

State of Wisconsin



2017 Assembly Bill 499

Date of enactment: **December 11, 2017**
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2017 WISCONSIN ACT 134

AN ACT *to repeal* 227.42 (4), 293.43 (2), 293.43 (3), 293.43 (4), 293.43 (5) and 293.50; *to amend* 20.370 (2) (gh), 70.375 (2) (b), 70.375 (4) (h), 281.35 (5) (e), 283.84 (3m), 293.01 (9), 293.01 (18), 293.13 (2) (b) (intro.), 293.13 (2) (b) 4., 293.13 (2) (b) 7., 293.13 (2) (c) (intro.), 293.13 (2) (c) 7., 293.15 (8), 293.31 (title), 293.31 (1), 293.31 (2), 293.31 (3), 293.31 (4), 293.43 (1), 293.43 (1m) (b), 293.49 (1) (a) (intro.), 293.51 (title), 293.51 (3), 293.55 (1) (c), 293.55 (1) (d), 293.65 (3) (b) and 293.81; *to repeal and recreate* 293.95; and *to create* 293.01 (2m), 293.15 (7m), 293.26, 293.31 (4m), 293.32 (4), 293.37 (5), 293.40, 293.43 (2m), 293.43 (3m), 293.43 (4m), 293.49 (1) (a) 2m., 293.495, 293.51 (1g), 293.51 (1m), 293.51 (1r), 293.51 (5) and 293.66 of the statutes; **relating to:** the regulation of nonferrous metallic mining, prospecting, exploration, and bulk sampling, repealing administrative rules relating to wetlands, granting rule-making authority, and making an appropriation.

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

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

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

SECTION 1n. 70.375 (2) (b) of the statutes is amended to read:

70.375 (2) (b) The secretary may promulgate any rules necessary to implement the tax under ss. 70.37 to 70.39 and 70.395 (1e). In respect to mines not in operation on November 28, 1981, ss. 71.10 (1), 71.30 (1) and (2), 71.74 (2), (3), (9), (11) and (15), 71.77, 71.78, 71.80 (6), 71.83 (1) (a) 1. and 2. and (b) 2. and (2) (a) 3. and (b) 1. and 71.85 (2) apply to the administration of this section.

SECTION 2. 70.375 (4) (h) of the statutes is amended to read:

70.375 (4) (h) The cost of premiums for bonds required under s. 293.26 (9), 293.51, 295.45 (5), or 295.59.

SECTION 3. 227.42 (4) of the statutes is repealed.

SECTION 4. 281.35 (5) (e) of the statutes is amended to read:

281.35 (5) (e) *Right to hearing.* ~~Except as provided in s. 227.42 (4), any~~ Any person who receives notice of a denial or modification requirement under par. (c) is entitled to a contested case hearing under ch. 227 if the person requests the hearing within 30 days after receiving the notice.

SECTION 5. 283.84 (3m) of the statutes is amended to read:

283.84 (3m) A person engaged in mining, as defined in s. 293.01 (9) or 295.41 (26), prospecting, as defined in s. 293.01 (18), bulk sampling, as defined in s. 293.01 (2m) or 295.41 (7), or nonmetallic mining, as defined in

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

s. 295.11 (3), may not enter into an agreement under sub. (1).

SECTION 6. 293.01 (2m) of the statutes is created to read:

293.01 (2m) “Bulk sampling” means excavating in a potential mining site by removing less than 10,000 tons of material, including overburden and any other material removed from any portion of the excavation site, for the purposes of obtaining site-specific data to assess the quality and quantity of the nonferrous metallic mineral deposits and of collecting data from and analyzing the excavated materials in order to prepare the application for a mining permit or for any other approval. Bulk sampling does not constitute prospecting within the meaning of sub. (18).

SECTION 7. 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, bulk sampling, or prospecting, including commercial extraction, agglomeration, beneficiation, construction of roads, removal of overburden and the production of refuse.

SECTION 8. 293.01 (18) of the statutes is amended to read:

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

SECTION 9. 293.13 (2) (b) (intro.) of the statutes is amended to read:

293.13 (2) (b) (intro.) Minimum standards for exploration, bulk sampling, prospecting, and mining shall include the following:

SECTION 10. 293.13 (2) (b) 4. of the statutes is amended to read:

293.13 (2) (b) 4. Adequate diversion and drainage of water from the exploration, bulk sampling, prospecting, or mining site.

