Chapter NR 131

NONFERROUS METALLIC MINERAL PROSPECTING

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Note: Chapter NR 131 as it existed on August 31, 1982, was repealed and a new chapter NR 131 was created effective September 1, 1982. **Chapter NR 131 as it existed on December 31, 2021, was repealed and a new chapter NR 131 was created effective January 1, 2022.**

NR 131.101 Purpose. The purpose of this chapter is to implement ch. 293, Stats., by establishing procedures and standards for the comprehensive regulation of nonferrous metallic mineral prospecting in this state and facilitating a coordinated procedure by which department permits, licenses, and approvals may be applied for, hearings may be held, and determinations may be made by the department in an integrated manner.

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22.

NR 131.102 Applicability. (1) The provisions of this chapter are applicable to all nonferrous metallic mineral prospecting, including the storage, handling, processing, transportation, and disposal of all materials resulting from a prospecting operation except to the extent that mining wastes are regulated under ch. NR 182.

(2) If a standard under any state or federal statute, rule, or regulation other than this chapter specifically regulates in whole an activity or facility on a prospecting site regulated under this chapter, the other state or federal statute, rule, or regulation shall be the controlling standard. If the other state or federal statute, rule, or regulation only specifically regulates the activity or facility in part, the other statute, rule, or regulation shall only be controlling as to that part.

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22; correction in (2) made under s. 35.17, Stats., Register December 2021 No. 792.

NR 131.103 Definitions. In this chapter:

(1) "Applicant" means a person who has applied for a prospecting permit.

(2) "Background water quality" or "background concentration" means surface water or groundwater quality at or near a facility, practice or activity which has not been affected by that facility, practice or activity established by monitoring at the proposed site, upgradient and downgradient of the proposed site and at representative reference sites, as necessary.

(3) "Baseline data" means the data collected by the applicant or the department which the department has accepted through the regulatory process of ss. NR 131.105 and 131.117, and s. 293.31, Stats., as representing the existing environmental conditions prior to the commencement of prospecting and established by monitoring at the proposed site, upgradient and downgradient of the proposed site and at representative reference sites, as necessary.

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

(5) "Environmental pollution" has the meaning specified in s. 293.01 (4), Stats.

(6) "Groundwater" means any waters of the state, as defined in s. 281.01 (18), Stats., occurring in a saturated subsurface geological formation of rock or soil.

(7) "Materials" means all solid, liquid and gaseous, substances handled, processed, transported, stored or disposed of on the prospecting site during prospecting and reclamation operations, including other substances generated by the operation as well as those brought onto the prospecting site.

(8) (a) "Mining waste" or "nonferrous mining waste" means any refuse, sludge, or other discarded material, including solid, liquid, semi–solid, or contained gaseous material, resulting from nonferrous metallic mineral prospecting or mining, or from the cleaning or preparation of nonferrous metallic minerals during prospecting or mining operations.

(b) "Mining waste" includes tailings, waste rock, mine overburden, and waste treatment sludges.

(c) "Mining waste" does not include topsoil and mine overburden not disposed of in a waste site, but placed in a facility permitted under this chapter or ch. NR 132, to be returned to the mine site or used in the reclamation process, and does not include merchantable by–products.

(d) "Mining waste" does not include trees and other vegetation removed from the mining site during site preparation and facility construction.

(9) "Monitoring data" means the data collected by the operator or the department after the commencement of prospecting.

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

Note: This definition does not apply to substances mined primarily for their iron oxide content. This definition includes substances mined for the purpose of extracting a metal or metals such as copper, zinc, lead, gold, silver, titanium, vanadium, nickel, cadmium, molybdenum, chromium, manganese, cobalt, zirconium, beryllium, thorium, and uranium.

(11) "Non–mining solid waste" means solid waste generated as part of a nonferrous prospecting or mining operation that is not mining waste and includes materials such as discarded vegetation, tires, barrels, sanitary waste, and various other solid waste materials defined in ch. NR 500, including construction and demolition waste, garbage, commercial solid waste and municipal solid waste.

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

(13) "Ore" means a naturally occurring material from which nonferrous metallic minerals may be recovered at a profit.

(14) "Overburden" means any unconsolidated geologic material, such as till, sand and gravel, and weathered bedrock that may be removed during prospecting or mining.

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

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

(17) "Prospecting" has the meaning specified s. 293.01 (18), Stats.

Note: Section 293.01 (18), Stats., defines "prospecting" to mean: "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."

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

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

(20) "Prospecting site" means the lands on which prospecting is actually conducted as well as those lands on which physical disturbance will occur as a result of such activity including a mining waste facility, if one is needed, corridors for access roads and other activities related to the prospecting operation but does not include environmental monitoring sites located off of the main portion of the prospecting site.

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

(22) "Reclamation" means the process by which an area physically or environmentally affected by prospecting is rehabilitated to either its original state or, if this is shown to be physically or economically impracticable or environmentally or socially undesirable, to a state that provides long–term environmental stability. Reclamation shall provide the greatest feasible protection to the environment and shall include, but is not limited to, the criteria for reclamation set forth in s. 293.13 (2) (c), Stats.

(23) "Reclamation plan" means the proposal for the reclamation of the prospecting site that must be approved by the department under s. 293.45, Stats., as part of the prospecting permit, and includes the closure requirements of ch. NR 182 for facilities licensed under that chapter, if any.

(24) "Refuse" means all waste soil, overburden, rock, mineral, liquid, vegetation, and other material, directly resulting from or displaced by the prospecting, and from the cleaning or preparation of nonferrous metallic minerals during prospecting operations, including all waste materials deposited on or in the prospecting site from other sources.

(25) "Unsuitable" or "unsuitability" means that the land proposed for prospecting is not suitable for such activity because the prospecting activity itself may reasonably be expected to destroy or irreparably damage any of the following:

(a) Habitat required for survival of species of vegetation or wildlife as designated in ch. NR 27, if such endangered species cannot be firmly reestablished elsewhere.

(b) Unique features of the land, as determined by state or federal designation as any of the following, that cannot have their unique characteristic preserved by relocation or replacement elsewhere:

1. Wilderness areas designated by statute or administrative rule.

2. Wild and scenic rivers designated by statute or administrative rule.

3. National or state parks designated by statute or administrative rule.

4. Wildlife refuges and areas designated by statute or administrative rule.

5. Properties of historical significance identified as listed properties under s. 44.31 (4), Stats., and archaeological sites, as defined in s. 44.47 (1) (b), Stats.

6. State natural areas designated under s. 23.28, Stats.

(c) Other areas of a type designated by statute or administrative rule as unique or unsuitable for prospecting or surface mining.

(26) "Waste rock" means consolidated geologic material that has been excavated during the prospecting process but is not of sufficient value to constitute ore.

