an approval
21 described in par. (a) is required, its proposed decision, its draft approval, information
22 or summaries related to the approval, the department's analyses and preliminary
23 determinations relating to the approval, the preapplication description under s.
24 295.46, any additional information that a law concerning the approval requires to be

ASSEMBLY BILL 426

1 made available, and the opportunity to submit written comments within 30 days
2 after the notice is published.

3 (c) In the notice under par. (b), the department shall also specify the date, time,
4 and location of the public informational hearing. The department shall send the
5 notice to any person to whom the department is required to give notice of any
6 proposed determination, application, or hearing concerning an approval described
7 in par. (a) under the laws relating to the issuance of the approval.

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

15 (e) The department shall hold a public informational hearing within 30 days
16 after publishing the notice under par. (b). The department shall hold the public
17 informational hearing in the county where the majority of the proposed bulk
18 sampling site is located. If there is more than one approval described in par. (a), the
19 department shall hold a single public informational hearing covering all of the
20 approvals and the preapplication description under s. 295.46. If possible, the
21 department shall include consideration of an approval that is an individual permit
22 for which federal law requires the opportunity for public comment or the ability to
23 request a public hearing prior to issuance of the approval in the public informational
24 hearing under this paragraph. The public informational hearing under this
25 paragraph is not a contested case hearing under ch. 227.

ASSEMBLY BILL 426

1 **(10g)** (a) If it is not possible to coordinate the public comment period and public
2 informational hearing for an approval that is an individual permit for which federal
3 law requires the opportunity for public comment or the ability to request a public
4 hearing prior to issuance of the approval with the public comment period and public
5 informational hearing under sub. (10), the department shall issue a separate public
6 notice and hold a separate public informational hearing for the approval in
7 accordance with the law governing the approval.

8 (b) The department shall approve or deny the application for an approval to
9 which par. (a) applies within 180 days after the date on which the application is
10 considered to be complete under sub. (4).

11 **(10r)** An approval identified under sub. (3) is issued upon mailing and is final
12 and effective upon issuance.

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

16 **295.46 Preapplication description.** (1) A person who files a bulk sampling
17 plan under s. 295.45 with regard to a proposed mining project shall file, together with
18 the bulk sampling plan, a general description of the proposed mining project. A
19 person who proposes to engage in a mining project, but who does not file a bulk
20 sampling plan, shall file a general description of the proposed mining project with
21 the department at the time that the person provides the notice of intent to file an
22 application for a mining permit under s. 295.465. The general description shall
23 include all of the following:

24 (a) A description of the proposed mining site.

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

ASSEMBLY BILL 426

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

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

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

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

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

11 6. The elevation of the water table.

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

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

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

19 **(2)** (a) If the department provides notice to an applicant under s. 295.45 (3) that
20 no approvals are required for bulk sampling or if a person who proposes to engage
21 in a mining project files a preapplication description of the proposed mining project
22 at the time that the person provides the notice of intent to file an application for a
23 mining permit under s. 295.465 because the person did not file a bulk sampling plan,
24 the department shall publish a class 1 notice, under ch. 985, of a public informational
25 hearing on the proposed mining project. The department shall publish the notice

ASSEMBLY BILL 426

1 when if notifies the applicant that no approvals are required or after it receives the
2 notice of intent.

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

4 1. Describe the availability of the preapplication description.

5 2. Describe the opportunity to submit written comments within 30 days after
6 the notice is published.

7 3. Specify the date, time, and location of the public informational hearing.

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

9 1. The clerk of any city, village, town, or county within which any part the
10 proposed mining site lies.

11 2. The clerk of any city, village, or town, contiguous to any city, village, or town
12 within which any portion of the proposed mining site is located.

13 3. Any regional planning commission for the area within which the affected
14 area lies.

15 4. Any state agency that the department knows may be required to grant a
16 permit or other authorization necessary for the proposed mining project.

17 5. Any interested person who has requested notification.

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

22 **295.465 Preapplication notification.** (1) At least 12 months before filing
23 an application for a mining permit under s. 295.47, a person proposing to engage in
24 a mining project shall notify the department in writing of the intention to file an
25 application for a mining permit. After receiving the notification, the department

ASSEMBLY BILL 426

1 shall hold at least one meeting with the person to make a preliminary assessment
2 of the project's scope, to make an analysis of alternatives, to identify potential
3 interested persons, and to ensure that the person making the proposal is aware of
4 all of the following:

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

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

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

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

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

15 (b) Any available information relevant to the potential impacts of the mining
16 project on rare, threatened, or endangered species and historic or cultural resources
17 and any other information relevant to potential impacts that may occur from the
18 project that are required to be considered under s. 1.11.

19 (c) Available information to evaluate the environmental impact of the project
20 and to expedite the preparation of the environmental impact report and the
21 environmental impact statement, including information concerning preliminary
22 environmental reviews, field studies, and investigations; monitoring programs to
23 establish baseline water quality; laboratory studies and investigations; advisory
24 services; and the timing and the processes associated with any necessary
25 consultations with other state or federal agencies and within the department, such

ASSEMBLY BILL 426

1 as those required for endangered resources and cultural resource consultations and
2 approvals.

3 **295.47 Application for mining permit. (1)** (a) No person may engage in
4 mining or reclamation at any mining site unless the mining site is covered by a
5 mining permit and by written authorization to mine under s. 295.59 (3). An
6 applicant shall submit an application for a mining permit to the department in
7 writing and in reproducible form and shall provide the number of copies that are
8 requested by the department. An application and a mining permit are required for
9 each separate mining site. The applicant shall distribute copies of the application
10 to the clerk of any city, village, town, or county with zoning jurisdiction over the
11 proposed site, to the clerk of any city, village, town, or county within whose
12 boundaries any portion of the proposed mining site is located, and to the main public
13 library of each city, village, town, or county with zoning jurisdiction over the proposed
14 site or within whose boundaries any portion of the proposed site is located.

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

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

21 (a) A mining plan under s. 295.48.

22 (b) A reclamation plan under s. 295.49.

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

ASSEMBLY BILL 426

1 (e) The name and address of each owner of land within the mining site and each
2 person known by the applicant to hold any option or lease on land within the mining
3 site.

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

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

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

11 a. A forfeiture by the applicant, principal shareholder of the applicant, or a
12 related person of a mining reclamation bond that was sufficient to cover all costs of
13 reclamation and was posted in accordance with a permit or other approval for a
14 mining operation in the United States, unless the forfeiture was by agreement with
15 the entity for whose benefit the bond was posted.

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

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

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

ASSEMBLY BILL 426

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

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

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

7 **295.48 Mining plan. (1) GENERAL.** An applicant for a mining permit shall
8 submit as part of the application a mining plan that includes a description of the
9 proposed mining site and either a detailed map drawn to a scale approved by the
10 department or aerial photographs, if the photographs show the details to the
11 satisfaction of the department, prepared and certified by a competent engineer,
12 surveyor, or other person approved by the department that show all of the following:

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

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

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

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

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

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

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

24 (b) The elevation of the water table.

ASSEMBLY BILL 426

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

4 (d) The nature and depth of the overburden.

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

8 (a) The sequence of mining operations.

9 (b) The handling of overburden materials.

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

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

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

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

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

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

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

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

ASSEMBLY BILL 426

1 proposes to take in the event of that an accidental health or environmental hazard
2 occurs.

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

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

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

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

12 **(4) REQUIRED DEMONSTRATIONS.** The applicant shall demonstrate in the mining
13 plan that the proposed mining will be consistent with the reclamation plan under s.
14 295.49 and that all of the following will apply, at a minimum:

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

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

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

ASSEMBLY BILL 426

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

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

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

7 3. Reagents will not be used or stored at the mining site if they are not included
8 in the mining waste site feasibility study and plan of operation or in the mining plan,
9 except for reagents for laboratory, testing, research, or experimental purposes.

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

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

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

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

19 (i) The following apply:

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

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

ASSEMBLY BILL 426

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

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

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

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

9 **295.49 Reclamation plan. (1)** An applicant for a mining permit shall submit
10 as part of the application a reclamation plan, designed to minimize adverse effects
11 to the environment to the extent practicable, that includes all of the following:

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

15 (am) Prereclamation and postreclamation drawings.

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

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

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

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

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

ASSEMBLY BILL 426

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

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

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

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

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

11 (b) At the conclusion of mining activity, each tunnel, shaft, and other
12 underground opening will be sealed in a manner that will prevent seepage of water
13 in amounts that may be expected to create a safety, health, or environmental hazard,
14 unless the applicant demonstrates alternative uses for the tunnel, shaft, or other
15 underground opening that do not endanger public health or safety and that conform
16 to applicable environmental protection and mine safety laws and rules.

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

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

23 (e) Merchantable by-products will be stabilized.

24 (f) Diversion and drainage of water from the mining site, including the mining
25 waste site and sites for the disposal of wastes that are not mining wastes, will be

ASSEMBLY BILL 426

1 adequate to prevent erosion and contamination of surface water and groundwater
2 to the extent practicable.

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

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

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

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

13 (k) All recoverable topsoil from surface areas disturbed by the mining will be
14 removed and stored in an environmentally acceptable manner for use in reclamation
15 or in the mitigation or minimization of adverse environmental impacts.

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

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

24 **(3)** If it is physically or economically impracticable or environmentally or
25 socially undesirable for the reclamation process to return the area affected by mining

ASSEMBLY BILL 426

1 to its original state, the applicant shall provide, in the reclamation plan, the reasons
2 it would be impracticable or undesirable and a discussion of alternative conditions
3 and uses to which the affected area can be put.

4 **295.51 Mining waste site location criteria; feasibility study, and plan**
5 **of operation. (1) DEFINITIONS.** In this section:

6 (a) "Groundwater flow net" means a drawing showing equipotential contour
7 lines and the direction that groundwater will flow.

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

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

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

15 **(1e) HAZARDOUS MINING WASTE.** (a) Prior to the informational hearing under s.
16 295.57 (5) the department shall designate any mining wastes identified by the
17 department as hazardous under s. 291.05 (1).

18 (b) The disposal of any mining wastes that are identified by the department as
19 hazardous under s. 291.05 (1) in a mining waste site is subject to this subchapter, and
20 not to chs. NR 660 to 669, Wis. Adm. Code, except as necessary to comply with
21 applicable federal regulations adopted under the federal Resource Conservation and
22 Recovery Act, 42 USC 6901 to 6991m.

23 **(1m) LOCATION CRITERIA.** (a) Except as provided in par. (b), no person may locate
24 or operate a mining waste site, excluding the portion of a mining site from which

ASSEMBLY BILL 426

1 ferrous minerals are extracted and that is backfilled with mining waste, within 1,000
2 feet of any of the following:

3 1. The nearest edge of the right-of-way of any state trunk highway, as defined
4 in s. 340.01 (60).

5 2. The boundary of any state or national park.

6 3. The boundary of a scenic easement purchased by the department or the
7 department of transportation.

8 4. The boundary of a designated scenic or wild river.

9 5. A scenic overlook designated by the department by rule.

10 6. A hiking or biking trail designated by the department or the U.S. Congress.

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

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

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

ASSEMBLY BILL 426

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

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

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

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

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

21 **(1s) BACKFILLED WASTE SITE.** For surface mining, the portion of a mining site
22 from which ferrous minerals are extracted and that is backfilled with mining waste
23 and any buildings, structures, roads, or drainage controls associated with that
24 portion of the mining site may be considered a single mining waste site.

ASSEMBLY BILL 426

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

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

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

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

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

ASSEMBLY BILL 426**SECTION 65**

1 (d) Chemical and physical characteristics testing, including testing to
2 determine the leaching potential of the mining wastes and the composition of the
3 resulting leachate, using, at a minimum, the method in federal environmental
4 protection agency publication EPA 600/2-78-054, except that this testing is not
5 required if the applicant demonstrates, based on the analyses in pars. (b) and (c) or
6 on past experience, that there is not a probability for significant environmental
7 damage or a probability of an adverse impact on public health, safety, or welfare.

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

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

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

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

ASSEMBLY BILL 426

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

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

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

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

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

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

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

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

ASSEMBLY BILL 426

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

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

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

13 a. Specific conductance.

14 b. Temperature.

15 c. Hydrogen ion concentration (pH).

16 d. Dissolved oxygen.

17 e. The major anions sulfate, chloride, and bicarbonate.

18 f. The major cations calcium, magnesium, potassium, and sodium.

19 g. Other total and dissolved metals, including aluminum, iron, and manganese,
20 that may be introduced by the mining activities.

21 h. General chemistry, including total alkalinity, total organic carbon, gross
22 alpha, gross beta, ammonia, nitrate, total dissolved solids, total hardness, and total
23 suspended solids.

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

ASSEMBLY BILL 426

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

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

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

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

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

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

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

ASSEMBLY BILL 426

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

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

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

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

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

16 1. Topography.

17 2. Hydrology, including surface water drainage patterns and important
18 hydrologic features such as navigable waters, springs, drainage divides, and
19 wetlands.

20 3. Geology, including the nature and distribution of bedrock and
21 unconsolidated deposits.

22 4. Hydrogeology, including depth of groundwater, flow directions, recharge and
23 discharge areas, groundwater divides, aquifers, and the identification of the aquifers
24 used by all public and private wells within at least 1,200 feet of the proposed mining
25 waste site.

ASSEMBLY BILL 426

- 1 5. Groundwater and surface water quality and precipitation chemistry.
- 2 6. Climatology.
- 3 7. Identification of owners of land adjacent to the proposed mining waste site.
- 4 8. Zoning.
- 5 9. Existing land uses with particular emphasis on known recreational, historic,
6 archaeological, scientific, cultural, or scenic significance.
- 7 10. Existing or proposed access roads and weight restrictions on those roads.
- 8 11. Identification of aquatic and terrestrial ecosystems such as stream orders
9 and classifications.
- 10 (m) A discussion of alternative methods of disposing of mining waste materials,
11 including an analysis of the practicability of the reuse, sale, recovery, or processing
12 of the mining wastes for other purposes.
- 13 (n) An analysis of the results of the mining waste characterizations under sub.
14 (3), the site specific information under sub. (4) and this subsection, and the regional
15 information under par. (L) in relation to the approach for locating the mining waste
16 site and developing appropriate design, construction, operation, monitoring, and
17 long-term care requirements for each type of mining waste.
- 18 (o) A proposed mining waste site design, based on conclusions resulting from
19 analysis of the mining waste characterizations under sub. (3) and the site data under
20 sub. (4), that includes all of the following:
 - 21 1. A map, using the existing site conditions plan under par. (c) as a base, that
22 shows proposed access, lateral extent of filling, and phases of mining waste site
23 development.
 - 24 2. A series of cross-sections, using the geological cross-sections under par. (d)
25 as the base, that show existing topography, proposed base grades, and final grades.

ASSEMBLY BILL 426**SECTION 65**

1 3. Preliminary earthwork balance calculations, showing amounts of materials
2 expected to be moved on the mining waste site prior to the disposal of mining waste.

3 4. Proposed methods for leachate control.

4 5. Proposed methods of mining waste site development, phasing, access control,
5 and other special design features.

6 6. Expected material balances showing the quantities of each type of mining
7 waste identified in par. (a) showing the amounts generated, disposed of on site, and
8 taken off site, including all of the following:

9 a. The projected conditions existing at the end of a typical year of production.

10 b. The projected conditions existing at the end of operations.

11 c. The projected conditions existing at the end of reclamation.

12 7. A discussion of the reasoning behind the design of the major features of the
13 mining waste site, such as traffic routing, base grade and relationships to subsurface
14 conditions, anticipated waste types and characteristics, phases of development,
15 mining waste site monitoring, and similar design features.