SECTION 11. 293.13 (2) (b) 7. of the statutes is amended to read:

293.13 (2) (b) 7. Removal and stockpiling, or other measures to protect topsoils prior to exploration, bulk sampling, prospecting, or mining.

SECTION 12. 293.13 (2) (c) (intro.) of the statutes is amended to read:

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

SECTION 13. 293.13 (2) (c) 7. of the statutes is amended to read:

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

SECTION 14. 293.15 (7m) of the statutes is created to read:

293.15 (7m) Issue licenses and approvals necessary for bulk sampling.

SECTION 15. 293.15 (8) of the statutes is amended to read:

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

SECTION 16. 293.26 of the statutes is created to read:

293.26 Bulk sampling. (1) In this section, “approval” means any permit, license, certification, contract, or other authorization that the department issues, or any other action by the department, that is required to engage in bulk sampling.

(1m) No person may engage in bulk sampling except as provided in a bulk sampling license issued by the department under sub. (4) or (14m) and any approval required by the department to engage in bulk sampling identified under sub. (4) or sub. (4m). A person who intends to engage in bulk sampling shall file a bulk sampling plan with the department. The collection of data under a bulk sampling plan may include sampling and analysis related to geophysical, geochemical, groundwater, and surface water conditions, as well as any other data or studies necessary to prepare an application for a mining permit, including the mining plan, reclamation plan, mining waste site feasibility study and plan of operation, or any other approval required for the proposed mining.

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

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

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

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

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

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

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

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

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

(4) Within 14 days of receipt of a complete bulk sampling plan under sub. (2), the department shall identify for the applicant, in writing, all approvals that are required before the bulk sampling may be implemented, any waivers, exemptions, or exceptions to those approvals that are potentially available, and any information that the department needs to issue the approvals or to issue a decision on any waiver, exemption, or exception. If no approvals are required, the department shall notify the

applicant that no approvals are required and issue a bulk sampling license to the applicant.

(4m) An applicant shall file a revised bulk sampling plan if there are any significant changes to the information provided in the previous bulk sampling plan under sub. (2).

(a) If the revised bulk sampling plan is filed before the department approves or denies any waiver, exemption, or exception under sub. (12), issues any approval under sub. (13) or (14), or issues a bulk sampling license under sub. (14m), within 14 days of receiving the revised bulk sampling plan, the department shall notify the applicant, in writing, of any changes to the information provided to the applicant under sub. (4).

(b) If the revised bulk sampling plan is filed after the department approves or denies any waiver, exemption, or exception under sub. (12), issues any approval under sub. (13) or (14), or issues a bulk sampling license under sub. (14m), within 14 days of receiving the revised bulk sampling plan, the department shall identify for the applicant, in writing, any modifications to existing approvals or additional approvals that the department requires.

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

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

(7) An applicant shall submit all of the following at the same time:

(a) Applications for individual approvals identified under sub. (4) or (4m) (a).

(b) Applications for coverage under general permits or registration permits identified under sub. (4) or (4m) (a).

(c) Applications for waivers, exemptions, or exceptions identified under sub. (4) or (4m) (a).

(d) A bond, as provided in sub. (9).

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

describing the specific information necessary to make the application complete.

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

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

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

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

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

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

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

(10) Notwithstanding any provision in ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291 or a rule promulgated under those chapters applicable to an approval identified under sub. (4) or (4m), the department shall require the bulk sampling activity for which the approval is issued to be conducted at locations that result in the fewest overall adverse environmental impacts.

(11) (a) In determining whether to approve or deny an application for an approval identified under sub. (4) or (4m), the department shall consider the site-specific ero-

sion control plan, the revegetation plan, and any wetland mitigation program.

(b) The department may modify the application for an approval identified under sub. (4) or (4m) in order to meet the requirements applicable to the approval, and, as modified, approve the application.

(12) Notwithstanding any inconsistent period in ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291 or in a rule promulgated under those chapters that is applicable to an approval identified under sub. (4) or (4m), the department shall approve or deny an application within 30 days after the day on which the application is considered to be complete under sub. (8) if any of the following applies:

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

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

(13) (a) Notwithstanding any inconsistent period in ch. 23, 29, 30, 31, 169, 281, 283, 285, 289, or 291 or in a rule promulgated under those chapters that is applicable to an approval identified under sub. (4) or (4m), the department shall approve or deny any application for an approval identified under sub. (4) or (4m) to which sub. (12) does not apply within 60 days after the date on which the application is considered to be complete under sub. (8), unless the application is for an individual permit for which federal law requires the opportunity for public comment or the ability to request a public hearing prior to issuance of the approval.