(27) "Wetlands" means an area where water is at, near or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22; correction in (4), (25) (b) 5., made under s. 35.17, Stats., and correction in (17) made under s. 13.92 (4) (b) 7., Stats., Register December 2021 No. 792.

NR 131.104 Environmental baseline data collection prior to preapplication notification. (1) A person who intends to submit a preapplication notification under s. 293.31, Stats., may, prior to obtaining, collecting, or generating environmental baseline data intended to be used to support a prospecting permit application, submit to the department a description of the methodology that the person intends to use in obtaining, collecting, or generating the data. The description shall include all of the following:

(a) The sampling equipment and instrumentation.

(b) The sampling locations.

(c) The sample collection protocols.

(d) The sampling schedules.

(e) The analytical methods and reporting procedures.

(2) Information submitted under sub. (1), shall be submitted in a format prescribed by the department, including a complete electronic version and duplicate reproducible paper copies of the information in a quantity specified by the department.

(3) Any request under sub. (1) for department review of proposed environmental data collection methodology shall be accompanied by a fee of $1,500. The department may waive the fee if the requested review is of limited scope or is substantively duplicative of previous requests.

(4) (a) The department shall review the proposed methodology and shall either inform the person that the proposed methodology is accepted by the department or provide the person with the methodology that the department requires the person to use.

(b) The review conducted by the department under this subsection is limited specifically to the proposed methodology for data collection and analysis. Department approval of the methodology is not an endorsement or approval of the intended data collection program, including adequacy of the scope of the data collection program and appropriateness of sampling locations and analytical parameters.

(c) In approving the proposed methodology under this subsection, the department may require the person to provide notice to the department prior to specific data collection activities to facilitate verification of data collection by department staff, as necessary.

(5) If a person obtains, collects, or generates data or information intended to be used to support a prospecting permit application 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, docu-

ments, studies, reports, and similar sources, whether public or private, not prepared by or for the applicant.

(6) If the period of data collection prior to the filing of a preapplication notice under s. NR 131.105 continues for longer than 12 months, the department may require the person to enter into a pre–application services agreement with the department under s. 23.40 (4), Stats., to cover costs incurred by the department in verifying or reviewing the environmental data.

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22.

NR 131.105 Preapplication notification and data collection. (1) At least 12 months before filing an application for a prospecting permit under s. NR 131.107 a person proposing to engage in a prospecting project shall notify the department in writing of the person's intention to apply for a prospecting permit and submit to the department a project review fee under s. NR 131.106. The person submitting the preapplication notification shall provide the department with a complete electronic version of the notice in a format prescribed by the department and shall provide duplicate paper copies of the notice in a quantity specified by the department. The notice shall include all of the following information:

(a) The name, address, and telephone number of the person submitting the preapplication notification.

(b) A map showing the approximate location of the prospecting site including anticipated project boundaries, locations of surface waters, roads, railroads, pipelines and utilities within the project area and identification of property ownership of lands included in the project site and adjacent areas.

(c) The expected date when a prospecting permit application may be submitted under s. NR 131.107.

(d) A preliminary project description that includes all of the following:

1. A topographic map showing the location of the prospecting operation and preliminary location of project facilities.

2. A general description of the nonferrous metallic mineral deposit including available details on size, shape, and orientation, faulting and fracturing systems and patterns, origin, lithology, and mineralogic composition, including approximate metal grades and content.

3. A discussion of the anticipated prospecting methods.

4. A general description of the wastes expected to be generated.

5. The potential locations of anticipated mining waste facilities, if any.

6. The following information pertaining to potential prospecting sites:

a. A discussion of land uses at the proposed prospecting site and the surrounding area which may have an impact on the suitability of the property as a prospecting site or on groundwater quality.

b. A discussion of land use zoning, with particular attention given to areas where zoning variances will be required, where agricultural impact statements may be required, or where floodplain, conservancy, shoreland or wetland zoning is designated.

c. Identification of known recreational, historical, archaeological areas, areas that contain threatened or endangered species per s. 29.604, Stats., and ch. NR 27, state or local natural areas and county forest lands.

d. A discussion of the regional setting of the proposed prospecting site generally documented by currently available public information addressing the topography, surface hydrology including the presence of any resources designated as areas of special natural resources interest under s. 30.01 (1am), Stats., geology, and hydrogeology of the area surrounding the potential prospecting site.

7. An estimate of the project schedule.

(e) A proposed scope of study that includes all of the following:

1. Identification of data requirements needed for preparation of the prospecting permit application, and, as applicable, environmental impact report, mining waste site feasibility report, and plan of operation and other applications for permits, licenses, and approvals issued by the department.

2. Specific methodologies to be utilized in data collection, data processing and synthesis, laboratory methods, and analyses.

3. Description of the format in which the data will be presented in the prospecting permit application and other required submittals.

4. Tentative schedule for collection of field data.

5. Names, addresses, and qualifications of persons who will be responsible for data collection, laboratory work, and impact analysis. Data shall be submitted under the seal of a licensed professional engineer, geologist or hydrologist registered with or licensed by the Wisconsin department of safety and professional services or other professional with expertise directly applicable to the data.

6. Quality assurance programs employed in obtaining, collecting, generating, and evaluating all baseline data.

7. Identification of any anticipated modeling studies necessary to evaluate the prospecting operation and complete environmental impact assessments.

(f) Other pertinent information as requested by the department.

(2) The person giving notice under sub. (1) may submit, as part of the notification, specific environmental data that were obtained, collected, or generated prior to submitting a preapplication notification under this section including data reviewed under s. NR 131.104 and data that were not reviewed under s. NR 131.104. To the extent such information is available, the person shall include substantiating background information that will assist the department in establishing the validity of the data including the following:

(a) The data obtained, the method of data collection, and the analytical methods employed.

(b) The identity of persons obtaining, collecting, and generating the data and their qualifications. Data shall be submitted under the seal of a licensed professional engineer, geologist or hydrologist registered with or licensed by the Wisconsin department of safety and professional services or other professional with expertise directly applicable to the data.

(c) Permits, licenses, and approvals that were in effect when the data and information were obtained, collected, and generated prior to submitting the preapplication notification.

(3) Upon receipt of the preapplication notification under sub. (1), the department shall give public notice of the department's receipt of the preapplication notification in the same manner as provided under s. 293.43 (2m) (b), Stats., and to the government of any American Indian tribe or band whose reservation boundaries are within 60 miles of any portion of the proposed project, and to the government of those American Indian tribes or bands with federally recognized treaty rights in the area of the project. The department shall make the preapplication notification available for review in the county, city, village, or town in which the prospecting site is located. The notice under this subsection shall invite interested persons to submit comments regarding information those interested persons believe should be requested from the person submitting a preapplication notification under sub. (1) and information that the interested persons believe the department should seek through independent studies. The department shall hold a public informational hearing to receive comments from interested persons and the hearing shall be completed within 45 days after public notice required under this subsection is given.