16 8. A proposed monitoring program, based on potential variations in the quality
17 and quantity of mining waste and methods of processing, transport and disposal, and
18 on the variability of important environmental conditions, designed to monitor the
19 proposed mining waste site for compliance with all environmental standards that
20 are applicable under this subchapter.

21 9. The results of engineering and hydrologic modeling to assess mining waste
22 site performance relative to compliance with applicable groundwater quality
23 standards to a depth of not more than 1,000 feet into the Precambrian bedrock or to
24 the final depth of the mining excavation, whichever is greater, and to compliance
25 with applicable surface water quality standards, examining a period equal to the

ASSEMBLY BILL 426

1 proposed period in which the mining waste site is proposed to operate plus 100 years
2 after closure of the mining waste site. The applicant may also include information
3 from other mining operations and operations for the extraction of nonferrous
4 metallic minerals to substantiate that the proposed mining waste site design,
5 including associated contingency plans and monitoring and response plans, will
6 allow for the operation and closure of the mining waste site in a manner that will not
7 substantially adversely affect groundwater and surface water quality in accordance
8 with applicable standards.

9 10. If the applicant proposes to expand an existing mining waste site, an
10 evaluation of the existing mining waste site design and operation.

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

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

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

24 1. Geology of the mining waste site including type and homogeneity of the
25 foundation.

ASSEMBLY BILL 426

- 1 2. Materials and methods to be used for embankment construction.
- 2 3. Physical and chemical characteristics of the mining waste as deposited and
- 3 predicted changes through time.
- 4 4. The potential area to be affected in case of failure, considering land use and
- 5 the surrounding environment.
- 6 5. Requirements of the mine safety and health administration of the federal
- 7 department of labor.
- 8 (s) An economic analysis, including an engineer's cost estimate, for mining
- 9 waste site closure and long-term care.
- 10 (t) Identification and analysis of alternatives to the design and location of any
- 11 new proposed mining waste site and discussion of operation alternatives to the
- 12 extent they have a significant impact on design and location alternatives.
- 13 (u) An appendix that includes all of the following:
- 14 1. Boring logs, soil tests, well construction data, and water level
- 15 measurements.
- 16 2. A description of the methods and equations used in the analysis of the raw
- 17 data.
- 18 3. References.
- 19 **(6) CONTENTS RELATING TO OPERATION.** An applicant for a mining permit shall
- 20 submit as part of the mining waste site feasibility study and plan of operation
- 21 provisions relating to operation of the mining waste site including all of the following:
- 22 (a) Engineering plans consisting of all of the following:
- 23 1. An existing site conditions plan sheet indicating site conditions before
- 24 development to the extent not provided under sub. (5).

ASSEMBLY BILL 426

1 2. A base grade plan sheet indicating mining waste site base grades or the
2 appearance of the mining waste site if it were excavated in its entirety to the base
3 elevation, before installation of any engineering modifications and before disposal
4 of any mining wastes.

5 3. An engineering modifications plan sheet indicating the appearance of the
6 mining waste site after installation of engineering modifications.

7 4. A final site topography plan sheet indicating the appearance of the site at
8 closing including the details necessary to prepare the mining waste site for
9 reclamation and long-term care.

10 5. A series of phasing plan sheets showing initial mining waste site
11 preparations for each subsequent major phase or new area where substantial mining
12 waste site preparation must be performed, along with a list of construction items and
13 quantities projected to be necessary to prepare the phase indicated.

14 6. A site monitoring plan sheet showing the location of all devices for the
15 monitoring of leachate quality, leachate production, and groundwater quality and
16 levels in both the natural zone of saturation and that developed within the mining
17 waste site, along with a table indicating the parameters to be monitored for and the
18 frequency of monitoring before and during mining waste site development.

19 7. A long-term care plan sheet showing the completion of closure and
20 indicating those items anticipated to be performed during the period of long-term
21 care for the mining waste site, along with a discussion of the procedures to be used
22 for the inspection and maintenance of runoff control structures, settlement, erosion
23 damage, leachate control facilities, and leachate and groundwater monitoring and
24 a table listing those items and the anticipated schedule for monitoring and
25 maintenance.

ASSEMBLY BILL 426

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

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

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

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

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

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

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

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

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

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

19 j. All temporary and permanent fencing.

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

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

24 m. Leachate and groundwater monitoring devices and systems.

25 n. Disposal areas for severe weather operations.

ASSEMBLY BILL 426

- 1 o. Support buildings, utilities, gates, and signs.
- 2 p. Handling areas for the segregation of various types of mining waste.
- 3 q. Construction notes and references to details.
- 4 r. On the appropriate plan sheet, the location of each cross-section under subd.
- 5 9., with the section labeled using the mining waste site grid system.
- 6 9. A series of mining waste site cross-sections, drawn perpendicular and
- 7 parallel to the mining waste site baseline at a maximum distance of 500 feet between
- 8 cross-sections and at points of important construction features, each cross-section
- 9 showing, where applicable: existing and proposed base and final grades; soil borings
- 10 and monitoring wells that the section passes through or is adjacent to; soil types,
- 11 bedrock, and water table; leachate control, collection, and monitoring systems;
- 12 quantity of mining waste and area filled by each major mining waste type; drainage
- 13 control structures; access roads and ramps on the mining waste site perimeter and
- 14 within the active fill area; the filling sequence or phases; and other appropriate site
- 15 features.
- 16 10. Drawings and typical sections for, as appropriate, drainage control
- 17 structures, tailings distribution systems, access roads, fencing, leachate control
- 18 systems and monitoring devices, buildings, signs, and other construction details.
- 19 (b) A plan for initial site preparations, including a discussion of the field
- 20 measurements, photographs to be taken, and sampling and testing procedures to be
- 21 used to verify that the in-field conditions encountered were the same as those
- 22 defined in the mining waste site feasibility study and plan of operation and to
- 23 document that the mining waste site was constructed according to the engineering
- 24 plans and specifications submitted for department approval.

ASSEMBLY BILL 426**SECTION 65**

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

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

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

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

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

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

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

ASSEMBLY BILL 426

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

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

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

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

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

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

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

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

ASSEMBLY BILL 426

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

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

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

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

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

17 (i) All surface water drainage ditches, culverts, and other drainage control
18 structures are designed for a rainfall event measured in terms of the depth of the
19 rainfall occurring within a 24-hour period and having an expected recurrence
20 interval of once in 100 years.

21 (j) The final slopes of the completed mining waste site will be no less than 2
22 percent and no greater than 50 percent, unless the mining waste site is specifically
23 designed for a final use compatible with other slopes.

ASSEMBLY BILL 426

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

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

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

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

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

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

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

ASSEMBLY BILL 426

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

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

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

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

11 (w) Tailings pipelines are as short as practicable.

12 (x) Upstream rainfall catchment areas are minimized.

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

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

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

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

24 **295.53 Environmental impact statement. (1) CONSULTANTS.** The
25 department may enter into contracts for environmental consultant services under

ASSEMBLY BILL 426

1 s. 23.41 to assist in the preparation of an environmental impact statement or to
2 provide assistance to applicants.

3 (2) NOTICE. After the department receives an application for a mining permit,
4 it shall notify the public and affected agencies that an environmental impact
5 statement will be prepared for the proposed mine and that the process of identifying
6 major issues under s. NR 150.21 (3), Wis. Adm. Code, is beginning.

7 (3) ENVIRONMENTAL IMPACT REPORT. (a) An applicant shall prepare an
8 environmental impact report for the mining project. In the environmental impact
9 report, the applicant shall provide a description of the proposed mining project, the
10 present environmental conditions in the area and the anticipated environmental
11 impacts of the proposed mining project, the present socioeconomic conditions in the
12 area and the anticipated socioeconomic impacts of the proposed mining project,
13 details of any wetlands compensation program under s. 295.60 (8), any measures for
14 navigable waters under s. 295.605 (4), any proposed changes to the forest
15 designations specified in sub. (4) (c), and the alternatives to the proposed mining
16 project. As the applicant provides more information or makes modifications to the
17 proposed mining project, the department may revise the requirements it specified
18 under s. 295.465 (2) to ensure the potential environmental effects can be identified
19 in the department's environmental impact statement.

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

ASSEMBLY BILL 426

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

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

8 (d) The department shall accept original data from an environmental impact
9 report for use in the environmental impact statement and need not verify all original
10 data provided by the applicant to accept the data as accurate. The department shall
11 use original data from an environmental impact report in the environmental impact
12 statement if the data contains the information identified in sub. (1) (e) 1. and any of
13 the following conditions is met:

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

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

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

24 **(4) PROCEDURE FOR ENVIRONMENTAL IMPACT STATEMENT.** (a) The department shall
25 prepare an environmental impact statement for every application for a mining

ASSEMBLY BILL 426

1 permit. In preparing the environmental impact statement, the department shall
2 comply with s. 1.11 (2) and s. NR 150.22 (2), Wis. Adm. Code.

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

- 6 1. Tourism.
- 7 2. Employment.
- 8 3. Schools and medical care facilities.
- 9 4. Private and public social services.
- 10 5. The tax base.
- 11 6. The local economy.

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

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

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

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

24 4. The transfer of land for which amounts were awarded by the department,
25 including under s. 23.09 (17m), 26.38, 28.11 (5r), or 77.895, to fund the acquisition

ASSEMBLY BILL 426

1 of, or to fund activities conducted on, forest land and any modification of, or
2 amendment to, a forest stewardship management plan or other plan necessitated by
3 the transfer of the land.

4 (d) The public notice, informational hearing, and comment provisions in s.
5 295.57, the provision concerning the effective date of approvals in s. 295.58 (6), and
6 the provisions for review in s. 295.77 apply to an environmental impact statement
7 prepared under this subsection. If the department revises and redistributes an
8 environmental impact statement or portion of an environmental impact statement
9 prepared under this section, the department shall distribute the environmental
10 impact statement or portion of the environmental impact statement as provided in
11 s. 295.57, but the period for public comment is 30 days, rather than 45 days.

12 (e) The department shall conduct its environmental review process jointly with
13 any federal or local agency that consents to a joint environmental review process.
14 The department may adopt any environmental analysis prepared by another state
15 agency or by a federal or local agency. The department may enter into a written
16 agreement with any of those agencies that have a major responsibility related to or
17 that are significantly affected by the proposed mining. In the written agreement, the
18 parties shall define the responsibility of each agency in the development of a single
19 environmental impact statement on the proposed mining and outline the procedures
20 to be used in the regulatory process. The department shall be the lead agency for any
21 environmental review process involving other state agencies. To the extent that any
22 federal or local agency's environmental review process conflicts with the provisions
23 of this section or s. 295.57, then the department shall follow the provisions of this
24 section and s. 295.57 and may only coordinate its environmental review to the extent
25 consistent with the provisions of this section and s. 295.57. The department shall

ASSEMBLY BILL 426

1 comment on any federal agency's environmental assessment or environmental
2 impact statement associated with a mining project in accordance with s. NR 150.30,
3 Wis. Adm. Code.

4 **(5) RELATIONSHIP TO OTHER LAWS.** This section and s. 295.57 govern the
5 department's obligations under ss. 1.11 and 1.12 with respect to a mining project.
6 Sections 23.11 (5) and 23.40 and ss. NR 2.085, 2.09, and 2.157, Wis. Adm. Code, do
7 not apply with respect to a mining project. The rest of ch. NR 2, Wis. Adm. Code, only
8 applies with respect to a mining project to the extent that it does not conflict with this
9 section and s. 295.57. Sections NR 150.24 and 150.25, Wis. Adm. Code, do not apply
10 with respect to a mining project. The rest of ch. 150, Wis. Adm. Code, only applies
11 with respect to a mining project to the extent that it does not conflict with this section
12 and s. 295.57.

13 **295.56 Exemptions. (1)** The department may grant an exemption, as
14 provided in this section, from any of the requirements of this subchapter applicable
15 to any of the following:

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

18 (b) A mining permit.

19 (c) Any other approval.

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

24 (b) An applicant may obtain an exemption only if the applicant submits the
25 request no later than the 180th day after the application for the mining permit is

ASSEMBLY BILL 426

1 administratively complete under s. 295.57 (2), unless the condition that is the basis
2 for the requested exemption is not known to the applicant before that day, in which
3 case the deadline is extended to the 20th day before the deadline under s. 295.57 (7)
4 (a).

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

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

12 2. The exemption will result in significant adverse environmental impacts, but
13 the applicant will offset those impacts through compensation or mitigation, as
14 provided in s. 295.60; through the measures provided in s. 295.605, or through the
15 conservation measures provided in s. 295.61.

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

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

24 **295.57 Application procedure. (1) SUBMISSION.** (a) An applicant shall
25 submit the application for a mining permit as provided in s. 295.47.

ASSEMBLY BILL 426

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

7 **(2) DETERMINATION OF ADMINISTRATIVE COMPLETENESS.** (a) An application for a
8 mining permit is administratively complete on the 30th day after the department
9 receives the application, unless, before that day, the department provides the
10 applicant with written notification that the application is not administratively
11 complete. The department may determine that an application is not
12 administratively complete only if the applicant does not submit one of the following:

13 2. A mining plan that contains the types of information specified in s. 295.48
14 (1), (2), (3), and (4).

15 3. A reclamation plan that contains the types of information specified in s.
16 295.49 (1), (2), and (3).

17 4. A mining waste site feasibility study and plan of operation that contains the
18 types of information specified in s. 295.51 (5), (6), and (7).

19 5. An environmental impact report.

20 6. The evidence required under s. 295.47 (2) (g).

21 (b) In making the determination under par. (a), the department may not
22 consider the quality of the information provided.

23 (c) In a notice provided under par. (a), the department shall specify what is
24 missing from the application.

ASSEMBLY BILL 426**SECTION 65**

1 (d) The running of the 30-day period under par. (a) is tolled from the day on
2 which the department provides notification, in compliance with par. (a), that an
3 application is not administratively complete until the day on which the applicant
4 submits the missing or revised mining plan, reclamation plan, mining waste site
5 feasibility study and plan of operation, environmental impact report, or evidence
6 required under s. 295.47 (2) (g). The department shall notify the applicant when it
7 receives the missing or revised mining plan, reclamation plan, waste site feasibility
8 study and plan of operation, environmental impact report, or evidence required
9 under s. 295.47 (2) (g). The application is administratively complete on the day on
10 which the department provides the notification to the applicant or on the expiration
11 of the remainder of the 30-day period, whichever is sooner.

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

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

20 **(3m) RECEIPT OF CERTAIN APPROVALS.** If a storm water discharge permit under
21 s. 283.33 (1) (a) or a water quality certification under rules promulgated under subch.
22 II of ch. 281 to implement 33 USC 1341 (a) is needed for a mining operation, the
23 person applying for the mining permit may apply for and be issued the permit or
24 certification.

ASSEMBLY BILL 426

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

4 1. The application for the mining permit, including the mining plan,
5 reclamation plan, and mining waste site feasibility study and plan of operation.

6 2. Any of the following relating to an approval other than the mining permit:

7 a. The application.

8 b. A draft approval.

9 c. Information or summaries relating to the approval.

10 3. The environmental impact statement, environmental impact report, and any
11 additional supporting information used in the department's evaluation of the
12 proposed mining.

13 4. The department's analyses and preliminary determinations relating to any
14 approval.

15 (b) The department shall distribute a notice that describes the availability of
16 the information under par. (a); the opportunity for written public comment, including
17 an invitation for the submission of written comments by any person within 45 days
18 after the notice is published; and the date, time, and location of the public
19 informational hearing and that includes any additional information that a law
20 concerning any approval requires to be provided. The department shall publish the
21 notice as a Class I notice under ch. 985. The department shall also send the notice
22 to all of the following:

23 1. The clerk of any city, village, town, or county with zoning jurisdiction over
24 the proposed mining site.