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

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

persons under this paragraph may be given through an electronic notification system established by the department.

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

(e) The department shall hold a public informational hearing within 30 days after the date of the publication of the notice under par. (b). The department shall hold the public informational hearing in the county where the majority of the proposed bulk sampling site is located. If there is more than one approval described in par. (a), the department shall hold a single public informational hearing covering all of the approvals. If possible, the department shall include consideration of an approval that is an individual permit for which federal law requires the opportunity for public comment or the ability to request a public hearing prior to issuance of the approval in the public informational hearing under this paragraph. The public informational hearing under this paragraph is not a contested case hearing under ch. 227.

(14) (a) If it is not possible to coordinate the public comment period and public informational hearing for an approval that is an individual permit for which federal law requires the opportunity for public comment or the ability to request a public hearing prior to issuance of the approval with the public comment period and public informational hearing under sub. (13), the department shall issue a separate public notice and hold a separate public informational hearing for the approval in accordance with the law governing the approval.

(b) The department shall approve or deny the application for an approval that is an individual permit for which federal law requires the opportunity for public comment or the ability to request a public hearing prior to issuance of the approval within 180 days after the date on which the application is considered to be complete under sub. (8).

(14m) Upon issuing all of the approvals required by the department to engage in bulk sampling under subs. (13) and (14), the department shall issue the applicant a bulk sampling license.

(15) An approval identified under sub. (4) or (4m) or a bulk sampling license is issued upon mailing and is final and effective upon issuance.

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

(17) The department may revoke or suspend a bulk sampling license issued under this section if it determines, after a hearing, that the license holder has failed to comply with statutes or rules of the department or with the terms of the license, or has failed to increase bond amounts to adequate levels as specified by the department.

SECTION 17. 293.31 (title) of the statutes is amended to read:

293.31 (title) Data Preapplication notification; data collection.

SECTION 18. 293.31 (1) of the statutes is amended to read:

293.31 (1) ~~Any~~ At least 12 months before filing an application for a prospecting permit under s. 293.35 or a mining permit under s. 293.37, a person proposing to engage in a prospecting or mining project shall notify the department in writing of the intention to apply for a prospecting or mining permit. A person who intends to give notice of intent to apply for a prospecting or mining permit may, prior to obtaining, collecting, or generating environmental data intended to be used to support the permit application, submit to the department the methodology that the person intends to use in obtaining, collecting, or generating the data. The department shall review the proposed methodology and shall either inform the person that the proposed methodology will be accepted by the department or provide the person with the methodology that the department requires to be used. The department may assess the person submitting the proposed methodology a fee equal to the department's costs for reviewing the proposed methodology. If a person intending to submit an application for a prospecting or mining permit shall notify the department prior to the collection of obtains, collects, or generates data or information intended to be used to support the a prospecting or mining permit application. Specific environmental data which would be pertinent to a specific prospecting or mining application, but which was obtained or collected or generated prior to the notice of intent to apply for a prospecting or mining permit, shall be submitted in writing to the department together with any substantiating background information which would assist the department in establishing the validity of the data. The department shall review the data and, if it concludes that the benefits of permitting the admission of the data outweigh the policy reasons for excluding it, and if the data is otherwise admissible, inform the person giving the notice of intent to prospect or mine that the data will be accepted by the department. Such exclusion shall not relate to without obtaining department approval of the person's methodology under sub. (4), the department may not exclude any of the data or information that consists of general environmental information such as soil characteristics, hydrologic conditions, and air and water data contained in publications, maps, documents, studies,

reports, and similar sources, whether public or private, not prepared by or for the applicant. ~~Such exclusion shall likewise not relate to data which is otherwise admissible that is collected prior to notification under this subsection for purposes of evaluating another site or sites and which is not collected with intent to evade the provisions of this section.~~

SECTION 19. 293.31 (2) of the statutes is amended to read:

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

SECTION 20. 293.31 (3) of the statutes is amended to read:

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

SECTION 21. 293.31 (4) of the statutes is amended to read:

293.31 (4) After No later than 90 days after the receipt period for receiving and consideration of considering ~~receipt period for receiving and consideration of considering~~ comments from interested persons under sub. (3), the department shall inform the person giving notice of intent to apply for a prospecting or mining permit of the type and quantity of information that it then believes to be needed to support an application, and, where applicable, the methodology to be used in gathering information. The department shall specifically inform the person giving notice of intent to apply for a prospecting or mining permit of the type and quantity of information on the characteristics of groundwater resources in the area in which prospecting or mining is anticipated to occur which the department believes is needed to support an application, including the information that the department believes should be included in the applicant's environmental impact report and the information that the department will need to prepare an environmental impact statement. The department shall also ~~begin informing~~ inform the person giving notice of intent to apply for a prospecting or mining permit ~~as to of the timely application date and other filing requirements for all other approvals, licenses, and permits, so as to facilitate the consideration of all other matters at the hearing on the prospecting or mining permit relating to the proposed prospecting or mining project.~~

SECTION 22. 293.31 (4m) of the statutes is created to read:

293.31 (4m) Before providing the information required under sub. (4), the department shall seek to enter into a memorandum of understanding with the applicant, the U.S. army corps of engineers, and any other federal regulatory agency with responsibilities related to the potential prospecting or mining operation to address sampling methodology and any other issue of mutual concern related to processing an application for a prospecting or mining permit. The memorandum may include an agreement between the department and the applicant relating to timelines, including timelines for the parties to conduct environmental studies and for granting or denying the prospecting or mining permit. The U.S. army corps of engineers, and any other federal agency that is a party to the memorandum, is not required to be a party to any agreement relating to timelines between the department and the applicant.

SECTION 23. 293.32 (4) of the statutes is created to read:

293.32 (4) Subchapter VI of ch. 289 does not apply to mining waste disposed of in a mining waste site covered by a mining permit, except that an operator shall pay the fees specified in ss. 289.63 (4), 289.64 (3), and 289.67 (1) (d).

SECTION 24. 293.37 (5) of the statutes is created to read:

293.37 (5) If the department requires an applicant for a mining permit to conduct engineering and hydrologic modeling to assess a mining waste site's performance relative to compliance with applicable groundwater quality standards and surface water quality standards, the department may not require the applicant to examine a period longer than the period in which the mining waste site is proposed to operate plus 250 years after closure of the mining waste site.

SECTION 25. 293.40 of the statutes is created to read:

293.40 Timeline for review. (1) Subject to subs. (4) and (5), within 180 days after an applicant submits an application for a prospecting or mining permit, an environmental impact report, if required, and any applications for other approvals, licenses, or permits relating to the prospecting or mining operation the department shall review the information submitted and, if necessary, provide comments to the applicant and request additional information from the applicant relating to the proposed prospecting or mining project.

(2) Subject to subs. (4) and (5), if the department requests additional information from an applicant under sub. (1), within 90 days after the applicant provides additional information the department shall review the information submitted and, if necessary, provide comments to the applicant and request additional information from the

applicant relating to the proposed prospecting or mining project.

(3) Subject to sub. (5), if the department requests additional information from an applicant under sub. (2), within 180 days after the applicant provides additional information the department shall prepare a draft environmental impact statement, a draft prospecting or mining permit, and draft approvals, licenses, or permits relating to the prospecting or mining operation. If the department requests additional information from an applicant under sub. (1) but not under sub. (2), the department shall prepare these draft documents within 180 days after the expiration of the 90-day period under sub. (2). If the department does not request additional information from an applicant under sub. (1) or sub. (2), the department shall prepare these draft documents within 180 days after the expiration of the 180-day period under sub. (1).

(4) Subject to sub. (5), if before the expiration of the 90-day period under sub. (2) the secretary of the department determines that the applicant has made a substantial modification to the mining or prospecting plan that significantly changes the information necessary to prepare an environmental impact statement or adequately review an application, the department shall notify the applicant of the secretary's determination and request additional information from the applicant. Upon the applicant's submission of additional information, the timeline under this section shall begin again, starting with the period described in sub. (1). A determination by the secretary under this subsection is not subject to administrative or judicial review and may be made only once during an applicant's permitting process.

(5) The department and the applicant may agree to modify all or part of the timeline under this section.

(6) The department may request additional information needed to process a prospecting or mining permit application or any other application for an approval, license, or permit related to the prospecting or mining operation after making requests for additional information under this section, but the department may not delay the application and review process based on another request for additional information.