(4) The department shall receive and consider any comments from interested persons received within 45 days after public

notice is given under sub. (3) as to information that the interested persons believe should be requested from the person submitting a preapplication notification under sub. (1) and the information that the interested persons believe the department should seek through independent studies.

(5) No later than 90 days after the period for receiving and considering comments from interested persons under sub. (4), the department shall inform the person giving notice under sub. (1) of the type and quantity of information that the department believes to be needed to support an application for a prospecting permit and the methodology to be used in gathering information and shall identify preliminary verification procedures to be conducted by the department under sub. (9). The department shall specifically inform the person submitting a preapplication notification under sub. (1) of the type and quantity of information on the characteristics of groundwater resources in the area in which prospecting is anticipated to occur that 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 inform the person submitting a preapplication notification under sub. (1) of the application timelines and other filing requirements for all other approvals, licenses, and permits relating to the proposed prospecting project.

(6) No later than 45 days after receiving the information from the department in sub. (5), the person submitting a preapplication notification under sub. (1) shall submit to the department a final scope of study incorporating information provided by the department in sub. (5).

(7) All environmental baseline data gathered by a person submitting a preapplication notification under sub. (1) shall be submitted to the department as soon as it is in final form as described in the scope of study. The department may require the person to submit any raw field data collected either by the applicant or by a consultant.

(8) The department may at any time after consultation with the person submitting a preapplication notification under sub. (1) revise or modify its requirements regarding information that must be gathered and submitted as part of the information needed for preparation of the prospecting permit application, environmental impact report, mining waste site feasibility report, plan of operation, or other applications for permits, licenses, and approvals issued by the department.

(9) The department may conduct studies necessary to verify information that may be submitted in support of the environmental impact report, if required, prospecting permit application, or applications for other permits and approvals issued by the department. The department shall develop studies and quality assurance and verification programs in a manner consistent with future monitoring requirements.

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22; correction in (1) (d) 6. c., (2) (intro.) made under s. 35.17, Stats., and correction in numbering in (2) (a) to (c) made under s. 13.92 (4) (b) 1., Stats., Register December 2021 No. 792.

NR 131.106 Prospecting project review fee.

(1) When a person gives notice under s. NR 131.105 (1) of the person's intention to apply for a prospecting permit, the person shall pay the department a fee of $25,000 to reimburse the department for costs incurred by the department in connection with review of the proposed prospecting project during the year following receipt of the notice, other than any costs related to the environmental impact statement for the proposed prospecting.

(2) The department shall annually compare the fees paid under this section and under chs. 30, 280 to 292, and 295 to 299, Stats., in connection with proposed prospecting for which notice was given under s. NR 131.105 (1) with the costs incurred by the department in connection with the proposed prospecting project, including the costs incurred under chs. 30, 280 to 292, and 295 to 299, Stats., but excluding costs related to the environmental impact statement. If the costs incurred exceed the fees paid, the person who provided notice under s. NR 131.105 (1) shall pay a fee equal to the amount by which the costs exceed the fees previously paid.

(3) When the department issues or denies a prospecting permit or when a person who gave notice under s. NR 131.105 (1) ceases to seek approval of the proposed prospecting project, the department shall compare the fees paid under this section and under chs. 30, 280 to 292 and 299, Stats., in connection with the proposed prospecting project with the costs incurred by the department in connection with the proposed prospecting project, including the costs incurred under chs. 30, 280 to 292, and 299, Stats., but excluding costs related to the environmental impact statement. If the costs incurred are less than the fees paid, the department shall pay the person who gave notice under s. NR 131.105 (1) the amount by which the fees exceed the costs. If the costs incurred exceed the fees paid, the person who gave notice under s. NR 131.105 (1) shall pay a final fee equal to the amount by which the costs exceed the fees previously paid.

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22; correction in (2) made under s. 13.92 (4) (b) 7., Stats., Register December 2021 No. 792.

NR 131.107 Application to prospect.

(1) No person may engage in prospecting or reclamation at any prospecting site without securing a prospecting permit issued under s. 293.45, Stats., and this chapter.

(2) (a) An applicant for a prospecting permit shall submit an application and additional documents specified under sub. (4) to the department in writing and in reproducible form and shall provide the department with paper copies of the application in a quantity specified by the department. The applicant shall also submit a complete copy of the application in an electronic format prescribed by the department.

(b) Upon receipt of the application under sub. (2), the department shall give public notice of the department's receipt of the application and the availability, for review, of the prospecting permit application and other documents specified under sub. (4), in the same manner as provided under s. 293.43 (2m) (b), Stats., and to the government of any American Indian tribe or band whose reservation boundaries are within 60 miles of any portion of the proposed project, and to the government of those American Indian tribes or bands with federally recognized treaty rights in the area of the project.

(3) The application for a prospecting permit shall include all of the following:

(a) A prospecting plan in accordance with s. NR 131.108.

(b) A reclamation plan in accordance with s. NR 131.109 that includes an itemized statement showing the estimated costs that will be incurred by the state if it is necessary for the state to implement and fulfill the reclamation plan.

(c) A proposed monitoring and quality assurance plan consistent with the requirements of this chapter, ch. NR 182, and s. 1.11, Stats. The monitoring plan shall provide for adequate monitoring of project–related environmental changes during the course of the permitted activity and for such additional period of time as is necessary to satisfactorily complete reclamation and completely release the permit holder from the financial securities required under s. 293.51 (1), Stats. The monitoring plan shall include monitoring locations on the prospecting site and locations both upgradient and downgradient of the prospecting site. The plan shall summarize all project–related environmental monitoring programs and may cross reference monitoring provisions required under other permits, approvals, or licenses issued by the department.

(d) A list of names and addresses of each owner of land within the prospecting site and each person known by the applicant to hold any option or lease on land within the prospecting site and all prospecting and mining permits in this state held by the applicant.

(e) Evidence satisfactory to the department that the applicant has applied for necessary approvals and permits under all applicable zoning ordinances.

(f) Information specified in s. 293.35 (1), Stats., related to forfeiture of mining reclamation bonds, by the applicant or related persons within the preceding 20 years.

(g) Information relating to whether unsuitability may exist for prospecting and surface mining to the extent not fully considered under s. 293.45, Stats.

(h) A description of the land contiguous to the proposed prospecting site that the applicant owns, leases, or has an option to purchase or lease.

(i) A summary of project–related impacts to wetlands and steps to minimize impacts to wetlands in accordance with s. 281.36, Stats.

(j) A summary of project–related impacts to water supply wells and surface water bodies as result of groundwater pumping or prospecting site dewatering, if applicable, and steps to mitigate the impacts as provided under s. 293.65 (3) (b), Stats.

(k) A summary of environmental management and pollution control technologies that will be implemented at the proposed prospecting site.