ASSEMBLY BILL 426

1 2. The clerk of any city, village, town, or county within whose boundaries any
2 portion of the proposed mining site is located.

3 3. The clerk of any city, village, or town, contiguous to any city, village, or town
4 within whose boundaries any portion of the proposed mining site is located.

5 4. The main public library of each city, village, town, or county with zoning
6 jurisdiction over the proposed mining site or within whose boundaries any portion
7 of the proposed mining site is located.

8 5. Any regional planning commission for the area within which the proposed
9 mining site lies.

10 6. Any state agency that the department knows is required to grant a permit
11 or other authorization necessary for the construction or operation of the proposed
12 mining project.

13 7. The federal environmental protection agency, U.S. Army Corps of Engineers,
14 and states potentially affected by the proposed discharge if a water discharge permit
15 under ch. 283 or a water quality certification for a federal wetland under s. 295.60
16 (4) is to be considered at the public informational hearing.

17 8. The federal environmental protection agency and appropriate agencies in
18 other states that may be affected if an air pollution control permit under ch. 285 is
19 to be considered at the public informational hearing.

20 9. If a water withdrawal permit under s. 295.61 for a withdrawal of surface
21 water is to be considered at the public informational hearing, the persons specified
22 in s. 30.18 (4) (a).

23 10. If an individual permit under s. 30.12 for a structure through which water
24 transferred from the Great Lakes basin would be returned to the source watershed
25 through a stream tributary to one of the Great Lakes is to be considered at the public

ASSEMBLY BILL 426

1 informational hearing, the governing body of each city, village, and town through
2 which the stream flows or that is adjacent to the stream downstream from the point
3 at which the water would enter the stream.

4 11. Any person upon request.

5 12. The applicant.

6 13. Any other person to whom the department is required to give notice of any
7 proposed determination, application, or hearing concerning an approval under the
8 laws relating to the issuance of any approval or under s. 1.11.

9 (c) The department shall coordinate the public comment period for the mining
10 permit with the public comment period for any other approval for the mining
11 operation, except that if an application for an approval is filed too late to allow public
12 comment within the public comment period for the mining permit, the department
13 shall issue separate notice, as described in par. (b), for the approval after the
14 application is filed.

15 **(5) INFORMATIONAL HEARING.** The department shall hold a public informational
16 hearing before issuing or denying a mining permit and not less than 30 days after
17 publishing the notice under sub. (4) (b). The department shall hold the public
18 informational hearing in the county where the majority of the proposed mining site
19 is located. The department shall hold a single public informational hearing covering
20 the mining permit, all other approvals, and the environmental impact statement,
21 except that if an application for an approval is filed too late to allow the application
22 to be considered at the public informational hearing for the mining permit, the
23 department shall hold a separate public informational hearing on the approval in the
24 county where the proposed site is located not less than 30 days after publishing the

ASSEMBLY BILL 426

1 notice under sub. (4) (b) for the approval. The public informational hearing under
2 this subsection is not a contested case hearing under ch. 227.

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

7 **(7) DEADLINE FOR ACTING ON MINING PERMIT APPLICATION.** (a) No more than 360
8 days after the day on which the application for a mining permit is administratively
9 complete under sub. (2), the department shall approve the application, and issue a
10 mining permit, or deny the application, in accordance with s. 295.58.

11 (b) If the department does not comply with par. (a), the application for the
12 mining permit is automatically granted and the department shall issue a mining
13 permit. The applicant may engage in mining based on the automatic approval,
14 notwithstanding any delay by the department in issuing the mining permit.

15 **(8) DEADLINE FOR ACTING ON OTHER APPROVALS.** (a) Except as provided in par.
16 (c), if an applicant files an application for an approval other than a mining permit
17 no later than 60 days after the day on which the application for the mining permit
18 is administratively complete under sub. (2), the department shall approve the
19 application, and issue the approval, or deny the application no more than 360 days
20 after the day on which the application for the mining permit is administratively
21 complete under sub. (2).

22 (b) Except as provided in par. (c) if an applicant files an application for an
23 approval other than a mining permit more than 60 days after the day on which the
24 application for the mining permit is administratively complete under sub. (2), the
25 deadline for acting on the application is extended beyond the deadline under par. (a)

ASSEMBLY BILL 426

1 by the number of days beyond the 60th day after the day on which the application
2 for the mining permit is administratively complete that the applicant files the
3 application for the approval.

4 (c) Paragraphs (a) and (b) do not apply to the application for an air pollution
5 control permit under s. 285.62.

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

10 **(8m)** SUBMISSION OF TECHNICAL REVIEW TO GREAT LAKES REGIONAL BODY. If an
11 applicant files an application under s. 281.346 for an approval for a withdrawal of
12 surface water or groundwater that is subject to regional review or council approval,
13 the department shall provide its technical review, as defined in s. 281.346 (1) (u), to
14 the regional body, as defined in s. 281.346 (1) (q), no later than 90 days after the
15 applicant files the application for the approval.

16 **(9)** APPLICABLE PROCEDURE. The provisions of this section and ss. 295.58 (5) and
17 (6) and 295.77 concerning public notice, comment, and hearing; issuance of
18 department decisions; effective date of department decisions; and review of
19 department decisions; and the duration of approvals apply to any approval,
20 notwithstanding any provisions related to those matters in s. 44.40 or 169.25, subch.
21 I or VI of ch. 77, ch. 23, 29, 30, 169, 281, 283, 285, 289, or 291, or rules promulgated
22 under those provisions, except as provided in s. 281.343 (7r) and except that if a
23 withdrawal of surface water or groundwater is subject to regional review or council
24 approval under s. 281.346, the applicable provisions related to regional review or
25 council approval apply.

ASSEMBLY BILL 426**SECTION 65**

1 **295.58 Mining; department grant or denial of permit. (1)** CRITERIA FOR
2 APPROVAL. (a) Except as provided in sub. (2) and except with respect to property
3 specified in s. 41.41 (11), the department shall issue a mining permit if it finds all of
4 the following:

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

7 2. That the waste site feasibility study and plan of operation complies with s.
8 295.51.

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

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

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

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

17 (b) The department shall approve or deny an application for a mining permit
18 in writing and shall include the reasons for its decision with clarity and in detail.
19 The department may modify the applicant's proposed mining plan, reclamation plan,
20 or mining waste site feasibility study and plan of operation in order to meet the
21 requirements of this subchapter, and, as modified, approve the application. The
22 approval of the application for a mining permit constitutes the approval of the
23 mining plan, reclamation plan, and waste site feasibility study and plan of operation.
24 In its decision on the application for a mining permit, the department shall include

ASSEMBLY BILL 426

1 a final decision on compliance with s. 1.11 and the requirements of s. 295.53,
2 discussing all of the following:

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

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

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

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

11 (a) That the site is unsuitable for mining.

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

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

18 a. A dwelling house.

19 b. A public building.

20 c. A school.

21 d. A church.

22 e. A cemetery.

23 f. A commercial or institutional building.

24 g. A public road.

ASSEMBLY BILL 426

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

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

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

11 (d) Subject to sub. (3), that the applicant, principal shareholder of the
12 applicant, or a related person has within 10 years before the application is submitted
13 forfeited a mining reclamation bond that was posted in accordance with a permit or
14 other authorization for a mining operation in the United States, unless the forfeiture
15 was by agreement with the entity for whose benefit the bond was posted and the
16 amount of the bond was sufficient to cover all costs of reclamation.

17 (e) Subject to sub. (3), that the applicant, a related person, or an officer or
18 director of the applicant has, within 10 years before the application is submitted,
19 been convicted of more than one felony for violations of laws for the protection of the
20 natural environment arising out of the operation of a mining site in the United
21 States, unless one of the following applies:

22 1. The person convicted has been pardoned for all of the felonies.

23 2. The person convicted is a related person or an officer or director of the
24 applicant with whom the applicant terminates its relationship.

ASSEMBLY BILL 426

1 3. The applicant included in its permit application under s. 295.47 a plan to
2 prevent the occurrence in this state of events similar to the events that directly
3 resulted in the convictions.

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

9 (g) Subject to sub. (3), that, within 10 years before the application is submitted,
10 a mining permit or other authorization for mining issued to the applicant or a related
11 person was permanently revoked because of a failure to reclaim a mining site in the
12 United States in violation of state or federal law and that failure has not been and
13 is not being remedied.

14 **(3) EXCEPTION FROM DENIAL CRITERIA.** The department may not deny a mining
15 permit under sub. (2) (d) to (g) if the person subject to the convictions, forfeiture,
16 permanent revocation, bankruptcy, or dissolution is a related person but the
17 applicant shows that the person was not the parent corporation of the applicant, a
18 person that holds more than a 30 percent ownership in the applicant, or a subsidiary
19 or affiliate of the applicant in which the applicant holds more than a 30 percent
20 interest at the time of the convictions, forfeiture, permanent revocation, bankruptcy,
21 or dissolution.

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

ASSEMBLY BILL 426

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

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

5 (c) An approval issued for a mining project under ch. 23, 29, 30, 169, 281, 283,
6 285, 289, or 291, except for a permit under ch. 283 or 285 that is subject to a federal
7 requirement limiting its duration, remains valid for the life of the mining project,
8 subject to the enforcement provisions applicable to the approval.

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

11 **(7) MERCHANTABLE BY-PRODUCTS.** In a mining permit, the department shall
12 require the operator to treat merchantable by-products as refuse if after 3 years from
13 the time the merchantable by-products result from or are displaced by mining the
14 material has not been transported off the mining site, unless removal is continuing
15 at a rate of more than 12,000 cubic yards per year.

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

24 **295.59 Bonds and other security. (1) SECURITY FOR RECLAMATION.** (a) Upon
25 notification that an application for a mining permit has been approved by the

ASSEMBLY BILL 426

1 department but before beginning mining, the operator shall furnish one of the
2 following to the department:

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

6 2. Cash.

7 3. Certificates of deposit.

8 4. Government securities.

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

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

20 **(2) CERTIFICATE OF INSURANCE.** The operator shall submit a certificate of
21 insurance certifying that the applicant has in force a liability insurance policy issued
22 by an insurer authorized to do business in this state or, in lieu of a certificate of
23 insurance, evidence that the applicant has satisfied state or federal self-insurance
24 requirements, covering all mining operations of the operator in this state and
25 affording personal injury and property damage protection in a total amount

ASSEMBLY BILL 426

1 determined to be adequate by the department but not more than \$1,000,000 and not
2 less than \$50,000.

3 **(2m) PROOF OF FINANCIAL RESPONSIBILITY FOR LONG-TERM CARE OF MINING WASTE**
4 **SITE.** An operator shall maintain proof of financial responsibility ensuring the
5 availability of funds for compliance with the long-term care requirements specified
6 in the waste site feasibility study and plan of operation for a period of 40 years after
7 closing of the mining waste site. The operator shall furnish the proof of financial
8 responsibility to the department in one of the following forms:

9 (a) A bond

10 (b) Cash.

11 (c) Certificates of deposit.

12 (d) Government securities.

13 (e) Insurance.

14 **(3) WRITTEN AUTHORIZATION TO MINE.** Upon approval of the operator's bonds or
15 other security under subs. (1) and (2m), mining application, and certificate of
16 insurance, the department shall issue written authorization to begin mining at the
17 permitted mining site in accordance with the approved mining plan, reclamation
18 plan, and mining waste site feasibility study and plan of operation.

19 **(4) RECLAMATION BOND FOR MORE THAN ONE MINING SITE.** Any operator who
20 obtains mining permits from the department for 2 or more mining sites may elect,
21 at the time that the mining permit for the 2nd or any subsequent mining site is
22 approved, to post a single bond under sub. (1) in lieu of separate bonds for each
23 mining site. An operator who chooses to post a single bond under this subsection
24 shall post a bond in an amount equal to the estimated cost to the state determined
25 under sub. (1) of reclaiming all mining sites the operator has under mining permits.

ASSEMBLY BILL 426

1 When an operator elects to post a single bond in lieu of separate bonds previously
2 posted on individual mining sites, the department may not release the separate
3 bonds until the department accepts the new bond.

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

9 **295.60 Impacts to wetlands. (1) DEFINITIONS.** In this section:

10 (a) "Area of special natural resource interest" has the meaning given in s.
11 281.37 (1) (a).

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

15 (c) "ASNRI wetland" means a wetland that is within the boundary of an area
16 of special natural resource interest or that is in close proximity to or that has a direct
17 hydrologic connection to an area of special natural resource interest.

18 (d) "Compensation" means the implementation of measures that will function
19 to improve functional values of wetlands or other water quality functions to offset
20 significant adverse impacts that remain after all practicable avoidance and
21 minimization measures have been achieved.

22 (e) "Federal compensatory mitigation requirement" means any mitigation
23 requirement that is imposed by the federal government.

24 (f) "Federal wetland" means a wetland that is not a nonfederal wetland and
25 includes an ASNRI wetland.

ASSEMBLY BILL 426

1 (g) "Functional values and water quality" means the water quality related
2 wetland functional values and uses specified in sub. (6).

3 (h) "Impact" means a permanent, temporary, cumulative, secondary, direct or
4 indirect result that is attributable to a discharge to which the wetland water quality
5 standards apply.

6 (i) "Mitigation" means the restoration, enhancement, or creation of wetlands
7 to offset significant adverse impacts to other wetlands.

8 (j) "Mitigation bank" means a system of accounting for wetland loss and
9 mitigation that includes one or more sites where wetlands are restored, enhanced,
10 or created to provide transferable credits to be subsequently applied to offset
11 significant adverse impacts to other wetlands.

12 (k) "Nonfederal wetland" has the meaning given in s. 281.36 (1) (c) and includes
13 an ASNRI wetland.

14 (L) "On-site location" means a location that is within one-half mile of an outer
15 boundary of a mining site.

16 (m) "Practicable" means available and capable of being implemented after
17 taking into consideration cost, available technology, and logistics in light of the
18 overall project purposes and the needs for bulk sampling or a mining operation.

19 (n) "Riparian restoration project" means a project that will restore or enhance
20 the natural beneficial uses and value of a watercourse.

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

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

ASSEMBLY BILL 426

1 (q) "Watershed" means an area of land where all of the water drains into a
2 common waterway.

3 (r) "Wetland water quality standard" means a water quality standard specified
4 under sub. (6).

5 **(2) SCOPE.** This section applies to any water quality certification, or any other
6 approval that involves an evaluation of impact to wetlands, that is associated with
7 mining or bulk sampling.

8 **(3) WETLAND DETERMINATIONS AND DELINEATIONS.** For purposes of this section,
9 wetland determinations and wetland boundary delineations shall be consistent with
10 the U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual and any final
11 regional supplement to the manual. The department may rely on wetland
12 determinations and wetland boundary delineations made by other agencies and
13 consultants. If the applicant for a water quality certification or for any other
14 approval for an activity involving impacts to wetlands has provided information to
15 the department that is identified in the manual or any final regional supplement as
16 being sufficient to make a wetland determination or a delineation of boundaries, the
17 department may visit the site to conduct surveys or gather additional site-specific
18 quantitative data provided that the department does not discontinue the processing
19 of the application to do so.

20 **(4) WATER QUALITY CERTIFICATION FOR FEDERAL WETLANDS.** (a) For purposes of
21 issuing a water quality certification that is required pursuant to 33 USC 1341 (a) for
22 a discharge associated with a mining operation or bulk sampling into a federal
23 wetland or for issuing any other approval associated with a mining operation for an
24 activity that involves any impact to a federal wetland, the department shall review

ASSEMBLY BILL 426

1 the federal compensatory mitigation requirements proposed as part of the federal
2 permit application.