SECTION 26. 293.43 (1) of the statutes is amended to read:

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

SECTION 27. 293.43 (1m) (b) of the statutes is amended to read:

293.43 (1m) (b) Except as provided in this ~~paragraph section,~~ for all department issued approvals, licenses, and permits relating to prospecting or mining, including solid waste feasibility report approvals and permits related to air and water, to be issued after April 30, 1980, the notice, hearing, and comment provisions, ~~if any,~~ process and the time for issuance of decisions, shall be controlled

by this section and ss. 293.45 and 293.49. ~~If an applicant fails to make application for an approval, license or permit for an activity incidental to prospecting or mining in time for notice under this section to be provided, the notice and comment requirements, if any, shall be controlled by the specific statutory provisions with respect to that application. If notice under those specific statutory notice requirements can be given for consideration of the approval, license or permit at the hearing under this section, the application shall be considered at that hearing; otherwise, the specific statutory hearing provisions, if any, with respect to that application shall control.~~ The substantive requirements for the issuance of any approval, permit, or license incidental to prospecting or mining are not affected by the fact that a hearing on the approval, permit, or license is conducted as part of a hearing under this section.

SECTION 28. 293.43 (2) of the statutes is repealed.

SECTION 29. 293.43 (2m) of the statutes is created to read:

293.43 (2m) **PUBLIC INFORMATION AND NOTICE.** (a) The department shall make available for review in the city, village, or town in which the proposed prospecting or mining site is located, information concerning the proposed prospecting or mining site, including all of the following:

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

(b) Within 30 days after the expiration of the applicable time period under s. 293.40 (3), the department shall distribute a notice that describes the availability of the information under par. (a); the opportunity for written public comment, including an invitation for the submission of written comments by any person within 45 days after the date of the publication of the notice; and the date, time, and location of the public informational hearing and that includes any additional information that a law concerning any approval requires to be provided. The department shall publish the notice as a class 1 notice under ch. 985 and shall publish notice on the department's Internet site. The date on which the department first publishes the notice on its Internet site shall be con-

sidered the date of the publication of the notice required to be published under this paragraph. The department shall also send the notice to all of the following:

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

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

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

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

5. Any regional planning commission for the area within which the proposed prospecting or mining site lies.

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

7. The federal environmental protection agency, U.S. army corps of engineers, and states potentially affected by the proposed discharge if a water discharge permit under ch. 283 or a wetland permit that constitutes a water quality certification as required by 33 USC 1341 (a) is to be considered at the public informational hearing.

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

9. If a water withdrawal permit under s. 293.65 for a withdrawal of surface water is to be considered at the public informational hearing, the persons specified in s. 30.18 (4) (a).

10. If an individual permit under s. 30.12 for a structure through which water transferred from the Great Lakes basin would be returned to the source watershed through a stream tributary to one of the Great Lakes is to be considered at the public informational hearing, the governing body of each city, village, and town through which the stream flows or that is adjacent to the stream downstream from the point at which the water would enter the stream.

11. Any person upon request. The department's notice under this subdivision may be given through an electronic notification system established by the department.

12. The applicant.

13. Any other person to whom the department is required to give notice of any proposed determination, application, or hearing concerning an approval under the

laws relating to the issuance of any approval or under s. 1.11.

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

SECTION 30. 293.43 (3) of the statutes is repealed.

SECTION 31. 293.43 (3m) of the statutes is created to read:

293.43 (3m) **INFORMATIONAL HEARING.** The department shall hold a public informational hearing before it approves or denies an application for a prospecting or mining permit and not less than 30 days after the date of the publication of the notice under sub. (2m) (b). The department shall hold the public informational hearing in the county where the majority of the proposed prospecting or mining site is located. The department shall hold a single public informational hearing covering the draft prospecting or mining permit, all other draft approvals, and the draft environmental impact statement, except that if an application for an approval is filed too late to allow the application to be considered at the public informational hearing for the prospecting or mining permit, the department shall hold a separate public informational hearing on the draft approval in the county where the majority of the proposed prospecting or mining site is located not less than 30 days after the date of the publication of a separate notice under sub. (2m) (b) for the approval. The department shall publish the separate notice for the approval on its Internet site not more than 10 days after the application is considered to be complete, which is the 30th day after the department receives the application unless, before that day, the department requests additional information, in which case the application is considered to be complete when the applicant provides the information. A public informational hearing under this subsection is not a contested case hearing under ch. 227.

SECTION 32. 293.43 (4) of the statutes is repealed.

SECTION 33. 293.43 (4m) of the statutes is created to read:

293.43 (4m) **SUMMARY.** After considering the comments received under subs. (2m) and (3m) and before acting on the application for the mining permit, the department shall prepare a summary of the comments and the department's response to the comments.

SECTION 34. 293.43 (5) of the statutes is repealed.