(L) If the prospecting project does not include a mining waste facility, a contingency plan consistent with the provisions of s. NR 182.109 (2) (d), as appropriate for the proposed prospecting operation.

(m) A description of any requested exemptions or variances to provisions of ch. 293, Stats., or this chapter, in accordance with s. NR 131.112.

(n) Other relevant information or documentation that the department may require.

(4) At the time an applicant submits a prospecting permit application, the applicant shall also submit an environmental impact report, if required by the department, consistent with the requirements of ch. NR 150, and applications and supporting documentation for other approvals, licenses, and permits relating to the proposed prospecting project and identified by the department in the response provided under s. NR 131.105 (5). These documents shall be provided in the format and quantities prescribed by the department.

(5) The hearing procedure outlined in s. 293.43, Stats., shall govern all hearings on the prospecting permit application, any statements prepared under s. 1.11, Stats., and, to the fullest extent possible, all other applications for approvals, licenses, and permits relating to the proposed prospecting project issued by the department.

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22; correction in (1) made under s. 35.17, Stats., Register December 2021 No. 792.

NR 131.108 Prospecting plan. The prospecting plan shall include all of the following:

(1) A detailed map of the proposed prospecting site.

(2) Details of the nature, extent, and final configuration of the proposed excavation and prospecting site including location and total production of mining waste, refuse and the nature and depth of overburden.

(3) Details of the proposed operating procedures, including all of the following:

(a) Prospecting operation sequence including site preparation and construction.

(b) Handling of topsoil, overburden, and waste rock materials.

(c) Storage, loading, and transportation of material to be transported off of the prospecting site for further analyses.

(d) Groundwater and surface water management techniques including provisions for erosion prevention and control, drainage control and a detailed water management plan showing sources, flow paths and flow rates, storage volumes, and release points. The water management plan shall include a detailed water budget that includes groundwater and surface water and plans for collection, treatment, and discharge of water resulting from the operation.

(e) Plans for adequate covering or isolation of all pollutant–bearing minerals or materials handled on the site.

(f) Plans for the collection, disposal, and recycling of refuse and solid waste materials generated during the life of the project but not regulated as mining waste under ch. NR 182.

(g) Plans for air quality protection as required under ch. 285, Stats.

(h) A risk assessment of possible accidental health and environmental hazards potentially associated with the prospecting operation. Contingency measures with respect to these risks and hazards, and the assumptions in this assessment, shall be explicitly stated.

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

(j) Description of all surface facilities associated with the prospecting site.

(k) Description of anticipated geological and geotechnical investigations and drilling programs to be conducted on the prospecting site.

(4) Evidence satisfactory to the department that the proposed prospecting operation will be consistent with the reclamation plan and will comply with all of the following minimum standards:

(a) Grading and stabilization of excavations, sides, and benches to conform with state and federal environmental and safety requirements and to prevent environmental pollution and prevent and control erosion.

(b) Grading and stabilization of deposits of prospecting refuse in conformance with applicable state and federal environmental and safety requirements and applicable solid waste laws and regulations.

(c) Adequate diversion and drainage of water from the prospecting site to prevent contamination of surface water and groundwater and prevent and control erosion.

(d) Notwithstanding the provisions of ch. NR 812, excavations shall be backfilled when the backfilling procedure will not interfere with the prospecting operation and will not do any of the following:

1. Cause an exceedance of any groundwater quality standards implemented under this chapter and ch. NR 182.

2. Adversely affect public health or welfare.

(e) Handling and storage, including covering as needed, of all materials on the prospecting site in an environmentally sound manner as determined by the department. Materials not licensed as mining waste under ch. NR 182, but deemed by the department to present a potential threat to the environment, shall be appropriately characterized in a manner consistent with procedures specified in s. NR 182.108.

(f) Removal and stockpiling, or other measures to protect topsoil or other soil materials from erosion and leaching, consistent with environmental considerations and reclamation, during prospecting site preparation and active prospecting unless the department determines that such action will be environmentally undesirable.

(g) Maintenance of adequate vegetative cover where feasible to prevent and control erosion.

(h) Impoundment of water where necessary in a safe and environmentally acceptable manner.

(i) Adequate planning of the site to achieve the aesthetic standards for the entire prospecting site described in ss. NR 131.110 (1) (e) and 131.111 (1).

(j) Identification and prevention of pollution, as defined in s. 281.01 (10), Stats., resulting from leaching of waste materials or other stockpiled materials, in accordance with state and federal solid waste laws and regulations.

(k) Identification and prevention of significant environmental pollution.

(L) Maintenance of appropriate emergency procedures to minimize damage to public health, safety, and welfare and the environment from events described under sub. (3) (k).

(5) Submission of a plan for a pre−blasting survey, if applicable, to document the condition of permanent structures and buildings within the area potentially affected by blasting at the prospecting site as determined under s. SPS 307.41 (2), with such survey being completed and submitted to the department prior to any blasting.

History: CR 20−043: cr. Register December 2021 No. 792, eff. 1−1−22; correction in (3) (h) made under s. 35.17, Stats., Register December 2021 No. 792.

NR 131.109 Reclamation plan. The operator shall reclaim prospecting sites in accordance with a reclamation plan approved by the department. If a prospecting site is part of a prospective mining site to be regulated under ch. NR 132, the reclamation plan shall include provisions for interim and permanent reclamation of the prospecting site. Prospecting sites shall be permanently reclaimed within 4 years after completion of prospecting unless the prospecting site is part of a site included under a pre−application notification submitted under s. NR 132.105 or a mining permit application submitted under s. NR 132.107. The reclamation plan for the prospecting site shall include all of the following:

(1) Detailed information and maps on reclamation procedures including all of the following:

(a) Manner, location, sequence, and anticipated duration of reclamation.

(b) Ongoing reclamation procedures during prospecting operations.

(c) Proposed interim and final topography and slope stabilization.

(d) Proposed final land use and relationship to surrounding land and land uses.

(e) Plans for long−term maintenance of the prospecting site, including all of the following:

1. Monitoring of all of the following, as applicable:

a. Wastes, groundwater levels and quality, and surface water levels and quality.

b. Leachate, slope stability, vegetation, groundwater elevation, surface water flows and elevations, wetlands, and other aquatic and terrestrial systems.

2. Details related to decommissioning or removing monitoring devices that are no longer in use.

3. The need for long−term water control, management, and treatment systems necessary to prevent pollution of groundwater or surface water.

4. Names of persons legally and operationally responsible for long−term maintenance.

(f) Projected costs of reclamation including an itemized statement showing the estimated costs that will be incurred by the state if it is necessary for the state to implement and fulfill the reclamation plan.

(g) Projected costs of periodic repair or replacement of any engineered cover systems or water management control systems used at the mining waste site, if one is constructed, to avoid adverse environmental consequences. The estimate shall cover the costs reasonably anticipated to occur during the period between 40 and 250 years after closure of the mining waste site.