3 (b) For purposes of determining whether to issue a water quality certification
4 or other approval that requires an evaluation of impacts to federal wetlands, the
5 department shall determine whether it has reasonable assurance that the federal
6 permitting process and federal compensatory mitigation requirements will offset
7 any significant adverse impact to the functional values and water quality of the
8 federal wetland. For purposes of areas of special natural resource interest and
9 federal wetlands that are ASNRI wetlands, the department shall determine that
10 reasonable assurance exists if significant adverse impacts have been avoided or
11 minimized to the extent practicable and any remaining significant adverse impacts
12 are offset by compensation or mitigation. If the department determines that
13 reasonable assurance exists, the department may not impose any additional
14 conditions.

15 (c) If the department determines that reasonable assurance does not exist
16 under par. (b), it may impose conditions in the water quality certification or other
17 approval if such conditions are limited to those that are necessary to offset any
18 significant adverse impacts to the federal wetland that are not offset by the federal
19 compensatory mitigation requirements in the federal permit or other approval. Any
20 conditions imposed by the department shall permit a compensation and mitigation
21 program as provided in sub. (8).

22 (d) In imposing conditions under par. (c), the department may not increase the
23 number of acres to be mitigated under the federal compensatory mitigation
24 requirements that are applicable to the federal wetland.

ASSEMBLY BILL 426

1 (e) The department shall issue a water quality certification under this
2 subsection if the federal permitting process, including any federal compensatory
3 mitigation requirement, offsets the significant adverse impacts to the functional
4 values and water quality of the federal wetland.

5 **(5) WATER QUALITY CERTIFICATION FOR NONFEDERAL WETLANDS.** (a) *Certification*
6 *required.* No person may discharge dredge or fill material associated with a mining
7 operation or bulk sampling into a nonfederal wetland unless the discharge is
8 authorized under a water quality certification issued under this section.

9 (b) *Avoidance or minimization of impacts.* For purposes of issuing a water
10 quality certification for a discharge subject to par. (a) or evaluating impacts to
11 nonfederal wetlands for any approval requiring an evaluation of impacts to
12 nonfederal wetlands, the department shall first determine whether any impact to
13 the nonfederal wetland caused by the mining operation or bulk sampling can be
14 avoided or minimized to the extent practicable. If the impacts have been avoided or
15 minimized to the extent practicable, any remaining impacts to nonfederal wetlands
16 or to areas of special natural resource interest may not be a basis for a denial of a
17 water quality certification provided that any remaining significant adverse impacts
18 are offset under a compensation and mitigation program under sub. (8).

19 (c) *Siting analysis.* 1. An applicant for a water quality certification for a
20 nonfederal wetland shall submit a siting analysis to the department for review. In
21 reviewing the siting analysis, the department shall recognize all of the following:

22 a. The limitations associated with the proposed location of the ferrous mineral
23 deposits to be mined or associated with bulk sampling.

24 b. The need for the mining waste sites and any processing facilities to be
25 contiguous to the location of the ferrous mineral deposits to be mined.

ASSEMBLY BILL 426

1 c. The presumption that nonfederal wetlands will be impacted.

2 2. The siting analysis shall be limited to an analysis of alternative
3 configurations associated with the areas of the proposed ferrous mineral deposits to
4 be mined at the mining site and with the areas that are contiguous to those deposits.

5 3. If it is impracticable to avoid an impact to, or the use of, a nonfederal wetland,
6 the applicant shall identify in the siting analysis, and the department shall review,
7 those configurations that would result in impacts to the fewest acres of nonfederal
8 wetlands to the extent practicable. The department shall determine which
9 configuration will minimize the impacts to the fewest acres.

10 4. After the department makes the determination under subd. 3., the
11 department shall evaluate the impact of the mining operation to the functional
12 values and water quality of the nonfederal wetland.

13 **(5m) EVALUATION OF IMPACTS.** The department shall determine the impact of a
14 proposed activity upon the functional values and water quality of a wetland by using
15 wetland ecological evaluation methods jointly accepted by the U.S. Army Corps of
16 Engineers and the department and appropriate to the affected wetland.

17 **(6) WETLAND WATER QUALITY STANDARDS.** The following wetland water quality
18 standards shall apply to any water quality certification under sub. (4) or (5):

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

24 1. Storm and flood water storage and retention and the moderation of water
25 level fluctuation extremes.

ASSEMBLY BILL 426

1 2. Hydrologic functions including the maintenance of dry season streamflow,
2 the discharge of groundwater to a wetland, the recharge of groundwater from a
3 wetland to another area, and the flow of groundwater through a wetland.

4 3. Filtration or storage of sediments, nutrients, or toxic substances that would
5 otherwise adversely impact the quality of waters of the state.

6 4. Shoreline protection against erosion through the dissipation of wave energy
7 and water velocity and anchoring of sediments.

8 5. Habitat for aquatic organisms in the food web including fish, crustaceans,
9 mollusks, insects, annelids, and planktonic organisms and the plants and animals
10 upon which these aquatic organisms feed and depend upon for their needs in all life
11 stages.

12 6. Habitat for resident and transient wildlife species, including mammals,
13 birds, reptiles, and amphibians, for breeding, resting, nesting, escape cover, travel
14 corridors, and food.

15 7. Recreational, cultural, educational, scientific, and natural scenic beauty
16 values and uses.

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

21 1. The use of liquids, fill, or other solids or gases.

22 2. The presence of floating or submerged debris, oil, or other material.

23 3. The use of materials producing color, odor, taste, or unsightliness.

24 4. The presence of concentrations or combinations of substances that are toxic
25 or harmful to human, animal, or plant life.

ASSEMBLY BILL 426

1 5. Adverse effects on hydrological conditions necessary to support the biological
2 and physical characteristics that are naturally present in wetlands. For purposes
3 of this subdivision, the hydrological conditions include of all of the following:

- 4 a. Water currents and erosion and sedimentation patterns.
- 5 b. Water temperature variations.
- 6 c. The chemical, nutrient, and dissolved oxygen regime of the wetland.
- 7 d. The movement of aquatic fauna.
- 8 e. The pH of the wetland.
- 9 f. Water levels or elevations.

10 6. Adverse effects on existing habitat and populations of animals and
11 vegetation found in wetlands.

12 **(6m) SCOPE OF EVALUATION.** For purposes of issuing a water quality certification
13 under sub. (4) or (5), the department shall evaluate whether an activity will result
14 in a significant adverse impact to the functional values and water quality associated
15 with a wetland by doing all of the following:

16 (a) Comparing the functional values and water quality of the wetland with
17 other wetlands located within the boundaries of the mining site or within the same
18 water management unit as the mining site and with other waters of the state that
19 are located in the same water management unit.

20 (b) Taking into consideration the floristic province in which the mining site is
21 located.

22 **(7) APPROVAL BY DEPARTMENT; NONFEDERAL WETLANDS.** The department shall
23 issue a water quality certification under this section for a nonfederal wetland, if the
24 department determines all of the following:

ASSEMBLY BILL 426

1 (a) All practicable measures will be taken to minimize the adverse impacts to
2 wetlands.

3 (b) Any significant adverse impacts to functional values and water quality that
4 remain are offset through a compensation or mitigation program under sub. (8).

5 **(8) COMPENSATION AND MITIGATION PROGRAM.** (a) *Contents.* A compensation and
6 mitigation program to offset significant adverse impacts to functional values and
7 water quality of wetlands shall contain all of the following:

8 1. Proposed projects for compensation or mitigation and a schedule for
9 implementing the projects. The projects may include riparian restoration projects.
10 These projects may be performed by a person other than the applicant, subject to the
11 department's approval of the projects and schedule.

12 2. If the program is applicable to a federal wetland, all federal compensatory
13 mitigation requirements associated with the federal wetland application.

14 (b) *Option of applicant.* An applicant submitting a program under par. (a) may
15 submit proposals for compensation or mitigation or any combination thereof.

16 (c) *Ratios for mitigation.* The amount of mitigation required may not exceed
17 1.5 acres of mitigation for each acre of adversely impacted wetland. For purpose of
18 credits in a mitigation bank, each acre that is subject to mitigation shall count as at
19 least one credit.

20 (d) *Sequence.* If it is not practicable or ecologically preferable to conduct
21 compensation or mitigation at an on-site location or if there is no on-site location
22 that will provide sufficient wetland acreage, the department shall allow the
23 applicant to conduct compensation or mitigation at a site other than an on-site
24 location. Compensation or mitigation shall be accomplished through the following
25 options:

ASSEMBLY BILL 426

1 1. Implementation of a project for compensation or mitigation. Projects for
2 compensation at a site other than an on-site location may include projects to protect
3 upland groundwater recharge areas, shoreline stabilization projects, and riparian
4 restoration projects.

5 2. Purchase of credits from a mitigation bank for a site in a mitigation bank that
6 is located anywhere in the state.

7 3. Purchase of mitigation credits from a mitigation bank established prior to
8 February 1, 2002, if the department determines that the bank sponsor is in
9 compliance with any applicable memorandum of understanding between the bank
10 sponsor and the department.

11 **(9) MINING PERMIT.** Any water quality certification issued by the department,
12 including all of the conditions imposed as part of the certification, shall be included
13 in the mining permit.

14 **(10) CONSERVATION EASEMENTS.** (a) A person who is the holder of a water quality
15 certification that authorizes mitigation to be implemented by the holder of the
16 certification at an on-site location shall grant a conservation easement under s.
17 700.40 to the department to ensure that the wetland that is subject to the mitigation
18 will not be destroyed or substantially degraded by any subsequent proprietor or
19 holder of interest in the property on which the wetland is located. The department
20 shall suspend the mining permit if the holder of the permit fails to grant the
21 easement within the time limit set forth in the mining permit. If the holder
22 subsequently grants the conservation easement to the department, the department
23 shall reinstate the mining permit.

24 (b) Notwithstanding par. (a), the department shall modify or release a
25 conservation easement granted under par. (a) if all of the following apply:

ASSEMBLY BILL 426

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

3 2. The person who is required to grant the conservation easement did not
4 contribute to the loss of the wetland as specified in subd. 1.

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

8 **(11) EXEMPTIONS.** (a) *Artificial wetlands.* All of the following artificial wetlands
9 that are associated with a mining operation are exempt from the water quality
10 certification provisions and compensation and mitigation provisions under this
11 section and under any other statute or rule relating to impacts on wetlands:

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

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

17 3. An artificial wetland that is actively maintained farm drainage and roadside
18 ditches.

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

20 (c) *Other exempted activities.* For nonfederal wetlands, all of the following
21 activities that are associated with a mining operation or bulk sampling are exempt
22 from the water quality provisions and compensation and mitigation provisions under
23 this section and any other law relating to impact on wetlands if the applicant
24 minimizes any adverse effect on the environment as a result of the activities:

ASSEMBLY BILL 426

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

3 2. Construction or maintenance of irrigation or drainage ditches.

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

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

9 (a) Sections 281.36 and 281.37, except as otherwise specifically provided in this
10 section.

11 (b) Any rule promulgated by the department relating to wetlands that conflicts
12 with this section, except that no rule promulgated by the department under s. 281.36
13 or 281.37 applies to a mining operation or bulk sampling.

14 **295.605 Impacts to navigable waters. (1) DEFINITION.** In this section,
15 “navigable water activity” means an activity for which a permit or contract is
16 required under s. 30.12, 30.123, 30.19, 30.195, or 30.20.

17 **(2) PERMIT OR CONTRACT REQUIRED.** No person may engage in any navigable
18 water activity associated with bulk sampling or mining unless the person has been
19 issued a permit or entered into a contract as provided under sub. (4).

20 **(3) APPLICATION; RIPARIAN STATUS.** (a) Any person who intends to engage in a
21 navigable water activity associated with bulk sampling or mining need not be a
22 riparian owner to do any of the following:

23 1. Apply for and be issued an individual permit for a navigable water activity
24 under s. 30.12, 30.123, 30.19, or 30.195.

25 1m. Enter into a contract under s. 30.20.

ASSEMBLY BILL 426

1 2. Engage in an activity that is exempt under s. 30.12, 30.123, 30.19, 30.195,
2 or 30.20.

3 3. Seek authorization under a general permit issued under s. 30.12, 30.123,
4 30.19, or 30.20.

5 (b) If a person is applying for more than one permit or contract for a navigable
6 water activity associated with bulk sampling or mining, the person may file a single
7 application. The application shall include any information requested by the
8 department under s. 295.45 (3).

9 **(4) REQUIREMENTS.** (a) *Generally.* The department shall issue a permit, or enter
10 into a contract, for a navigable water activity if the navigable water activity meets
11 all of the following requirements:

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

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

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

18 4. The navigable water activity will not significantly degrade water quality.

19 (b) *Measures.* The person applying for the permit or contract shall submit a
20 plan to the department containing proposed measures to to meet the requirements
21 under par. (a) and a proposed schedule for implementing the measures. The plan
22 shall include one or more of the following measures:

23 1. Measures to offset significant impacts to navigable waters by providing
24 public access to, restoring, or enlarging up to 1.5 acres of navigable waters in
25 exchange for each acre of navigable waters that is significantly impacted.

ASSEMBLY BILL 426

1 2. Measures to improve public rights or interests in navigable waters.

2 3. Measures to offset significant impacts to water quality or quantity.

3 4. Measures to enhance flood storage.

4 5. Compensation or mitigation as provided under s. 295.60.

5 6. Conservation measures as provided in s. 295.61.

6 (bn) *Plan review; finding.* In reviewing the plan, the department may require
7 that measures that are in addition to, or in conjunction with, one or more of the
8 measures specified in par. (b) 1. to 6. be included in the plan. After reviewing the plan
9 and application, if the department finds that the requirements under par. (a) will be
10 met by implementing some or all of the measures contained in the plan, the
11 department shall determine which measures shall be required, shall approve a
12 schedule for implementation, and shall issue the permit or enter into the contract.

13 (c) *Applicability of requirements.* The requirements that are specified in par.
14 (a) 1. to 4. are in lieu of any requirements required for permits under ss. 30.12 (3m)
15 (c), 30.123 (8) (c), 30.19 (4) (c), and 30.195 (2) (c) and are in lieu of any requirements
16 for contracts under s. 30.20 that relate to the state's or public's interests and shall
17 be used, in conjunction with the measures required under par. (b), in any evaluation
18 by the department pursuant to 33 USC 1341.

19 **(5) PERMIT CONDITIONS.** The department may impose conditions in a permit for
20 a navigable water activity that it determines to be necessary to ensure that the
21 navigable water activities subject to the permit meet the requirements under par. (a).

22 **(6) RELATIONSHIP TO OTHER LAWS.** (a) Chapter 30 and any rules promulgated
23 under that chapter apply to any navigable water activity subject to this section to the
24 extent that they do not conflict with this section, except as provided in par. (b).

ASSEMBLY BILL 426

1 (b) Sections 30.208, 30.209, and 30.2095 and any rules promulgated under
2 those sections, do not apply to any navigable water activity that is subject to this
3 section.

4 **295.607 Shoreland and floodplain zoning.** (a) In this section:

5 1. "Development or construction activity" means a waste site, structure,
6 building, fill, or other development or construction activity.

7 2. "Shoreland or floodplain zoning ordinance" means a shoreland or floodplain
8 zoning ordinance or regulation adopted under s. 59.692, 61.351, 62.231, 87.30, or
9 281.31.

10 (b) The department may not prohibit a development or construction activity to
11 be located in an area that would otherwise be prohibited under a shoreland or
12 floodplain zoning ordinance if the development or construction activity is authorized
13 by the department as part of a mining operation covered by a mining permit under
14 s. 295.58.

15 (c) A development or construction activity located in an area that would
16 otherwise be prohibited under a shoreland or floodplain zoning ordinance does not
17 violate the applicable ordinance if the development or construction activity is
18 authorized by the department as part of a mining operation covered by a mining
19 permit under s. 295.58. No shoreland or floodplain zoning variance is required for
20 a development or construction activity located as provided under this paragraph.