SECTION 35. 293.49 (1) (a) (intro.) of the statutes is amended to read:

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

SECTION 35m. 293.49 (1) (a) 2m. of the statutes is created to read:

293.49 (1) (a) 2m. The technology that will be used at the proposed operation is capable of resulting in compliance with all applicable air, groundwater, surface water, and solid and hazardous waste management laws and rules of the department and is reasonably certain to result in compliance with these laws and rules at the proposed mining site.

SECTION 36. 293.495 of the statutes is created to read:

293.495 Subsequently filed applications for other approvals. (1) (a) 1. For purposes of this subsection, an application for an approval other than a mining or prospecting permit is considered to be complete on the 30th day after the department receives the application unless, before that day, the department requests additional information, in which case the application is considered to be complete when the applicant provides the information.

2. For purposes of this subsection, an application for a mining or prospecting permit is considered to be complete on the 30th day after the department receives the application unless the department requests additional information under s. 293.40 (2) or (3), in which case the application is considered to be complete when the applicant provides the information.

(b) Except as provided in par. (d), if an applicant files an application for an approval other than a mining or prospecting permit no later than 60 days after the day on which the application for the mining or prospecting permit is complete under par. (a) 2., or more than 60 days after that day but in time to allow the application to be considered at the public informational hearing for the mining or prospecting permit under s. 293.43 (3m), the department shall approve the application and issue the approval, or deny the application, no later than the deadline under s. 293.45 (1) or (2) or 293.49 (1) or (2).

(c) 1. Except as provided in subd. 2., if an applicant files an application for an approval other than a mining or prospecting permit too late to allow the application to be considered at the public informational hearing for the mining or prospecting permit under s. 293.43 (3m) but before the department issues the decision to grant or deny the application for the mining or prospecting permit, the department shall approve the application and issue the approval, or deny the application, after the separate public informational hearing for the approval required under s. 293.43 (3m) and no later than 75 days after the application for the approval is complete under par. (a) 1.

2. Except as provided in par. (d), the department shall approve or deny the application for an approval described

in subd. 1. that is an individual permit for which federal law requires the opportunity for public comment or the ability to request a public hearing prior to issuance of the approval after the separate public informational hearing required for the approval under s. 293.43 (3m) and no later than 180 days after the application is complete under par. (a) 1.

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

(e) The department shall incorporate any approval other than a mining or prospecting permit into a single document with the mining or prospecting permit, unless the application for the approval was filed more than 60 days after the day on which the application for the mining or prospecting permit is complete under par. (a) 2.

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

SECTION 37. 293.50 of the statutes is repealed.

SECTION 38. 293.51 (title) of the statutes is amended to read:

293.51 (title) Bonds and other security.

SECTION 39. 293.51 (1g) of the statutes is created to read:

293.51 (1g) An operator shall maintain proof of financial responsibility ensuring the availability of funds for compliance with the long-term care requirements specified in the waste site feasibility study and plan of operation consistent with the requirements under s. 289.41 except that, notwithstanding s. 289.41 (3), the operator shall furnish the proof of financial responsibility in the form of a bond, cash, certificates of deposit, government securities, or insurance.

SECTION 39k. 293.51 (1m) of the statutes is created to read:

293.51 (1m) Upon notification that an application for a mining permit has been approved by the department but prior to commencing mining, the operator shall file with the department a bond issued by a surety company licensed to do business in this state, cash, certificates of

deposit, or government security, to cover unforeseen remedial contingencies not otherwise covered by the bonds or other security required under sub. (1) or (1g), including for the provision of a replacement water supply if required under s. 293.65 (4) (d). The amount of the bond or other security required shall be 10 percent of the total amount of the bonds or other security required under subs. (1) and (1g). The operator shall increase, and may decrease, the amount of the bond under this subsection according to any increase or decrease in the amount of the bonds or other security required under subs. (1) or (1g) until the operator ceases to extract material from the mining site, at which point the amount of the bond under this subsection shall remain the same until released by the department. The bond or other security under this subsection shall be released no later than 40 years after the operator ceases to extract material from the mining site.