(h) Proposed quantitative criteria and evaluation methods to demonstrate success and long−term stability of final reclamation for purposes of determining acceptable completion of reclamation and issuance of a certification of completion of reclamation under s. NR 131.122.

(2) Evidence satisfactory to the department that the proposed reclamation will conform with all of the following minimum standards:

(a) Toxic and hazardous wastes, refuse, and other solid waste shall be disposed of in conformance with applicable state and federal statutes or regulations.

(b) Tunnels, shafts, or other underground openings shall be sealed in accordance with applicable safety requirements and in a manner that will prevent seepage of water in amounts that may be expected to create a safety, health, or environmental hazard, unless the applicant can demonstrate alternative uses that do not endanger public health and safety and that conform to applicable environmental protection and mine safety laws and rules.

(c) Underground and surface runoff waters from prospecting sites shall be managed, impounded, or treated so as to prevent soil erosion, flooding, damage to agricultural lands or livestock, damage to wild animals, pollution of groundwater or surface waters, damage to public health, or threats to public safety.

(d) Surface structures constructed as a part of the prospecting activities shall be removed, unless they are converted to an acceptable alternate use, as determined by the department.

(e) Adequate measures shall be taken to prevent significant surface subsidence, but if such subsidence does occur, the affected area shall be reclaimed.

(f) Topsoil from surface areas disturbed during the prospecting operation shall be removed and stored in an environmentally acceptable manner for use in reclamation.

(g) Disturbed surface areas shall be revegetated as soon as practicable after the disturbance to stabilize slopes and prevent air and water pollution, with the objective of reestablishing a variety of plants and animals indigenous to the area immediately prior to prospecting, unless such reestablishment is inconsistent with the provisions of s. 293.01 (23), Stats. Plant species not indigenous to the area may be used if necessary, to provide rapid stabilization of slopes and prevention of erosion, if such species are acceptable to the department, but the ultimate goal of reestablishment of indigenous species shall be maintained.

(3) An analysis of alternative viable final land uses for the reclaimed site, including the presumed final use of returning affected areas to their approximate original state. The analysis of all options shall consider the extent to which the option is physically, economically and environmentally achievable and socially acceptable.

History: CR 20−043: cr. Register December 2021 No. 792, eff. 1−1−22.

NR 131.110 Location criteria and environmental standards. (1) No person may establish, construct, operate, or maintain the use of property for any prospecting related buildings, roads, ponds, or other purposes within the following areas except pursuant to an exemption granted under s. NR 131.112 or in compliance with another approval, license, or permit issued by the department:

(a) Within areas identified as unsuitable under s. NR 131.103 (25) unless the applicant conclusively certifies that he or she will not subsequently make application for a permit to conduct surface mining at the site.

(b) Within 500 feet of the ordinary high−water mark of any existing navigable lake, pond, or flowage.

(c) Within 500 feet of the ordinary high−water mark of a navigable river or stream.

(d) Within a floodplain.

(e) Within 1,000 feet of the nearest edge of the right−of−way of any of the following unless, regardless of season, the site is visually inconspicuous due to screening or being visually absorbed due to natural objects, compatible natural plantings, earth berm, or other appropriate means, or unless, regardless of season, the site is screened so as to be aesthetically pleasing and inconspicuous to the extent feasible:

1. Any state trunk highway, interstate, or federal primary highway.

2. The boundary of a state public park.

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

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

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

6. A bike or hiking trail designated by the United States congress or the state legislature.

(f) Within wetlands, except pursuant to the provisions under s. 281.36, Stats.

(g) Within areas that will result in noncompliance with applicable groundwater quality and quantity protection provisions.

(h) Within areas that will result in noncompliance with other applicable federal and state laws and regulations.

(2) The requirements in sub. (1) do not apply to an exemption granted under s. NR 131.112 or in compliance with another approval, license, or permit issued by the department.

History: CR 20−043: cr. Register December 2021 No. 792, eff. 1−1−22; correction in (1) (a) made under s. 13.92 (4) (b) 7., Stats., Register December 2021 No. 792.

NR 131.111 Minimum design and operation. An operator shall construct, establish, operate and maintain a prospecting site in conformance with the conditions attached to the prospecting permit, and all of the following requirements:

(1) An operator shall construct a prospecting site to meet all of the following requirements:

(a) Place site elements where least observable from off the premises in any season.

(b) Place site elements within the area of the overall site that is most visually compatible in respect to building shape.

(c) Paint and maintain buildings and other structures in a manner that is visually compatible with the surrounding vegetational and earth conditions. If a building or other structure cannot be painted and maintained in a manner that is visually compatible or if painting and maintaining a building or other structure in a manner that is visually compatible would cause safety concerns, the building or structure shall be made as visually inconspicuous as is practicable.

(2) An operator shall implement effective means, consistent with applicable state and federal safety−related regulations, to limit access to the site to minimize exposure of the public to hazards.

(3) An operator shall handle and store flammable, combustible, or hazardous liquids, including fuel and oil products, on the prospecting site in compliance with applicable state and federal regulations including ch. ATCP 93 and federal spill prevention control and countermeasure regulations in 40 CFR part 112.

(4) An operator shall make reasonable effort to reduce and control the production of contaminated water.

(5) An operator shall collect, store, recycle or treat contaminated water, including liquid effluents, from whatever source associated with the project to ensure compliance with applicable water quality standards.

(6) An operator shall collect and treat contaminated nonpoint source runoff from disturbed areas within the prospecting site in a manner that facilitates monitoring, maximum practicable recycling reuse, and consumption within the prospecting operation. Nonpoint sources of water pollution shall be minimized. Point source discharges of pollutants from storm water and wastewater shall be regulated pursuant to ch. 283, Stats.

(7) An operator shall make provisions for critical back−up equipment in the event of operation equipment breakdown.

(8) An operator shall include design and operation specifications for prospecting site facilities that include contingencies for emergency conditions. Such contingencies may include emergency power supplies, equipment redundancies, or temporary holding facilities.

(9) An operator shall design, construct, maintain, operate and reclaim any prospecting site permitted under this chapter to protect groundwater quality and quantity in accordance with the requirements of ch. NR 182 and ss. 293.37 (5), 293.65, and 293.66, Stats.

(10) An operator may not use waste containing potentially harmful concentrations of acid generating material for purposes such as construction fill material for surface facilities or the construction of parking lots or roads at a permitted prospecting site.

(11) An operator shall design prospecting site facilities to minimize surface area disturbance unless an alternate prospecting site design results in less overall environmental impact.

(12) An operator shall utilize, where practicable, elevation differences in water−based transport systems for gravity flows to minimize pumping facilities and pressures.

(13) An operator shall employ best management practices to control the spread of invasive species on the mining site during construction, operation and reclamation of project facilities.