21 **295.61 Withdrawals of surface waters and groundwater. (1)**

22 DEFINITIONS. In this section:

23 (a) "Authorized base level of water loss" has the meaning given in s. 281.35 (1)

24 (b).

ASSEMBLY BILL 426**SECTION 65**

1 (b) “Environmentally sound and economically feasible water conservation
2 measures” has the meaning given in s. 281.346 (1) (i).

3 (c) “Great Lakes basin” has the meaning given in s. 281.35 (1) (d).

4 (d) “High capacity well” has the meaning given in s. 281.34 (1) (b).

5 (e) “Interbasin diversion” has the meaning given in s. 281.35 (1) (g).

6 (f) “Upper Mississippi River basin” has the meaning given in s. 281.35 (1) (j).

7 (g) Unless the context otherwise requires, “use” includes dewatering.

8 (h) “Water loss” has the meaning given in s. 281.35 (1) (L).

9 (i) “Withdrawal” has the meaning given in s. 281.35 (1) (m).

10 **(2) PERMIT REQUIRED.** No person may engage in any withdrawal or use of surface
11 water as part of a mining operation or bulk sampling unless the person has been
12 issued a water withdrawal permit under this section. No person may engage in any
13 withdrawal or use of groundwater as part of a mining operation or bulk sampling if
14 the capacity and rate of withdrawal of all wells involved in the withdrawal of
15 groundwater or the dewatering of mines exceeds 100,000 gallons each day unless the
16 person has been issued a water withdrawal permit under this section.

17 **(3) PERMIT APPLICATION.** (a) *Application.* Any person applying for a water
18 withdrawal permit is required to submit only one application. A person applying for
19 such a permit need not be a riparian owner. An application for a water withdrawal
20 permit shall include any information requested by the department under s. 295.45
21 (3).

22 (b) *Siting analysis.* If withdrawal of water at a mining operation or for bulk
23 sampling will involve one or more high capacity wells, the department shall require
24 an applicant for a water withdrawal permit to submit a siting analysis for the
25 purpose of determining the location of the high capacity wells. The analysis shall

ASSEMBLY BILL 426

1 include alternate proposed locations for each high capacity well. In evaluating a
2 submitted analysis, the department shall recognize there is a need for mining waste
3 sites, processing facilities, including wastewater and sludge storage or treatment
4 lagoons, to be contiguous to the location of the ferrous mineral deposit, and shall
5 allow any high capacity well to be located so that need will be met. The department
6 shall determine which location for each high capacity well has the fewest overall
7 adverse environmental impacts to the extent practicable. In determining what is
8 practicable, the department shall take into consideration the ability to implement
9 any conservation measures that may be required under sub. (4) (b). Section 281.346
10 (5) (b) 5. does not apply to determining a location under this paragraph.

11 (c) *Entry to land.* After an application for a water withdrawal permit has been
12 submitted under this section, the applicant may enter any land from which the
13 applicant proposes to withdraw water or use water for the purpose of making any
14 surveys required for the mining operation or bulk sampling, but no work may be
15 commenced necessary for the mining operation or the bulk sampling until the
16 department issues the permit under this section.

17 (4) PERMIT ISSUANCE. (a) *General requirements.* The department shall issue
18 a water withdrawal permit if the withdrawal or use of the surface water or
19 groundwater meets all of the following requirements:

20 1. The proposed withdrawal and uses of the water are substantially consistent
21 with the protection of public health, safety, and welfare and will not be significantly
22 detrimental to the public interest.

23 2. The proposed withdrawal and uses of the water will not have a significant
24 adverse impact on the environment and ecosystem of the Great Lakes basin or the
25 Upper Mississippi River basin.

ASSEMBLY BILL 426**SECTION 65**

1 3. The proposed withdrawal and use of the water will not be significantly
2 detrimental to the quantity and quality of the waters of the state.

3 4. The proposed withdrawal and use of the water will not significantly impair
4 the rights of riparian owners or the applicant obtains the consent of the riparian
5 owners.

6 5. The proposed withdrawal and use of the water will not result in significant
7 injury to public rights in navigable waters.

8 6. If the withdrawal or the use of the water will result in an interbasin
9 diversion, the requirements of s. 281.35 (5) (d) 7. are met.

10 7. The proposed withdrawal or use of the water will comply with any
11 requirements imposed by the department under par. (cm).

12 (b) *Conservation measures.* The person applying for the permit shall submit
13 a plan to the department containing proposed conservation measures to meet the
14 requirements under par. (a) and a proposed schedule for implementing the
15 measures. The plan shall include one or more of the following measures:

16 1. Environmentally sound and economically feasible water conservation
17 measures.

18 2. Restoration of hydrologic conditions and functions of the source watershed,
19 or if the withdrawal is from a stream tributary to one of the Great Lakes, restoration
20 of the hydrologic conditions and functions of that stream.

21 3. Protection of important upland groundwater recharge areas.

22 4. Stabilization of shorelands.

23 5. Restoration or enhancement of the natural beneficial uses and values of a
24 stream or river.

ASSEMBLY BILL 426

1 6. Implementation of any feasible methods to offset impacts to water quality
2 or quantity.

3 7. Supplementation of additional water to water bodies to offset lower water
4 levels.

5 8. Taking steps to improve public rights or interests in navigable waters, if
6 navigable waters are subject to the permit.

7 9. Mitigation or compensation as provided in s. 295.60.

8 10. Measures to offset significant impacts to navigable waters by providing
9 public access to, restoring, or enlarging up to 1.5 acres of navigable waters in
10 exchange for each acre of natural navigable waters that is significantly impacted.

11 11. A riparian restoration project, as defined in s. 295.60 (1) (n).

12 12. Measures as provided in s. 295.605.

13 (bn) *Plan review; finding.* In reviewing the plan, the department may require
14 that conservation measures that are in addition to, or in conjunction with, one or
15 more of the conservation measures specified in par. (b) 1. to 12. be included in the
16 plan. After reviewing the plan and application, if the department finds that the
17 requirements under par. (a) will be met by implementing some or all of the
18 conservation measures contained in the plan, the department shall determine which
19 measures shall be required, shall approve a schedule for implementation, and shall
20 issue the permit.

21 (cm) *Impacts to water supplies.* If the department determines that a proposed
22 withdrawal or use of water will result in a significant impact to a public or private
23 water supply, the department shall require the applicant to offset that impact in a
24 manner approved by the department, which may include a requirement that the

ASSEMBLY BILL 426

1 applicant provide a replacement water supply of similar quality or provide an
2 increased amount of water to the water supply.

3 (d) *Public benefits.* If the department finds under par. (bn) that the applicant
4 cannot meet all of the applicable requirements under par. (a), the department shall
5 nevertheless issue the water withdrawal permit if the department determines that
6 the public benefits resulting from the mining operation exceed any injury to public
7 rights and interests in a body of water that is affected by the mining operation or bulk
8 sampling. In making this determination, the department shall recognize that the
9 withdrawal and use of the waters of the state in connection with mining is in the
10 public's interest and welfare and fulfills a public purpose and shall consider all of the
11 following factors:

12 1. The extent to which the public rights in a navigable body of water, and its
13 related environment, may be substantially and irreparably injured by the proposed
14 withdrawal or use.

15 2. Public benefits that may be provided by increased employment, economic
16 activity, and tax revenues from the mining operation.

17 3. The direct and indirect social benefits and costs that will result from the
18 proposed mining operation.

19 4. The rights of riparian owners or other competing users to the water that will
20 be subject to the permit.

21 5. The extent to which any impacts from mining or bulk sampling will be
22 temporary.

23 (e) *Use of nonriparian waters.* Water withdrawn in accordance with a water
24 withdrawal permit may be used on nonriparian property.

ASSEMBLY BILL 426

1 (f) *Limits on permit denials.* If the department determines that one of the water
2 withdrawal activities subject to an application for a water withdrawal permit does
3 not meet the requirements for issuing the permit under par. (a), (bn), or (d) and will
4 not be authorized under the permit, the failure to authorize the activity may not
5 affect the department's determination as to whether to approve or deny the permit
6 for other water withdrawal activities that are subject to the application.

7 **(5) PERMIT CONDITIONS.** The department may impose reasonable conditions in
8 a water withdrawal permit that do not interfere with the mining operation or bulk
9 sampling or limit the amount of water needed for the mining operation or bulk
10 sampling and that relate to any of the following:

11 (a) The location of the withdrawal or use.

12 (b) The authorized base level of water loss from the withdrawal or use.

13 (c) The dates on which or seasons during which withdrawal or use of the water
14 may occur.

15 (d) The purposes for the withdrawal or use of the water.

16 (e) The amount and quality of return flow required and the place of the
17 discharge.

18 (f) The requirements for reporting volumes and rates of withdrawal and any
19 other data specified by the department.

20 (g) Any other conditions that the department determines are necessary to
21 protect the environment and the public health, safety, and welfare and to ensure the
22 conservation and proper management of the waters of the state.

23 **(6) PERMIT MODIFICATIONS.** (a) 1. An operator to whom a permit has been issued
24 under this section may request a modification of any condition in the permit.

ASSEMBLY BILL 426**SECTION 65**

1 2. If the request for a modification under subd. 1. does not result in an increase
2 in an existing withdrawal resulting in a water loss averaging more than 2,000,000
3 gallons per day in any 30-day period above the operator's authorized base level of
4 water loss, within 30 days of receiving the request the department shall approve the
5 request and amend the permit to incorporate the modification.

6 3. a. If the request for a modification under subd. 1. results in an increase in
7 an existing withdrawal resulting in a water loss averaging more than 2,000,000
8 gallons per day in any 30-day period above the operator's authorized base level of
9 water loss, the department shall determine whether it is required, under ch. NR 150,
10 Wis. Adm. Code, to prepare an environmental assessment or environmental impact
11 statement and, if so, shall prepare an environmental assessment or an
12 environmental impact statement. If the department determines that, under ch. NR
13 150, Wis. Adm. Code, the operator must prepare an environmental impact report, the
14 department may only request information in the environmental impact report that
15 relates to decisions that the department makes under this section related to the
16 permit and the department shall limit its analysis to an evaluation of the request for
17 the modification.

18 b. The department shall publish a class 1 notice, under ch. 985, of the
19 availability of information about a request to which this subdivision applies, its
20 proposed decision on the request, the opportunity to comment within 30 days after
21 the notice is published, and the opportunity to request a public informational
22 hearing. The department shall also provide the notice to the applicant, the persons
23 specified in s. 30.18 (4) (a), and if the modification involves a structure through which
24 water transferred from the Great Lakes basin would be returned to the source
25 watershed through a stream tributary to one of the Great Lakes, the governing body

ASSEMBLY BILL 426

1 of each city, village, and town through which the stream flows or that is adjacent to
2 the stream downstream from the point at which the water would enter the stream.

3 c. Within 180 days of receiving a request to which this subdivision applies, the
4 department shall approve or deny as provided in sub. (4) the request and, if it
5 approves the request, shall amend the permit to incorporate the modification.

6 (b) 1. The department may propose modifications to any of the conditions in the
7 water withdrawal permit. If it proposes a modification, the department shall
8 determine whether it is required, under ch. NR 150, Wis. Adm. Code, to prepare an
9 environmental assessment or environmental impact statement and, if so, shall
10 prepare an environmental assessment or an environmental impact statement. If the
11 department determines that, under ch. NR 150, Wis. Adm. Code, the operator must
12 prepare an environmental impact report, the department may only request
13 information in the environmental impact report that relates to decisions that the
14 department makes under this section related to the permit and the department shall
15 limit its analysis to an evaluation of the proposed modification.

16 2. The department shall publish a class 1 notice, under ch. 985, of the
17 availability of information about a proposed modification under this paragraph, the
18 opportunity to comment within 30 days after the notice is published, and the
19 opportunity to request a public informational hearing. The department shall also
20 provide the notice to the applicant, the persons specified in s. 30.18 (4) (a), and if the
21 modification involves a structure through which water transferred from the Great
22 Lakes basin would be returned to the source watershed through a stream tributary
23 to one of the Great Lakes, the governing body of each city, village, and town through
24 which the stream flows or that is adjacent to the stream downstream from the point
25 at which the water would enter the stream.

ASSEMBLY BILL 426

1 3. The department may not impose the modification until after the end of the
2 public comment period under subd. 2.

3 4. Any modified condition under this paragraph may not interfere with the
4 mining operation or limit the amount of water needed for the mining operation if the
5 holder of the water withdrawal permit is implementing any conservation measures
6 that are applicable under the permit.

7 **(7) RELATIONSHIP TO OTHER LAWS.** None of the following apply to water
8 withdrawal or use that is associated with mining operations or bulk sampling:

9 (a) Sections 30.18, 281.34, and 281.35 and any rules promulgated under those
10 sections, except as specifically provided in this section.

11 (b) Any provision of ch. NR 812, Wis. Adm. Code, that conflicts with this section,
12 except that s. NR 812.08, Wis. Adm. Code, does not apply to water withdrawal or use
13 that is associated with mining operations or bulk sampling.

14 **295.62 Mining waste site construction and completion reports. (1)** An
15 operator shall construct a mining waste site substantially in accordance with the
16 approved mining waste site feasibility study and plan of operation.

17 **(2)** The operator shall inspect the mining waste site before it is used and ensure
18 that all associated structures are in substantial compliance with the mining waste
19 site feasibility study and plan of operation. The operator shall have a professional
20 engineer, registered as such under ch. 443, document mining waste site construction
21 and render an opinion as to whether the mining waste site has been constructed in
22 substantial conformance with the mining waste site feasibility study and plan of
23 operation. The engineer may use aerial or ground photographs to document the
24 inspection, but photographs do not in themselves constitute compliance with this

ASSEMBLY BILL 426

1 subsection. The operator shall maintain a complete file describing the items
2 inspected and their condition.

3 (3) An operator shall notify the department in writing when the mining waste
4 site has been constructed in substantial compliance with the mining waste site
5 feasibility study and plan of operation.

6 (4) (a) Within 5 business days of receipt of written notice from an operator that
7 the mining waste site has been constructed in substantial compliance with the
8 mining waste site feasibility study and plan of operation, the department shall either
9 review and inspect the mining waste site to ensure that it was constructed according
10 to the approved mining waste site feasibility study and plan of operation or notify the
11 operator that the department will not conduct a review and inspection before
12 disposal of mining waste in the mining waste site. Within 3 business days of any
13 review and inspection, the department shall notify the operator that the mining
14 waste site may be used for the disposal of mining waste or identify all steps that must
15 be completed to bring the mining waste site into substantial compliance with the
16 mining waste site plan of operation. After the operator completes the steps, the
17 operator shall notify the department that the steps have been completed.

18 (b) An operator may dispose of mining waste in a mining waste site after one
19 of the following occurs:

20 1. The operator receives notice from the department under par. (a) that the
21 department will not conduct a review and inspection before disposal of mining waste
22 in the mining waste site.

23 2. The operator receives notice from the department under par. (a) that the
24 mining waste site may be used for the disposal of mining waste.

ASSEMBLY BILL 426

1 3. The operator provides notice to the department under par. (a) that any steps
2 required by the department to be completed under par. (a) have been completed.

3 **295.63 Modifications; reporting.** (1) (a) An operator at any time may
4 request a change to a mining permit, the mining plan, the reclamation plan, or the
5 mining waste site feasibility study and plan of operation for any mining site that the
6 operator owns or leases, or request cancellation of the mining permit for any or all
7 of the unmined part of a mining site. The operator shall submit an application for
8 the change or cancellation in the form of a letter giving notice to the department of
9 the proposed change or cancellation and shall identify in the letter the tract of land
10 to be affected by a change in the mining plan, reclamation plan, or mining waste site
11 feasibility study and plan of operation or to be removed from the permitted mining
12 site.