SECTION 39m. 293.51 (1r) of the statutes is created to read:

293.51 (1r) At the time of closure of the mining waste site, the operator shall provide proof of financial responsibility to the department in an amount equal to the reasonably anticipated costs during the period between 40 and 250 years after closure of the mining waste site to repair or replace any engineered cover systems or tailings water management control systems used at the mining site or mining waste site to avoid adverse environmental consequences. At the time that the application for a mining permit is approved, the department shall determine the amount to be paid at the time of closure based on the net present value discounted at a rate of at least 5 percent per year, and identify the reasonably anticipated costs that the amount is intended to cover. The operator shall provide the proof of financial responsibility in the form of a cash deposit, which the department shall segregate and invest in an interest-bearing account; certificates of deposit, government securities, or other interest-bearing forms of security; or proof of establishment of an interest-bearing account, including an escrow account or trust account. The operator or any successor in interest may use the funds or request the department release the funds to cover any reasonably anticipated costs that were identified by the department. The department shall release any remaining funds to the operator or the operator's successor in interest after all of the reasonably anticipated costs that were identified by the department have been incurred, or upon determining that the reasonably anticipated costs are no longer applicable.

SECTION 40. 293.51 (3) of the statutes is amended to read:

293.51 (3) Upon approval of the operator's bond or other security under subs. (1), (1g), (1m), and (1r), mining application, and certificate of insurance, the department shall issue written authorization to commence mining at the permitted mining site in accordance with the approved mining and reclamation plans.

SECTION 41. 293.51 (5) of the statutes is created to read:

293.51 (5) The department may not require an operator to provide a type or form of financial assurance other than those specified in this section.

SECTION 42. 293.55 (1) (c) of the statutes is amended to read:

293.55 (1) (c) *Substantial changes.* The department shall determine if any change in the mining or reclamation plans is substantial and provide notice of its determination in the same manner as specified under s. 293.43 ~~(3)~~ (2m) (b) ~~1. to 3.~~

SECTION 43. 293.55 (1) (d) of the statutes is amended to read:

293.55 (1) (d) *Notice.* The department shall provide notice of any modification which involves an increase or decrease in the area of a mining site or a substantial change in the mining or reclamation plan in the same manner as an original application for a mining permit under s. 293.43 ~~(3)~~ (2m). If 5 or more interested persons do not request a hearing in writing within 30 days of notice, no hearing is required on the modification. The notice shall include a statement to this effect.

SECTION 44. 293.65 (3) (b) of the statutes is amended to read:

293.65 (3) (b) The department may not issue an approval under s. 281.34 if the withdrawal of groundwater for prospecting or mining purposes or the dewatering of mines will result in the unreasonable detriment of public or private water supplies or the unreasonable detriment of public rights in the waters of the state. No withdrawal of groundwater for prospecting or mining purposes or the dewatering of mines may be made to the unreasonable detriment of public or private water supplies or the unreasonable detriment of public rights in the waters of the state. Notwithstanding any limitation on approval conditions in s. 281.34, if the department determines that a proposed withdrawal of groundwater or dewatering of mines will result in the unreasonable detriment of public or private water supplies or the unreasonable detriment of public rights in the waters of the state the department shall include conditions in the mining or prospecting permit or in an approval issued under s. 281.34 to ensure that the withdrawal or dewatering will not result in the unreasonable detriment of public or private water supplies or the unreasonable detriment of public rights in the waters of the state. These conditions may include a requirement that the applicant for the mining or prospecting permit or approval under s. 281.34 provide a replacement water supply of similar quality, provide an increased amount of water to the water supply, or temporarily augment the quantity of water in, or flowing into or from, the affected waters of the state that is of substantially similar quality and that has substantially similar characteristics to the water that was in the affected waters

of the state before any proposed mining or prospecting activity began.

SECTION 45. 293.66 of the statutes is created to read:

293.66 Groundwater quality. (1) For the site of any activity that will take place under a mining or prospecting permit or under another approval related to a mining or prospecting operation, the department shall determine the depth in the Precambrian bedrock below which the groundwater is not reasonably capable of being used or made suitable for human consumption and is not hydrologically connected to other sources of groundwater that are suitable for human consumption. The department shall notify the applicant of its determination before the department issues a draft environmental impact statement.

(2) For an activity regulated under a mining or prospecting permit or another approval related to the mining or prospecting operation, the department may not apply a groundwater enforcement standard at any point that is deeper than the depth identified under sub. (1).

SECTION 46. 293.81 of the statutes is amended to read:

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

SECTION 47. 293.95 of the statutes is repealed and recreated to read:

293.95 Review. (1) LIMITS ON CONTESTED CASE HEARINGS. No person is entitled to a contested case hearing on a decision by the department on an exploration license or relating to bulk sampling. No person is entitled to a contested case hearing on a decision by the department on a mining or prospecting permit application or any other approval, except as provided in subs. (2) and (3).