History: CR 20−043: cr. Register December 2021 No. 792, eff. 1−1−22.

NR 131.112 Exemptions and variances. (1) AUTHORITY TO GRANT EXEMPTIONS AND VARIANCES. The department may grant an exemption or variance, as provided in this section, from any of the requirements of this chapter applicable to any of the following:

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

(b) A prospecting permit.

(2) EXEMPTION AND VARIANCE REQUESTS SUBMITTED AS PART OF THE PROSPECTING PERMIT APPLICATION PROCESS. (a) To the extent feasible, an applicant shall submit all requests for exemptions or variances under this section as part of an application for a prospecting permit or the mining waste site feasibility report or plan of operation and shall describe the grounds for the exemption or variance including documentation identifying the physical conditions that necessitate the exemption or variance, other reasons for the exemption or variance, discussion of any environmental impacts that will result from issuance of the exemption or variance, mitigation measures, if any, proposed to offset adverse impacts resulting from the exemption or variance, and the reasonableness of the exemption or variance.

(b) An applicant shall submit an application for an exemption or variance under this subsection no later than 60 days after the prospecting permit application is considered complete under s. 293.495 (1) (a) 2., Stats. The department may consider an application for an exemption or variance submitted after that time, but only if the application is received in time to allow the application to be considered at the public informational hearing for the prospecting permit under s. 293.43 (3m), Stats.

(c) The department shall issue a decision on a request for an exemption or variance as part of the decision on the prospecting permit under s. NR 131.114 and, except as provided in par. (d), the department shall grant the exemption or variance if it is consistent with the purposes of this chapter and ch. 293, Stats., will not violate any applicable state environmental law outside of this chapter and ch. 293, Stats., will not endanger public health, safety, or wel-

fare and will not result in significant adverse environmental impacts on or off the prospecting site.

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

(3) EXEMPTION AND VARIANCE REQUESTS SUBMITTED AFTER PERMIT APPLICATION REVIEW PERIOD AND BEFORE ISSUANCE OF PROSPECTING PERMIT. If an applicant submits a request for a variance or exemption under this section more than 60 days after the prospecting permit application is considered complete but before the department issues or denies the prospecting permit, the application for an exemption or variance shall be processed following the provisions of s. 293.495 (1) (c), Stats.

(4) EXEMPTION AND VARIANCE REQUESTS SUBMITTED AFTER ISSUANCE OF PROSPECTING PERMIT. The department shall process any exemption and variance request under this section submitted after issuance of a prospecting permit as a modification under s. 293.53 (1) (b), Stats., and s. NR 131.120.

(5) INFORMATION TO SUPPORT EXEMPTION AND VARIANCE REQUESTS. The department may require the applicant submitting the request for a variance or exemption to conduct specific studies and analyses and submit additional supporting documentation, as necessary, to facilitate the review of the request by the department.

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22; (5) (title) created under s. 13.92 (4) (b) 2., Stats., Register December 2021 No. 792.

NR 131.113 Timeline for review of prospecting permit application. (1) Subject to subs. (4) and (5), within 180 days after an applicant submits an application for a prospecting permit, an environmental impact report, if required, and any applications for other approvals, licenses, or permits relating to the prospecting 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 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 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 permit, and draft approvals, licenses, or permits relating to the prospecting 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 (2), the department shall prepare those 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 prospecting plan or reclamation 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. In reaching this determination, the department shall consider the extent to which the modification necessitates new data collection programs and analyses or substantive expansions or modifications of ongoing monitoring activities and analyses. Upon submission of additional information by the applicant, 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 permit application or any other application for an approval, license, or permit related to the prospecting 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.

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22.

NR 131.114 Prospecting permit issuance. (1) Unless denied pursuant to s. NR 131.115 and except with respect to property specified in s. 41.41 (11), Stats., within 60 days of the completion of the record for the public hearing held under s. 293.43, Stats., the department shall issue the prospecting permit if it finds all of the following:

(a) The prospecting plan and reclamation plan comply with this chapter and ch. 293, Stats., and the prospecting plan and reclamation plan are approved as part of the prospecting permit.

(b) The site is not unsuitable for prospecting.

(2) The department shall make an approval in findings of fact, conclusions of law, and an order setting forth reasons with clarity and in detail. The department may modify or conditionally approve the operator's proposed prospecting or reclamation plans in order to meet the requirements of this chapter, and, as modified or conditioned, grant its approval.

(3) Except as otherwise provided in s. 293.57, Stats., a prospecting permit shall be valid for the life of the project unless canceled under s. 293.85 (1) or (3), Stats., or revoked under s. 293.87 (2) or (3), Stats. Unless previously modified, canceled, or revoked, a prospecting permit issued under this section shall remain valid until reclamation of the entire prospecting site has been certified as complete under s. NR 131.121 and a revised prospecting permit is issued under s. NR 131.121 (7) (b).

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22; correction in (3) made under s. 13.92 (4) (b) 7., Stats., Register December 2021 No. 792.

NR 131.115 Prospecting permit denial. (1) DENIAL. Within 60 days of the completion of the record for the public hearing held under s. 293.43, Stats., the department shall deny the prospecting permit if it finds any of the following:

(a) The prospecting site is unsuitable for prospecting or, absent certification under s. 293.35 (1), Stats., surface mining.

(b) The prospecting plan and the reclamation plan will not comply with the minimum standards for prospecting and reclamation as provided in ss. NR 131.108 and 131.109.

(c) The applicant is in violation of ch. 293, Stats., and the provisions of this chapter.

(d) The applicant has within the previous 20 years forfeited any bond posted in accordance with prospecting or mining activities in this state, unless by mutual agreement with the state.

(e) Any officer or director of the applicant has, while employed by the applicant, the applicant's parent corporation, any of the applicant's principal shareholders, or any of the applicant's subsidiaries or affiliates, in which the applicant owns more than a 40 percent interest, within the previous 20 years forfeited any bond posted in accordance with prospecting or mining activities in this state unless by mutual agreement with the state.

(f) The proposed prospecting operation may reasonably be expected to create any of the following situations:

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

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

3. Hazards resulting in irreparable damage to any of the following, which cannot be prevented under the requirements of ch. 293, Stats., avoided to the extent applicable by removal from the area of hazard or mitigated by purchase or by obtaining the consent of the owner:

a. Dwelling houses.

b. Public buildings.

c. Schools.

d. Churches.

e. Cemeteries.

f. Commercial or institutional buildings.

g. Public roads.

h. Other public property designated by the department.

4. Irreparable environmental damage to lake or stream bodies despite adherence to the requirements of ch. 293, Stats. This subdivision does not apply to an activity which the department has authorized pursuant to statute, except that the destruction or filling in of a lakebed shall not be authorized notwithstanding any other provision of the law.