13 (b) The department shall grant a request under par. (a) unless it determines
14 that the requested change makes it impossible for the permit holder to substantially
15 comply with the approved mining plan, reclamation plan, or mining waste site
16 feasibility study and plan of operation. If the department determines that the
17 requested change would make substantial compliance impossible, it shall follow the
18 procedure in sub. (3).

19 (c) If the request under par. (a) is to cancel any or all of the unmined part of a
20 mining site, the department shall ascertain, by inspection, if mining has occurred on
21 the land. If the department finds that no mining has occurred, the department shall
22 order release of the bond or other security posted for the land being removed from
23 the permitted mining site and cancel or amend the operator's written authorization
24 to conduct mining on the mining site. The department may not approve the removal
25 of land where mining has occurred from a permitted mining site, or release that land

ASSEMBLY BILL 426

1 from the bond or other security under this subsection, unless the operator has
2 completed reclamation to the satisfaction of the department.

3 (2) The operator shall furnish the department with a report for each mining
4 site within 30 days after the end of every 12-month period after issuance of the
5 permit, within 30 days after completion of all mining at the mining site, and within
6 30 days after completion of the mining plan and of the reclamation plan, describing
7 any reclamation work accomplished, or experimental reclamation work performed,
8 during the preceding year. The operator shall include in the reports an annual plan
9 map, color-coded and with a legend, showing all of the following, as of December 31
10 of the previous year, or as near to December 31 of the previous year as mining
11 operations permit:

12 (a) Location and boundary of the mining area.

13 (b) Any mine mill.

14 (c) Any open pit.

15 (d) Stockpiles of overburden.

16 (e) Stockpiles of waste rock.

17 (f) Ferrous ore stockpiles.

18 (g) Streams, lakes, and reservoirs.

19 (h) Tailings basins.

20 (i) Roads.

21 (j) Sequential numbers or letters or other method, as approved by the
22 department, permanently assigned to portions of the mining site that have been
23 abandoned before abandonment of the entire mining operation.

24 (k) Changes in the surface area disturbed by mining during the preceding year,
25 indicated by vertical crosshatching or other method approved by the department.

ASSEMBLY BILL 426**SECTION 65**

1 (L) Anticipated changes in the surface area disturbed by mining during the
2 current year, indicated by horizontal crosshatching or other method approved by the
3 department.

4 (m) Elevations of stockpiles and tailings basins.

5 (n) Drainage on and away from the surface area disturbed by mining, showing
6 directional flow of water in drainage ways, natural watercourses, and streams,
7 intermittent and flowing, including discharge from the mining.

8 (o) The name of the geologist, engineer, or surveyor responsible for the
9 preparation of the map.

10 (p) The date the map was prepared.

11 **(3)** If the department finds that a change requested under sub. (1) (a) would
12 make substantial compliance with the approved mining plan, reclamation plan, or
13 mining waste site feasibility study and plan of operation impossible or it finds, based
14 on a review conducted no more frequently than every 5 years, that because of
15 changing conditions, including changes in reclamation costs or reclamation
16 technology, the reclamation plan for a mining site is no longer sufficient to
17 reasonably provide for reclamation of the mining site consistent with this
18 subchapter, it shall require the applicant to submit an amended mining plan,
19 reclamation plan, or mining waste site feasibility study and plan of operation and
20 applications for amending any approval associated with the proposed amendments
21 to the mining plan, reclamation plan, or mining waste site feasibility study and plan
22 of operation. The public notice, public comment, and public hearing procedures in
23 s. 295.57 apply to amended plans and applications under this subsection. The
24 department shall approve or deny the amended mining plan, reclamation plan, or
25 mining waste site feasibility study and plan of operation in accordance with s.

ASSEMBLY BILL 426

1 295.58, within 30 days following the close of the public comment period. The
2 applicant may continue to operate under the existing mining permit until the
3 amended mining permit is issued or denied.

4 **295.635 Required mining waste site inspections, record keeping,**
5 **reporting, and responses. (1) DEFINITIONS.** In this section:

6 (a) "Active dam" means a dam and associated settling area into which tailings
7 or wastewater are being introduced or that has not been reclaimed in a manner
8 approved by the department.

9 (b) "Inactive dam" means a dam and associated settling area that is no longer
10 being used for disposal of tailings or wastewater and that has been reclaimed in a
11 manner approved by the department.

12 **(2) GENERAL.** The operator shall, at least monthly, visually inspect all of the
13 following and record observations in a mining waste site operating log:

14 (a) The active portions of the mining waste site for possible damage or
15 structural weakening.

16 (b) Mining waste handling and monitoring equipment and readings, to ensure
17 normal operation and measurements.

18 (c) Fences or barriers around the mining waste site, for possible damage.

19 (d) The buffer area around the mining waste site, for possible environmental
20 damage related to its operation.

21 **(3) ACTIVE DAMS.** The operator shall, at least monthly, inspect active dams and
22 record the findings in the mining waste site operating log. The operator shall record
23 at least all of the following findings:

24 (a) Condition of vegetation on the dam and within 50 feet from the outside base.

25 (b) Piezometric levels within the mass of the dam.

ASSEMBLY BILL 426

1 (c) Condition of soil surfaces on the top and slopes of the dam and within 50 feet
2 from the outside base.

3 (d) Condition of drainage ditches near the base of the dam.

4 (e) Liquid surface level and amount of freeboard.

5 (f) Condition of spillways, conduits, and water level control structures.

6 **(4) INACTIVE DAMS.** The operator shall inspect inactive dams quarterly and
7 record the findings in the mining waste site operating log. The operator shall record
8 at least all of the following findings:

9 (a) Condition of soil surfaces on the top and slopes of the dam and within 50 feet
10 from the outside base.

11 (b) Piezometric levels within the mass of the dam if that instrumentation has
12 been determined to be necessary or is required in the long-term care provisions of
13 the mining waste site feasibility study and plan of operation.

14 (c) Condition of spillways, conduits, and water level control structures.

15 **(5) DEFECTIVE CONDITIONS OF DAMS POSING RISK OF ADVERSE IMPACT.** When a
16 defective condition that poses a significant risk of adverse impact to the environment
17 is found during an inspection of a dam, the operator shall ensure that it is recorded
18 and corrected at the earliest practicable time. At the earliest practicable time, the
19 operator shall make a written report to the department of the condition and the
20 actions proposed and taken for its correction. Within 5 business days of receipt of a
21 written report, the department may confirm the correction of the condition and
22 specify any necessary additional corrective action. An operator shall consider any
23 of the following items as indicating a condition that requires prompt investigation
24 and that may require corrective action:

ASSEMBLY BILL 426

1 (a) Seepage on the outer face of the dam accompanied by boils, sand cones, or
2 deltas.

3 (b) Silt accumulations, boils, deltas, or cones in the drainage ditches at the base
4 of the dam.

5 (c) Cracking of soil surface on the top or either face of the dam.

6 (d) Bulging of the outside face of the dam.

7 (e) Seepage, damp areas, or boils in the vicinity of, or erosion around, a conduit
8 through the dam.

9 (f) Any shrinkage of the top or faces of the dam.

10 **(6) POTENTIAL DEFECTS OF DAMS.** All of the following conditions indicate
11 potential defects and the operator shall closely check them on subsequent
12 inspections for an active dam and conduct an intermediate inspection if they exist
13 for an inactive dam:

14 (a) Patches of overgrown vegetation on the outside face or close to the base of
15 the dam.

16 (b) Surface erosion, gullyng, or wave erosion on the inside of the dam.

17 (c) Surface erosion, gullyng, or damp areas on the outside of the dam, including
18 the berm and the area within 50 feet from the outside base.

19 (d) Erosion below any conduit.

20 (e) Wet areas or soggy soil on the outside of, or in natural soil below, the dam.

21 **(7) RECORD KEEPING RELATED TO DAMS.** (a) The operator shall retain all records
22 relating to dam monitoring, analytical, and verification activities and data,
23 including all original strip chart recordings and instrumentation, calibration, and
24 maintenance records, until termination of operator responsibility, except to the
25 extent that copies of those records have previously been provided to the department.

ASSEMBLY BILL 426**SECTION 65**

1 (b) The operator shall maintain in a permanent file all of the following
2 construction records pertaining to any dam in case they are needed for future
3 reference:

4 1. Aerial photos of the construction site before construction.

5 2. Construction drawings and modifications of the drawings.

6 3. Construction specifications and modifications of the specifications.

7 4. Results of all soil tests on foundations and fill materials.

8 5. Logs of borings and engineering geology reports.

9 6. Copies of construction progress inspections pertinent to core trench, toe
10 drain, internal drains, and other significant phases of the structure including, at the
11 option of the operator, photographs of various structural items.

12 7. Aerial photos of the entire dam taken within 90 days after all construction
13 is completed.

14 8. A description of and justification for all deviations or variances from the
15 construction plans and specifications.

16 **(8) RESPONSES TO UNPLANNED EVENTS.** If a mining waste site has an accidental
17 or emergency discharge, a fire, an explosion, or other unplanned or unpredicted
18 event that is likely to damage human health or the environment, the operator shall
19 follow the procedures set forth in the contingency plan under s. 295.51 (6) (f) and
20 shall report the incident to the department and to county, town, and tribal
21 governmental agencies immediately after the operator has discovered the event.

22 **(9) ANNUAL REPORT.** The operator shall submit to the department an annual
23 summary report concerning the mining waste site containing all of the following:

24 (a) Statistical summaries of annual and cumulative data.

ASSEMBLY BILL 426

1 (b) A comparison of the summaries under par. (a) to mining waste
2 characterization, leachate characterizations, effluent predictions, and baseline
3 water quality and background water quality data as contained in the approved
4 mining waste site feasibility study and plan of operation.

5 (c) The results of verification procedures and a presentation of the error
6 associated with each parameter reported.

7 (d) Information from monitoring wells that have not been affected, including
8 a discussion of whether the baseline values should be modified due to natural
9 variability and what the new values should be.

10 **(10) APPLICABILITY.** This section does not apply to a surface mine that is
11 backfilled with mining waste.

12 **295.64 Mining site monitoring; general. (1) GENERAL.** The department,
13 as a condition of a mining permit, shall require the operator to perform adequate
14 monitoring of environmental changes during the course of the mining and for the
15 additional period of time that is necessary to satisfactorily complete reclamation and
16 completely release the operator from any bonds or other security required. The
17 department may monitor environmental changes concurrently with the operator
18 and for an additional period after the security is released.

19 **(2) ANALYSES.** (a) The department shall review baseline water quality data
20 with respect to groundwater and monitoring data associated with the mine, mining
21 waste sites, and sites for the disposal of wastes that are not mining wastes at the time
22 of each review of the mining permit or reclamation plan under s. 295.63 (3) and when
23 the operator requests a modification of the mining permit or reclamation plan.

24 (b) An operator shall have bacteriological analyses of water samples and all
25 radiological analyses associated with the mining site performed by the state

ASSEMBLY BILL 426

1 laboratory of hygiene or at a laboratory certified or approved by the department of
2 health services. An operator shall have other laboratory tests the results of which
3 are submitted to the department under this subchapter performed by a laboratory
4 certified or registered under s. 299.11, except that this requirement does not apply
5 to any of the following:

- 6 1. Physical testing of soil.
- 7 2. Air quality tests.
- 8 3. Tests for hydrogen ion concentration (pH).
- 9 4. Tests for chlorine residual.
- 10 5. Tests for temperature.

11 **295.643 Mining waste site monitoring. (1) GENERAL.** The department may
12 require the monitoring of groundwater, surface water, leachate, or other physical
13 features associated with a mining waste site.

14 **(2) PHYSICAL FEATURES.** The department may require the monitoring of air
15 quality, berms, embankments, vegetation growth, and drainage control structures
16 associated with the mining waste site. The department may require monitoring of
17 other chemical or biological conditions, if the department determines that the
18 monitoring is necessary to assess the impact of the mining waste site on critical
19 aquatic and terrestrial ecosystems.

20 **(3) MONITORING WELLS AND OTHER DEVICES.** (a) The department shall require
21 the installation of groundwater monitoring wells at a mining waste site. The
22 department may require installation of leachate monitoring wells, lysimeters,
23 moisture probes, and similar devices and associated water quality sampling and
24 analysis programs to detect the effects of leachate on groundwater.

ASSEMBLY BILL 426

1 (b) The department shall determine the required number of groundwater
2 monitoring wells based on the size of the mining waste site, the design of the mining
3 waste site, the types of mining waste, and the hydrologic and geologic setting of the
4 mining waste site. The department shall ensure that the number of wells is adequate
5 to yield samples representative of the groundwater quality both up gradient and
6 down gradient of the mining waste site.

7 (c) An operator shall construct all monitoring wells in accordance with ch. NR
8 141, Wis. Adm. Code, and in such a manner as to prevent, to the extent practicable,
9 the exchange of water between aquifers.

10 **(4) DESTRUCTION OF MONITORING DEVICES.** (a) If for any reason a monitoring well
11 or other monitoring device associated with a mining waste site is destroyed or
12 otherwise fails to function properly, the operator shall notify the department in
13 writing within 5 days of discovering the destruction or malfunction.

14 (b) The operator shall either restore the monitoring well or other device or
15 properly abandon it and replace it with a functioning device within 60 days of
16 notifying the department under par. (a) unless the department notifies the operator
17 otherwise in writing within 30 days of receiving notice from the operator.

18 **(5) SAMPLING OTHER WELLS.** The department may require an operator to sample
19 public or private wells as part of a regular monitoring program or to determine the
20 extent of groundwater contamination associated with a mining waste site. If the
21 owner of a well does not authorize access for sampling, the operator shall promptly
22 notify the department.

23 **(6) REQUIRED MONITORING AND ANALYSIS.** (a) An operator shall monitor
24 groundwater at locations identified in the waste site feasibility study and plan of
25 operation on a quarterly basis, during March, June, September, and December,

ASSEMBLY BILL 426

1 unless the department agrees to an alternate schedule. The department may base
2 an alternate schedule on the hydrogeologic system's characteristics, such as flow
3 velocity and stratigraphy, and on fluctuations in quality as determined through
4 background water quality or baseline water quality sampling and mining waste
5 type. The operator shall analyze for the parameters listed in the approved waste site
6 feasibility study and plan of operation.

7 (b) An operator shall use the methods for groundwater and surface water
8 sample collection, preservation, and analysis that are specified in the approved
9 mining waste site facility study and plan of operation.

10 (7) WATER ELEVATION MEASUREMENTS. The operator shall make water elevation
11 measurements on a quarterly basis.

12 (8) OPERATIONS REPORT. The department may require an operator to submit an
13 operations report to assess the effectiveness and environmental acceptability of
14 mining waste site operations. The operator may include in the report a discussion
15 of confinement of the active fill area and an analysis of leachate and other
16 monitoring, surface water control and erosion control, revegetation, settlement,
17 volume of the mining waste site utilized, leachate quantity and quality, slope
18 stability, equipment performance, volume and type of waste disposed of, and other
19 relevant parameters.

20 (9) REPORTS OF MONITORING DATA. The operator shall forward to the department,
21 within 60 days after sampling, 3 copies of the monitoring data required by this
22 section to be collected during each quarter.

295.645 Groundwater quality, monitoring, and response. (1)

24 DEFINITIONS. In this section:

ASSEMBLY BILL 426

1 (a) "Alternative concentration limit" means the concentration of a substance
2 in groundwater established by the department to replace a groundwater quality
3 standard when the department grants an exemption.

4 (b) "Statistically significantly different" means an amount of change
5 determined by the use of statistical tests for measuring significance at the 95 percent
6 confidence level.