(2) CONTESTED CASE HEARINGS; AFTER INITIAL MINING OR PROSPECTING PERMIT DECISION OR DECISION ON AMENDED PLAN. (a) *Entitlement.* 1. A person is entitled to a contested case hearing on a decision by the department related to a mining or prospecting permit for a proposed mining operation, including a decision related to the environmental impact statement for the proposed mining or prospecting operation, or on any decision that is related to an approval associated with the proposed mining or prospecting operation and that is issued no later than the day on which the department issues its decision on the application for the mining or prospecting permit, only if the person is entitled to a contested case hearing on the decision under s. 227.42 and the person requests the hearing within 30 days after the department issues the decision to approve or deny the application for the mining or prospecting permit.

2. A person is entitled to a contested case hearing on a decision by the department related to an amended mining plan, reclamation plan, or mining waste site feasibility study and plan of operation or to any amendment to an approval associated with the amended mining plan, reclamation plan, or mining waste site feasibility study and plan of operation only if the person is entitled to a contested case hearing on the decision under s. 227.42 and the person requests the hearing within 60 days after the department issues the decision to approve or deny the amended mining plan, reclamation plan, or mining waste site feasibility study and plan of operation.

3. All issues raised by all persons requesting a contested case hearing in accordance with subd. 1. or 2. in connection with the same mining or prospecting operation shall be considered in one contested case hearing.

(b) *Deadline for decision.* The hearing examiner presiding over a contested case hearing under this subsection shall issue a final decision on the case no more than 270 days after the department issues the decision to grant or deny the mining or prospecting permit or to approve or deny the amended mining plan, reclamation plan, or mining waste site feasibility study and plan of operation.

(d) *Judicial review.* A person seeking judicial review of the decision in a contested case hearing under this subsection shall comply with the requirements for service and filing in s. 227.53 (1) (a) and shall commence the action, in the circuit court for the county in which the majority of the proposed mining or prospecting site is located, no more than 30 days after service of the decision or, if the hearing examiner does not issue a final decision by the deadline under par. (b), no more than 30 days after that deadline.

(3) CONTESTED CASE HEARINGS ON OTHER DECISIONS. A person is entitled to a contested case hearing on a decision by the department related to a mining or prospecting operation that is issued after the department issues the decision to approve the application for the mining or prospecting permit for the mining or prospecting opera-

tion, other than a decision described in sub. (2) (a) 2., if the person is entitled to a contested case hearing under s. 227.42 and complies with the requirements for service and filing in s. 227.53 (1) (a).

(4) VENUE. Notwithstanding s. 227.53 (1) (a) 3., any person seeking judicial review of the decision on a contested case under sub. (2) or (3) or of any decision of the department related to an exploration, bulk sampling, mining, or prospecting operation shall bring the action in the circuit court for the county in which the majority of the mining or prospecting site is located or in which the majority of the exploration or bulk sampling will occur.

SECTION 48. NR 132.06 (4) of the administrative code is repealed.

SECTION 49. NR 132.17 (13) of the administrative code is amended to read:

NR 132.17 (13) Tailings transport systems, if not buried, should be designed to provide for emergency tailings conveyance or storage should a pipeline break, plug, freeze or require repairs and be made accessible for inspection, emergency repair and maintenance. Location of emergency spill areas must be consistent with the prevention of environmental pollution of surface waters and with the standards of ss. ~~NR 182.07 (2), 132.06 (4) and~~ s. 132.19. In the event of a power failure, tailing pipelines should be self draining to the tailings area or to an emer-

gency spill area or standby pumps and pipelines or standby power should be provided. In some cases (e.g., a long pipeline over rough country), several spill areas may have to be provided.

SECTION 50. NR 132.18 (1) (f) of the administrative code is amended to read:

NR 132.18 (1) (f) Within wetlands, except pursuant to the ~~criteria established in s. NR 132.06 (4) provisions~~ under s. 281.36.

SECTION 51. NR 182.07 (1) of the administrative code is renumbered NR 182.07.

SECTION 52. NR 182.07 (2) of the administrative code is repealed.

SECTION 53. NR 182.08 (2) (d) 8. e. of the administrative code is amended to read:

NR 182.08 (2) (d) 8. e. A table shall be provided showing existing water quality of all potentially affected surface waters. The table shall include those surface waters identified under s. NR 182.07 (4). Important aquatic habitat, such as class II trout stream or state scenic river, shall be indicated.

SECTION 54. Effective date.

(1) Notwithstanding section 227.265 of the statutes, this act takes effect on the first day of the 7th month beginning after publication.