(2) NOTICE OF DENIAL. If the department denies an application for a prospecting permit, the department shall furnish the operator findings of fact, conclusions of law, and an order setting forth the reasons for denial.

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22; correction in (1) (b) made under s. 13.92 (4) (b) 7., Stats., Register December 2021 No. 792.

NR 131.116 Reclamation bond and other financial assurance securities. (1) (a) Upon notification that a prospecting permit has been issued by the department but prior to commencing prospecting, the operator shall file with the department a bond conditioned on faithful performance of all of the requirements of this chapter and ch. 293, Stats. In lieu of a bond, the operator may deposit cash, certificates of deposit, or government securities with the department. Interest received on certificates of deposit and government securities shall be paid to the operator. The amount of the bond or other security required shall be equal to the estimated cost to the state of fulfilling the reclamation plan, in relation to that portion of the site that will be disturbed by the end of the following year. The department shall determine the estimated cost of reclamation of each prospecting site on the basis of relevant factors including expected changes in the price index, topography of the site, methods being employed, depth and composition of overburden, and depth of the prospecting excavation.

(b) The department, as provided under s. 293.53 (1) (a), Stats., may increase the amount of the bond, cash, certificates of deposit, or government security filed under par. (a) to assure adequate financing for the reclamation plan.

(c) A bond filed under par. (a) shall be issued by a surety company licensed to do business in Wisconsin. If the surety company's license to do business is revoked or suspended, the operator, within 30 days after receiving written notice thereof from the department, shall substitute surety underwritten by a surety company licensed to do business in Wisconsin. Upon failure of the operator to make a substitution, the department shall suspend the operator's prospecting permit until an acceptable substitute surety has been submitted.

(d) A bond filed under par. (a) shall provide that the bond shall not be canceled by the surety, except after not less than 90 days' notice to the department in writing by registered or certified mail. Not less than 30 days prior to the expiration of the 90–day notice of cancellation, the operator shall deliver to the department a replacement bond in the absence of which all prospecting shall cease.

(3) The applicant shall submit a certificate of insurance certifying that the applicant has in force a liability insurance policy issued by an insurer authorized to do business in this state, or in lieu of a certificate of insurance evidence that the applicant has satisfied state or federal self–insurance requirements, covering all prospecting operations of the applicant in this state and affording personal injury and property damage protection in a total amount deemed adequate by the department but not less than $50,000.

(4) If a mining waste site is approved as part of a permitted prospecting project, the owner 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 in accordance with ss. 293.51 (1g) and 289.41, Stats., and ch. NR 182. Proof of financial responsibility for long term care shall be submitted prior to operation of the mining waste facility.

(5) If a mining waste site is approved as part of a permitted prospecting project, the operator shall provide and maintain proof of financial responsibility as required under s. 293.51 (1r), Stats., related to replacement of engineered cover systems or water management control systems used at the mining site or mining waste site to avoid adverse environmental consequences following closure of the mining waste site. The amount of the security required under this subsection shall be determined as provided in s. 293.51 (1r), Stats., and shall be specified as part of the prospecting permit and reclamation plan approval. Proof of financial responsibility under this subsection shall be submitted at the time of closure of the mining waste site and in accordance with provisions of ch. NR 182.

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22.

NR 131.117 Monitoring. (1) The operator shall monitor the prospecting site and adjacent areas in accordance with the monitoring plan approved as part of the prospecting permit. The department may require the operator to perform additional monitoring of environmental changes during the course of the permitted activity and for such additional periods of time as is necessary to satisfactorily complete reclamation of the prospecting site and long–term care of the mining waste facility, if constructed as part of the prospecting operation.

(2) The department may monitor environmental changes concurrently with the operator as stated in sub. (1) and for an additional period after the full reclamation bond is released under s. 293.63, Stats.

(3) (a) Baseline data, monitoring data, and the monitoring plan shall be reviewed at the time of annual permit review or at such time as the operator requests any modification of the prospecting permit, prospecting plan, reclamation plan or monitoring plan.

(b) Baseline data and monitoring data shall be considered by the department in all enforcement actions including issuance of a stop order to an operator, requiring an immediate cessation of mining, in whole or in part, at any time that the department determines that there exists an immediate and substantial threat to public health and safety or the environment.

(c) If the analyses of samples indicate the quality of the groundwater is statistically significantly different from either baseline or background, the operator shall notify the department immediately and implement applicable provisions of the contingency plan submitted under s. NR 182.109 (2) (d) or 131.107 (3) (L).

(4) Any request for modification of the scope of the monitoring plan approved as part of the prospecting permit, including sampling parameters, monitoring locations and frequency and

duration of sampling, shall comply with the procedures in s. NR 131.120. Changes in monitoring equipment and sampling and analytical protocols may be reviewed and approved by the department and are not subject to the modification procedural requirements of s. NR 131.120.

(5) All laboratory chemical analyses required under the monitoring plan shall be conducted by a laboratory certified under s. 299.11, Stats., and ch. NR 149 or other certification program applicable to specific test categories.

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22; correction in (3) (c) made under s. 35.17, Stats., Register December 2021 No. 792.

NR 131.118 Inspections. (1) Subject to applicable state and federal safety rules or regulations, any authorized officer, employee, or representative of the department may enter and inspect any property, premises or place on or at which any prospecting operation or facility is located or is being constructed or installed at any reasonable time for the purpose of ascertaining the state of compliance with this chapter and chs. 30, 281, 283, 285, 289 to 292, and 299, Stats., and rules adopted under those chapters.

(2) No operator may refuse entry or access to any authorized representative of the department who requests entry for purposes of inspection, and who presents appropriate credentials, nor may any person obstruct, hamper, or interfere with any such inspection.

(3) The department shall furnish to the operator a written report on any inspection setting forth all observations, relevant information, and data that relate to compliance status.

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22.

NR 131.119 Reporting and prospecting permit review. (1) ANNUAL REPORT. By January 31 of each year, an operator shall submit an annual report to the department summarizing the extent of prospecting, the extent of reclamation activities, and other activities conducted at the prospecting site in the preceding calendar year. The operator shall provide the department with a quantity of paper copies specified by the department and shall provide a complete electronic version in a format specified by the department. The annual report shall include text, maps, tabular summaries and graphics as appropriate, documenting all of the following:

(a) A summary of all prospecting completed at the prospecting site during the year, including the extent of additional surface disturbance during the year and total acres of disturbed area on the prospecting site.

(b) The volume of material removed, stockpiled, or disposed of on the prospecting site including mining wastes by category, topsoil, and non–prospecting solid waste.

(c) A summary of reclamation activities including temporary and permanent reclamation and ongoing site maintenance activities that were completed during the year, including, as applicable, a summary of reclamation monitoring results, an evaluation of completed reclamation as related to the reclamation success criteria specified in the approved reclamation plan, an assessment of the effectiveness of specific reclamation activities conducted that year and recommendations for changes to specific reclamation protocols to consider for future work.