7 **(2) DESIGN MANAGEMENT ZONE.** (a) Notwithstanding the rule-making authority
8 in s. 160.21 (2) and except as provided under par. (b), for the purposes of ch. 160, the
9 horizontal distance to the boundary of the design management zone for a mining
10 operation is 1,200 feet from the limits of the engineered structures of the mining
11 waste site, including any wastewater and sludge storage or treatment lagoons, the
12 edge of the mine, and the adjacent mine mill and ferrous mineral processing facilities
13 or at the boundary of the property owned or leased by the applicant, whichever
14 distance is less.

15 (b) When issuing or modifying a mining permit or issuing or reissuing any other
16 approval, the department may expand the design management zone by a horizontal
17 distance of up to an additional 1,200 feet in any direction as provided in this
18 paragraph, but not beyond the boundary of the property owned or leased by the
19 applicant. The department may not expand the design management zone unless the
20 applicant demonstrates all of the following:

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

ASSEMBLY BILL 426

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

4 (c) Notwithstanding the rule-making authority in s. 160.21 (2), for the
5 purposes of ch. 160, the vertical distance to the boundary of the design management
6 zone for a mining site, including any mining waste site, extends no deeper than 1,000
7 feet into the Precambrian bedrock or than the final depth of the mining excavation,
8 whichever is greater.

9 **(3) POINT OF STANDARDS APPLICATION.** (a) Any point at which groundwater is
10 monitored is a point of standards application to determine whether a preventive
11 action limit or an alternative concentration limit to a preventive action limit has been
12 attained or exceeded for an activity regulated under a mining permit or another
13 approval related to the mining operation. Any of the following is a point of standards
14 application to determine whether an enforcement standard or an alternative
15 concentration limit to an enforcement standard has been attained or exceeded for an
16 activity regulated under a mining permit or another approval related to the mining
17 operation:

18 1. Any point of present groundwater use.

19 2. Any point beyond the boundary of the property on which the activity is
20 conducted, subject to par. (b).

21 3. Any point that is within the boundary of the property on which the activity
22 is conducted but is beyond the design management zone, subject to par. (b).

23 (b) No point at a depth of greater than 1,000 feet into the Precambrian bedrock
24 or than the final depth of the mining excavation, whichever is greater, is a point of
25 standards application under this subsection.

ASSEMBLY BILL 426

1 (c) Section 160.21 (2) does not apply to an activity regulated under this
2 subchapter.

3 **(4) CHANGE IN GROUNDWATER QUALITY.** If the analysis of samples collected
4 through monitoring indicates that the quality of groundwater is statistically
5 significantly different from either baseline water quality or background water
6 quality and the evaluation of the data shows a reasonable probability that without
7 intervention groundwater quality standards or alternative concentration limits will
8 be attained or exceeded, the operator shall do all of the following:

9 (a) Notify the department within 10 days after the operator receives the results
10 of the analysis of the samples.

11 (b) Determine, if possible, the cause of the difference in water quality, such as
12 a spill, a design failure, or an improper operational procedure.

13 (c) Determine the extent of groundwater contamination or the potential for
14 groundwater contamination.

15 (d) Implement the applicable portions of the approved contingency plan.

16 **(5) RESPONSE CONCERNING PREVENTIVE ACTION LIMITS.** In accordance with s. NR
17 140.24 (1) to (5), Wis. Adm. Code, the department shall evaluate the range of
18 responses proposed by the operator when a preventive action limit or an alternative
19 concentration limit to a preventive action limit is attained or exceeded and the
20 analysis of samples indicates that the quality of groundwater is statistically
21 significantly different from either baseline water quality or background water
22 quality at a point of standards application. In designating the appropriate response,
23 the department shall evaluate the operator's proposed range of responses, including
24 any alternate responses to those identified in s. NR 140.24, Wis. Adm. Code. For any
25 alternate responses, the department shall consider the technical and economic

ASSEMBLY BILL 426

1 feasibility of alternate responses, the practicality of stopping the further release of
2 the substance, and the risks and benefits of continued mining operations. The
3 department shall designate the appropriate response, except that, notwithstanding
4 s. 160.21 (3) and the rule-making authority under s. 160.21 (1), the department may
5 not prohibit a practice or activity or require closure and abandonment of a mining
6 waste site, including any wastewater and sludge storage or treatment lagoon, unless
7 it has followed the procedures in s. 295.78 and satisfies the requirements of s. 160.23
8 (4) and (6). The department may determine that no response is necessary and that
9 an exemption is not required when the requirements of s. NR 140.24 (5) (a) or (b), Wis.
10 Adm. Code are met.

11 **(6) RESPONSE CONCERNING ENFORCEMENT STANDARDS.** (a) In accordance with s.
12 NR 140.26 (1) and (2), Wis. Adm. Code, the department shall evaluate the range of
13 responses proposed by the operator based on the responses listed in Table 6 of s. NR
14 140.26, Wis. Adm. Code, when an enforcement standard or an alternative
15 concentration limit to an enforcement standard is attained or exceeded and the
16 analysis of samples indicates that the quality of groundwater is statistically
17 significantly different from either baseline water quality or background water
18 quality at a point of standards application. In designating the appropriate response,
19 the department shall evaluate the operator's proposed range of responses against
20 those identified in Table 6 of s. NR 140.26, Wis. Adm. Code. The department shall
21 designate the appropriate response, except that, notwithstanding ss. 160.21 (3) and
22 160.25 (1) (a) and the rule-making authority under s. 160.21 (1), the department may
23 not prohibit a practice or activity or require closure and abandonment of a mining
24 waste site, including any wastewater and sludge storage or treatment lagoon, unless
25 it has followed the procedures in s. 295.78 and all of the following apply:

ASSEMBLY BILL 426

- 1 1. The department bases its decision upon reliable test data.
- 2 2. The department determines, to a reasonable certainty, by the greater weight
3 of the credible evidence, that no other remedial action would prevent the violation
4 of the enforcement standard at the point of standards application.
- 5 3. The department establishes the basis for the boundary and duration of the
6 prohibition.
- 7 4. The department ensures that any prohibition imposed is reasonably related
8 in time and scope to maintaining compliance with the enforcement standard at the
9 point of standards application.
- 10 5. If the substance involved is naturally occurring, unless the substance
11 involved is carcinogenic, teratogenic, or mutagenic in humans, the department
12 considers the existence of the background concentration of the substance in
13 evaluating response options to the noncompliance with the enforcement standard or
14 alternative concentration limit for that substance and determines that the proposed
15 prohibition will result in the protection of or substantial improvement in
16 groundwater quality notwithstanding the background concentrations of the
17 substance.
- 18 (b) The department may only require a remedial action to be taken if the
19 remedial action is reasonably related in time and scope to the substance, activity, or
20 practice that caused the enforcement standard or alternative concentration limit to
21 an enforcement standard to be attained or exceeded and the quality of groundwater
22 to be statistically significantly different from either baseline water quality or
23 background water quality at the point of standards application.
- 24 (c) If nitrates or any substance of welfare concern attains or exceeds an
25 enforcement standard and if the analysis of samples indicates that the quality of

ASSEMBLY BILL 426

1 groundwater is statistically significantly different from either baseline or
2 background water quality, then the department shall evaluate whether the
3 enforcement standard was attained or exceeded in whole or in part due to high
4 background water quality concentrations of the substance and whether the
5 additional concentrations represent a public welfare concern before it designates the
6 appropriate response and, notwithstanding ss. 160.21 (3) and 160.25 (1) (a) and the
7 rule-making authority under s. 160.21 (1), the department may not prohibit a
8 practice or activity or require closure and abandonment of a mining waste site,
9 including any wastewater and sludge storage or treatment lagoon, unless it has
10 followed the procedures in s. 295.78 and par. (a) 1. to 4. apply.

11 (d) If compliance with an enforcement standard is achieved at a point of
12 standards application, then sub. (5) applies.

13 **(7) ENVIRONMENTAL ANALYSIS NOT REQUIRED.** An action under sub. (5) or (6) with
14 respect to a specific site does not constitute a major state action under s. 1.11 (2).

15 **(8) EXEMPTIONS TO GROUNDWATER QUALITY STANDARDS.** When issuing or
16 modifying a mining permit or issuing or reissuing any other approval, the
17 department may grant an exemption from a groundwater quality standard and
18 establish an alternative concentration limit to a groundwater quality standard.

19 **(9) APPLICABILITY OF OTHER LAW.** Chapter NR 140, Wis Adm. Code, applies to
20 mining operations and mining sites, including mining waste sites, only to the extent
21 that it does not conflict with this section.

22 **295.65 Successors. (1)** When one operator succeeds to the interest of another
23 in an uncompleted mining operation by sale, assignment, lease, or otherwise, the
24 department shall release the first operator from the duties imposed upon the first
25 operator by this subchapter as to the mining operation and transfer the mining

ASSEMBLY BILL 426

1 permit and any approvals under ss. 295.60, 295.605, and 295.61 to the successor
2 operator if all of the following apply:

3 (a) The successor operator agrees to comply with the requirements of this
4 subchapter.

5 (b) The successor operator discloses whether it has forfeited any performance
6 security because of noncompliance with any mining laws within the previous 10
7 years, posts any bond or other security required under s. 295.59, and assumes all
8 responsibilities of all applicable approvals granted to the predecessor operator.

9 (2) The department is not required to prepare an environmental impact
10 statement or an environmental assessment for the purposes of this section.

11 **295.66 Cessation of mining or reclamation.** If there is a cessation of
12 mining or reclamation for 30 days or more that is not set forth in either the mining
13 plan or the reclamation plan, the operator shall notify the department of the
14 cessation within 48 hours of the cessation of mining and shall begin stabilization of
15 the mining site. The department may require the operator to provide technical,
16 engineering, and any other information that the operator believes shows that its
17 actions to stabilize the mining site are adequate. If the department determines, after
18 reviewing the information provided by the operator, that the proposed stabilization
19 of the mining site will result in a substantial adverse impact to the environment, the
20 department shall order the operator to begin additional measures to protect the
21 environment, including, if the cessation is reasonably anticipated to extend for a
22 protracted period of time, reclamation according to the reclamation plan or part of
23 the reclamation plan. Usual and regular shutdown of operations on weekends, for
24 maintenance or repair of equipment or facilities, or for other customary reasons do
25 not constitute a cessation of mining.

ASSEMBLY BILL 426

1 **295.67 Determination of abandonment of mining.** (1) Except as provided
2 in sub. (2), abandonment of mining occurs if there is a cessation of mining, not set
3 forth in an operator's mining plan or reclamation plan or by any other sufficient
4 written or constructive notice, extending for more than 6 consecutive months.

5 (2) Abandonment of mining does not occur if all of the following apply:

6 (a) The cessation of mining is due either to labor strikes or to unforeseen
7 developments such as adverse market conditions.

8 (b) The cessation of mining does not continue beyond the time, not to exceed
9 5 years, specified by the department.

10 (c) The mining site is maintained in an environmentally stable manner during
11 the cessation of mining.

12 (d) The reclamation of the mining site continues according to the reclamation
13 plan during the cessation of mining to the extent practicable.

14 **295.68 Certificates of completion and release of security.** (1) Upon the
15 petition of the operator, but not less than 4 years after notification to the department
16 by the operator of the completion of the reclamation plan or not less than one year
17 after notification to the department by the operator of the completion of the
18 reclamation plan as to a portion of the mining site, if the department finds that the
19 operator has completed reclamation of any portion of the mining site in accordance
20 with the reclamation plan and this subchapter, the department shall issue a
21 certificate of completion setting forth a description of the area reclaimed and a
22 statement that the operator has fulfilled its duties under the reclamation plan as to
23 that area.

24 (2) Upon the issuance of any certificate of completion under sub. (1) for any
25 portion of the mining site, but not for the entire mining site, the department shall

ASSEMBLY BILL 426

1 allow the operator to reduce the amount of the bond or other security provided under
2 s. 295.59 (1) to an amount equal to the estimated cost of reclamation of the portion
3 of the mining site that is disturbed or for which reclamation has been completed but
4 no certificate of completion has been issued.

5 (3) Upon issuance of a certificate or certificates of completion of reclamation
6 for the entire mining site, the department shall require the operator to maintain a
7 bond or other security under s. 295.59 (1) equal to at least 10 percent of the cost to
8 the state of reclamation of the entire mining site, except that if the mining site in the
9 mining plan is less than 10 acres, the department may release the bond or other
10 security after issuance of the certificate of completion for the entire mining site.

11 (4) After 10 years after the issuance of a certificate or certificates of completion
12 for the entire mining site, the department shall release the remaining bond or other
13 security provided under s. 295.59 (1) if the department finds that the reclamation
14 plan has been complied with.

15 **295.69 Termination of proof of financial responsibility for long-term**
16 **care of mining waste site. (1)** One year after closure, and annually thereafter
17 until the department terminates the obligation to maintain proof of financial
18 responsibility for long-term care of a mining waste site under sub. (2) (c), an operator
19 who has carried out all necessary long-term care during the preceding year, may
20 apply to the department for a reduction in the amount of the proof of financial
21 responsibility provided under s. 295.59 (2m) equal to the costs of long-term care for
22 that year. The operator shall provide an itemized list of costs incurred. If the
23 department determines that the costs incurred are in accordance with the long-term
24 care requirements in the approved waste site feasibility study and plan of operation
25 and that adequate funds exist to complete required long-term care for the remainder

ASSEMBLY BILL 426

1 of the 40-year period on which the amount of the proof of financial responsibility was
2 originally determined, the department shall authorize in writing a reduction in the
3 amount of proof of financial responsibility provided. The department shall make its
4 determinations within 90 days of an application.

5 (2) (a) An operator may apply to the department for termination of its
6 obligation to maintain proof of financial responsibility for long-term care of the
7 mining waste site under s. 295.59 (2m) at any time after the mining waste site has
8 been closed for 20 years by submitting an application that demonstrates that
9 continuation of the obligation to maintain proof of financial responsibility for
10 long-term care is not necessary for adequate protection of public health or the
11 environment. The burden is on the operator to prove by a preponderance of the
12 evidence that continuation of the obligation to maintain proof of financial
13 responsibility for long-term care is not necessary for adequate protection of public
14 health or the environment.

15 (b) Within 30 days of receiving an application under par. (a), the department
16 shall provide notice to the public of the application for termination of the obligation
17 to maintain proof of financial responsibility for long-term care. In the notice, the
18 department shall invite the submission of written comments by any person on the
19 application within 30 days of the day on which the notice is published. The
20 department shall provide the notice by publishing a class 1 notice under ch. 985 in
21 the official newspaper designated under s. 985.04 or 985.05 or, if none exists, in a
22 newspaper likely to give notice in the area of the mining waste site. The department
23 shall also send the notice to the operator.

24 (c) Within 120 days of the day on which the department publishes the notice
25 under par. (b), the department shall determine either that proof of financial

ASSEMBLY BILL 426

1 responsibility for long-term care of the mining waste site is no longer required, in
2 which case the applicant is relieved of the responsibility of providing proof of
3 financial responsibility for long-term care, or that proof of financial responsibility
4 for long-term care of the mining waste site is still required, in which case the
5 applicant may not submit another application under par. (a) until at least 5 years
6 have elapsed since the previous application.

7 **295.695 Inspections by the department. (1)** Any duly authorized officer,
8 employee, or representative of the department who has received the safety training
9 under 30 CFR 48.31 may enter and inspect any property, premises, or place on or at
10 which any mining operation or facility is located or is being constructed or installed
11 at any reasonable time for the purpose of ascertaining the state of compliance with
12 this subchapter and the provisions of chs. 281, 283, 285, 289, 291, 292, and 299 and
13 rules promulgated under those chapters that are applicable to the mining operation.
14 No person may refuse entry or access to any authorized representative of the
15 department who requests entry for purposes of inspection, and who presents
16 appropriate credentials.

17 **(2)** No person may obstruct, hamper, or interfere with any inspection
18 authorized in sub. (1).

19 **(3)** The department shall furnish to the operator a written report on any
20 inspection setting forth all observations, relevant information, and data that relate
21 to compliance status.

22 **295.73 Fees. (1)** An applicant for a mining permit is not required to pay any
23 application or filing fee for any approval other than a mining permit,
24 notwithstanding any fee required under ch. 23, 29, 30, 169, 281, 283, 285, 289, or 291,
25 or rules promulgated under those chapters.

ASSEMBLY BILL 426**SECTION 65**

1 **(3)** (a) The department shall assess an applicant a fee equal to its costs for
2 evaluating the mining project, including the costs for consultants retained by the
3 department to evaluate the application for the mining permit and the application for
4 any other approval and to perform environmental analysis under s. 1.11 or
5 \$1,100,000, whichever is less.

6 (b) The applicant shall pay fees as follows:

7 1. One hundred thousand dollars shall be paid at the time that the bulk
8 sampling plan is filed under s. 295.45 or at the time that the notice of the intention
9 to file a mining permit application is filed, whichever is first.

10 2. Two hundred fifty thousand dollars when the department provides cost
11 information demonstrating that the payment under subd. 1. has been fully allocated
12 against actual costs.

13 3. Two hundred fifty thousand dollars when the department provides cost
14 information demonstrating that the payment under subd. 2. has been fully allocated
15 against actual costs.

16 4. Two hundred fifty thousand dollars when the department provides cost
17 information demonstrating that the payment under subd. 3. has been fully allocated
18 against actual costs.

19 5. Two hundred fifty thousand dollars when the department provides cost
20 information demonstrating that the payment under subd. 4. has been fully allocated
21 against actual costs.

22 (b) After the department approves or denies the application for a mining permit
23 or, if the applicant withdraws the application for a mining permit, after the applicant
24 withdraws the application, the department shall refund to the applicant any amount

ASSEMBLY BILL 426

1 paid by the applicant under par. (a) but not fully allocated against the department's
2 actual costs.

3 (4) Subchapter VI of ch. 289 does not apply to mining waste disposed of in a
4 mining waste site covered by a mining permit, except that an operator shall pay the
5 fees specified in ss. 289.63 (4), 289.64 (3), and 289.67 (1) (d).

6 **295.75 Effect of other laws.** If there is a conflict between a provision in this
7 subchapter and a provision in ch. 23, 29, 30, 160, 169, 281, 283, 285, 289, or 291 or
8 in a rule promulgated under one of those chapters, the provision in this subchapter
9 controls.

10 **295.77 Review.** (1) Notwithstanding s. 227.42, no person is entitled to a
11 contested case hearing on a decision by the department under this subchapter or on
12 a decision by the department relating to the issuance of an approval.

13 (2) Judicial review of a decision described in sub. (1) is the exclusive method
14 for challenging the decision. The court shall base review of a decision described in
15 sub. (1) on the administrative record before the department. The scope of the review
16 is that specified in s. 227.57. No judicial review is available before the department
17 issues the final decision on an approval.

18 **295.78 Mining and reclamation; orders.** (1) (a) If the department finds a
19 violation of law or any unapproved deviation from the mining plan, reclamation plan,
20 or mining waste site feasibility study and plan of operation at a mining site under
21 a mining permit, the department shall do one of the following:

22 1. Issue an order requiring the operator to comply with the law, mining plan,
23 reclamation plan, or mining waste site feasibility study and plan of operation within
24 a specified time.

ASSEMBLY BILL 426**SECTION 65**

1 2. Require the alleged violator to appear before the department for a hearing
2 and answer the department's charges.

3 3. Request the department of justice to initiate action under s. 295.79.

4 (b) Any order issued under par. (a) 1. following a hearing takes effect
5 immediately. Any other order takes effect 10 days after the date the order is served,
6 unless the person named in the order requests in writing a hearing before the
7 department within the 10-day period.

8 (c) If no hearing on an order issued under par. (a) 1. was held and if the
9 department receives a request for a hearing within 10 days after the date the order
10 is served, the department shall provide due notice and hold a hearing. If after the
11 hearing the department finds that no violation has occurred, it shall rescind its order.

12 (d) If an operator fails to comply with an order issued under par. (a) 1. within
13 the time for compliance specified in the order, the department shall suspend the
14 mining permit until the operator fully complies with the order, except that if the
15 operator seeks review of the order under s. 295.77, mining may continue until the
16 final disposition of the action, except as provided under sub. (4).

17 (e) The department shall inform the department of justice of a suspension
18 under par. (d) within 14 days. After receiving notice of a suspension, the department
19 of justice may commence an action under s. 295.79.

20 **(2)** If reclamation of a mining site is not proceeding in accordance with the
21 reclamation plan and the operator has not begun to rectify deficiencies within the
22 time specified in an order, or if the reclamation is not properly completed in
23 conformance with the reclamation plan within one year after completion or
24 abandonment of mining on any portion of the mining site, unless because of acts of
25 God, such as adverse weather affecting grading, planting, and growing conditions,

ASSEMBLY BILL 426

1 the department, with the staff, equipment, and material under its control, or by
2 contract with others, shall take the actions that are necessary for the reclamation of
3 mined areas. The operator is liable for the cost to the state of reclamation conducted
4 under this subsection.

5 (3) The department shall cancel all other mining permits held by an operator
6 who refuses to reclaim a mining site in compliance with the reclamation plan after
7 the completion of mining or after the cancellation of a mining permit. The
8 department may not issue any mining permit for that mining site or any other
9 mining site in this state to an operator who refused to reclaim the mining site in
10 compliance with the reclamation plan.

11 (4) At any time that the department determines that the continuance of mining
12 constitutes an immediate and substantial threat to public health and safety or the
13 environment, the department may request the department of justice to institute an
14 action in circuit court of the county in which the mine is located for a restraining
15 order or injunction or other appropriate remedy to stop mining until the immediate
16 and substantial threat is eliminated.

17 (5) Section 281.346 (7m) does not apply to a water withdrawal associated with
18 a mining operation for which a mining permit has been issued.

19 **295.79 Enforcement; penalties.** (1) The department of justice shall enforce
20 this subchapter and any order issued under this subchapter. The circuit court of the
21 county where the violation occurred has jurisdiction to enforce this subchapter or any
22 orders issued under this subchapter, by injunction or other appropriate relief.

23 (2) (a) Any person who authorizes or engages in mining without a mining
24 permit and written authorization to mine under s. 295.59 (3) shall forfeit all profits

ASSEMBLY BILL 426

1 obtained from those illegal activities and not more than \$5,000 for each day during
2 which the mine was in operation.

3 (b) A person to whom par. (a) applies is also liable to the department for the full
4 cost of reclaiming the affected area of land and any damages caused by the mining.

5 (c) If the violator of par. (a) is a corporation, limited liability company,
6 partnership, or association, any officer, director, member, manager, or partner who
7 knowingly authorizes, supervises, or contracts for mining is also subject to the
8 penalties in this subsection.

9 (3) Any person who makes or causes to be made in an application or report
10 required by this subchapter a statement known to the person to be false or
11 misleading in any material respect or who refuses to submit information required by
12 a mining permit or by this subchapter may be fined not less than \$1,000 nor more
13 than \$5,000. If the false or misleading statement is material to the issuance of the
14 mining permit and the mining permit would not have been issued had the false or
15 misleading statement not been made, the court may revoke the mining permit. If any
16 violation under this subsection is repeated the court may revoke the mining permit.

17 (4) (a) Any person who commits a violation of this subchapter or any permit or
18 order issued under this subchapter, except for the violations enumerated in subs. (2)
19 or (3), shall forfeit not less than \$10 nor more than \$5,000 for each violation. Each
20 day of continued violation is a separate offense, except that no forfeiture may be
21 imposed during the time that continued mining is authorized under s. 295.63 (3).
22 While an order is suspended, stayed, or enjoined, this penalty does not accrue.

23 (b) In addition to the penalties provided under par. (a), the court may award
24 the department of justice the reasonable and necessary expenses of the investigation
25 and prosecution of the violation, including attorney fees. The department of justice

ASSEMBLY BILL 426

1 shall deposit in the state treasury for deposit into the general fund all moneys that
2 the court awards to the department or the state under this paragraph. These moneys
3 shall be credited to the appropriation account under s. 20.455 (1) (gh).

4 (5) Any person having an interest that is or may be adversely affected may
5 intervene as a matter of right, in any enforcement action brought under this section.

6 **SECTION 66.** 299.85 (7) (a) 2. and 4. of the statutes are amended to read:

7 299.85 (7) (a) 2. Notwithstanding minimum or maximum forfeitures specified
8 in ss. 29.314 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969,
9 29.971 (1) (a), (1m) (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and
10 (3), 30.49 (1) (a) and (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2),
11 285.41 (7), 285.57 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97,
12 289.96 (2) and (3) (a), 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a),
13 295.19 (3) (a) and (b) 1., 295.37 (2), 295.79 (2), (3), and (4), 299.15 (4), 299.51 (5),
14 299.53 (4) (c) 1., 299.62 (3) (a) and (c), and 299.97 (1), if a regulated entity that
15 qualifies under sub. (2) for participation in the Environmental Compliance Audit
16 Program corrects violations that it discloses in a report that meets the requirements
17 of sub. (3) within 90 days after the department receives the report that meets the
18 requirements of sub. (3), the regulated entity may not be required to forfeit more than
19 \$500 for each violation, regardless of the number of days during which the violation
20 continues.

21 4. Notwithstanding minimum or maximum forfeitures specified in ss. 29.314
22 (7), 29.334 (2), 29.604 (5) (a), 29.611 (11), 29.889 (10) (c) 2., 29.969, 29.971 (1) (a), (1m)
23 (a), (3), (3m), (11g) (b), (11m) (b), and (11r) (b), 30.298 (1), (2), and (3), 30.49 (1) (a) and
24 (c), 31.23 (2), 281.75 (19), 281.98 (1), 281.99 (2) (a) 1., 283.91 (2), 285.41 (7), 285.57
25 (5), 285.59 (8), 285.87 (1), 287.95 (1), (2) (b), and (3) (b), 287.97, 289.96 (2) and (3) (a),

ASSEMBLY BILL 426

1 291.97 (1), 292.99 (1) and (1m), 293.81, 293.87 (3) and (4) (a), 295.19 (3) (a) and (b)
2 1., 295.37 (2), 295.79 (2), (3), and (4), 299.15 (4), 299.51 (5), 299.53 (4) (c) 1., 299.62
3 (3) (a) and (c), and 299.97 (1), if the department approves a compliance schedule
4 under sub. (6) and the regulated entity corrects the violations according to the
5 compliance schedule, the regulated entity may not be required to forfeit more than
6 \$500 for each violation, regardless of the number of days during which the violation
7 continues.

8 **SECTION 67.** 299.95 of the statutes is amended to read:

9 **299.95 Enforcement; duty of department of justice; expenses.** The
10 attorney general shall enforce chs. 281 to 285 and 289 to 295 and this chapter, except
11 ss. 285.57, 285.59, and 299.64, and all rules, special orders, licenses, plan approvals,
12 permits, and water quality certifications of the department, except those
13 promulgated or issued under ss. 285.57, 285.59, and 299.64 and except as provided
14 in ss. 285.86 and 299.85 (7) (am). The Except as provided in s. 295.79 (1), the circuit
15 court for Dane county or for any other county where a violation occurred in whole or
16 in part has jurisdiction to enforce chs. 281 to 285 and 289 to 295 or this chapter or
17 the rule, special order, license, plan approval, permit, or certification by injunctive
18 and other relief appropriate for enforcement. For purposes of this proceeding where
19 chs. 281 to 285 and 289 to 295 or this chapter or the rule, special order, license, plan
20 approval, permit or certification prohibits in whole or in part any pollution, a
21 violation is considered a public nuisance. The department of natural resources may
22 enter into agreements with the department of justice to assist with the
23 administration of chs. 281 to 285 and 289 to 295 and this chapter. Any funds paid
24 to the department of justice under these agreements shall be credited to the
25 appropriation account under s. 20.455 (1) (k).

ASSEMBLY BILL 426

1 **SECTION 68.** 323.60 (1) (gm) of the statutes is created to read:

2 323.60 (1) (gm) "Minerals" mean unbeneficiated metallic ore but does not
3 include mineral aggregates such as stone, sand, and gravel.

4 **SECTION 69.** 323.60 (5) (d) 3. of the statutes is amended to read:

5 323.60 (5) (d) 3. All facilities with 10 or more employees in major group
6 classifications 10 to 13 in the standard industrial classification manual, 1987
7 edition, published by the U.S. office of management and budget, at which a toxic
8 chemical is used at or above an applicable threshold quantity, except that compliance
9 with the toxic chemical release form requirements under this subdivision is not
10 required for the placement of a toxic chemical in a storage or disposal site or facility
11 that is located at a facility with a permit under ch. 293 or a mining permit under
12 subch. III of ch. 295 if the toxic chemical consists of or is contained in merchantable
13 by-products, as defined in s. 293.01 (7) or 295.41 (25), minerals as defined in s. 293.01
14 (8), or refuse, as defined in s. 293.01 (25) or 295.41 (41).

15 **SECTION 70.** 710.02 (2) (d) of the statutes is amended to read:

16 710.02 (2) (d) An exploration mining lease as defined in s. 107.001 (1) and land
17 used for mining and associated activities under chs. 293 and 295.

18 **SECTION 71. Nonstatutory provisions.**

19 (1) RULES.

20 (a) The department of natural resources shall submit in proposed form rules
21 revising chapters NR 130, 131, 132, and 182, Wisconsin Administrative Code, that
22 are in effect on the effective date of this paragraph and revising any other rules
23 promulgated under section 293.13 (1) (a) of the statutes that are in effect on the
24 effective date of this paragraph to the legislative council staff under section 227.15
25 (1) of the statutes no later than the first day of the 5th month beginning after the

ASSEMBLY BILL 426**SECTION 71**

1 effective date of this paragraph. The proposed revised rules shall clarify that
2 chapters NR 130, 131, 132, and 182, Wisconsin Administrative Code, and any other
3 rules promulgated under section 293.13 (1) (a) of the statutes do not apply to ferrous
4 metallic mining.

5 (b) The department of natural resources shall submit in proposed form rules
6 revising chapters NR 500 to 555 and 600 to 679, Wisconsin Administrative Code, that
7 are in effect on the effective date of this paragraph and revising any other rules
8 promulgated under sections 289.05 and 289.06 (1) of the statutes that are in effect
9 on the effective date of this paragraph to the legislative council staff under section
10 227.15 (1) of the statutes no later than the first day of the 5th month beginning after
11 the effective date of this paragraph. The department shall revise the rules in
12 chapters NR 500 to 555 and 600 to 679, Wisconsin Administrative Code, and any
13 other rules promulgated under sections 289.05 and 289.06 (1) of the statutes so that
14 they are consistent with subchapter III of chapter 295, of the statutes, as created by
15 this act.

16 (c) The department of natural resources shall submit, to the legislative council
17 staff under section 227.15 (1) of the statutes, no later than the first day of the 5th
18 month beginning after the effective date of this paragraph, in proposed form rules
19 revising any rules of the department that are in effect on the effective date of this
20 paragraph, in addition to the rules under paragraphs (a) and (b), that provide
21 exemptions for nonferrous mining or associated activities to provide the same
22 exemptions for ferrous mining and associated activities.

ASSEMBLY BILL 426

1 (d) Notwithstanding section 227.137 (2) of the statutes, the department of
2 natural resources is not required to prepare an economic impact report for the
3 revised rules required under paragraphs (a) to (c).

4 **(END)**