(d) A summary of prospecting site dewatering statistics including monthly pumping totals, if applicable.

(e) A summary of water treatment activities, if applicable, including monthly totals of water treated and discharged.

(f) A summary of any incidents and related responses concerning spills, pond overflows, embankment failures or leakage, liner failures, pipeline failures or leaks, or other unforeseen environmental releases that occurred at the prospecting site.

(g) A summary of any plan or permit modifications and any deviations from approved plans not subject to a modification.

(h) A summary of environmental monitoring activities and results required under the approved monitoring plan, including an analysis of the data to determine the development of any observable trends and a comparison of the data to background values and predicted values, if predictive modeling or similar analyses were conducted as part of the prospecting permit review process.

(i) A discussion of the extent of additional surface disturbance to be expected by the end of the next calendar year including estimates of the volumes of topsoil, ore, mining waste, merchantable by–products, and other materials to be removed.

(j) An assessment of the adequacy of the amount of the financial surety posted under s. NR 131.116 (1) considering the anticipated condition of the prospecting site at the end of the next calendar year, applicable provisions of the approved reclamation plan, any changes in reclamation costs or changes in state, federal or local regulatory requirements applicable to the prospecting operation. This analysis shall clearly identify the amount of financial security necessary to fulfill the reclamation plan relative to the prospecting site as it is projected to exist at the end of the calendar year.

(2) PERMIT REVIEW. The department shall review the prospecting permit, prospecting plan, reclamation plan, and required financial securities annually after issuance of the prospecting permit, to ascertain adequacy, compliance with state or federal laws enacted after the issuance of the permit, and technological currency. The department shall provide its findings to the operator within 30 days after receipt of the annual report submitted under sub. (1). If the department, after review, determines that the plans should be modified or the bond amount changed, it shall notify the operator of the necessary modifications or changes and establish a schedule for submitting modified plans in accordance with s. NR 131.120.

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22.

NR 131.120 Prospecting permit and plan modification. (1) If the department after review of the prospecting permit, prospecting plan and reclamation plan determines that the permit or plans should be modified or the bond amount changed, it shall notify the permit holder of the necessary modifications or changes. If the permit holder does not request a hearing within 30 days, the modifications or changes shall be deemed accepted.

(2) An operator, at any time, may apply for amendment or cancellation of a prospecting permit or for a change in the prospecting plan, reclamation plan, or monitoring plan for any prospecting operation that the operator owns or leases.

(a) The operator shall submit any application for the amendment, cancellation, or change in a format specified by the department. The request shall identify the tract of land to be added to or removed from the permitted prospecting site or to be affected by a change in the prospecting or reclamation plans. The request shall clearly identify any proposed changes in the prospecting plan, reclamation plan, or monitoring plan, reasons for the changes and anticipated environmental and economic impacts of the proposed changes.

(b) The department shall determine if any change in the prospecting plan, reclamation plan, or monitoring plan substantially broadens or changes the scope of the original prospecting project and provide notice of its determination in the same manner as specified under s. 293.43 (2m) (b), Stats.

(c) The department shall provide notice of any modification that involves an increase or decrease in the area of a prospecting site or a substantial change in the prospecting plan, reclamation plan, or monitoring plan in the same manner as an original application for a prospecting permit under s. 293.43 (2m), Stats. 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.

(d) If the department holds a hearing, it shall be conducted as an informational hearing and shall be subject to the notice and pro-

cedural provisions under s. 293.43 (3m), Stats. Any information presented in a prior hearing on either the original application or any previous modification may be offered as part of the hearing record on the proposed modification.

(e) If the application is to cancel any portion of a prospecting site, the department shall verify that prospecting has not occurred on the portion of the prospecting site identified in the request. If the department finds that no prospecting has occurred, the department shall modify the prospecting permit accordingly and, if applicable, shall authorize the operator to modify the financial securities required under s. NR 131.116 to reflect the decrease in the prospecting site.

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

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22; correction in (2) (c) made under s. 35.17, Stats., Register December 2021 No. 792.

NR 131.121 Certificate of completion of reclamation and reclamation bond release. (1) Upon completion of final reclamation in accordance with the approved reclamation plan for a portion of the prospecting site or the entire prospecting site the operator may provide notice to the department that final reclamation has been completed. The notice shall include all of the following:

(a) Clear delineation of the portion of the prospecting site addressed by the notification.

(b) Documentation that all applicable reclamation success criteria specified in the approved reclamation plan have been satisfied for the portion of the prospecting site addressed in the notification.

(c) Identification of routine management and maintenance activities that may be necessary to maintain the reclaimed portion of the site.

(d) Documentation of ongoing reclamation monitoring activities.

(e) Documentation that the reclamation activities, as implemented, have achieved the minimum standards as required in s. 293.13 (2) (c), Stats.

(2) Upon receipt of the notification of completion of final reclamation under sub. (1) the department shall review the information contained in the notification and take one of the following actions:

(a) Approve the notification, specifying the date upon which final reclamation is considered to have been completed and the scope of approved management, maintenance, and monitoring activities.

(b) Request additional information needed to complete the review of the notification.

(c) Deny approval of the notification, specifying the reasons for denial and steps to correct any identified deficiencies.

(3) Not less than 2 years after completion of final reclamation, as determined by the department under sub. (2) (a), or if the prospecting site becomes part of a mining site permitted under ch. NR 132, the operator may petition the department to consider issuance of a certificate of completion of reclamation for any portion of the prospecting site in accordance with the approved reclamation plan and this chapter. The petition shall include information that demonstrates continued compliance with the applicable reclamation success criteria specified in the approved reclamation plan and that the site is stable and generally self−sustaining, requiring only routine maintenance and management.

(4) The department shall provide public notice of any request for certification of completion of reclamation under sub. (3) in the same manner as an original application for a prospecting permit under s. 293.43 (2m), Stats., and shall hold an informational hearing following the procedures under s. 293.43 (3m), Stats. The scope of a hearing conducted under this subsection shall be limited to issues related to whether the operator has complied with the approved reclamation plan and the need for and scope of continued monitoring, maintenance, and reporting related to reclamation. If the requested certification is for the entire prospecting site or covers the entire remaining portion of the prospecting site that has not been previously certified, the public notice and hearing shall also include consideration of the revised prospecting permit under sub. (7) (b).

(5) (a) If the department finds after conducting a hearing that the operator has completed final reclamation for any portion of the prospecting site in accordance with the reclamation plan and this chapter, and the minimum standards specified under s. 293.13 (2) (c), Stats., the department shall issue a certificate of completion setting forth a description of the area reclaimed and a statement that the operator has fulfilled its duties under the reclamation plan as to that area. Upon issuance of a certificate of completion, the department shall reduce the amount of the bond or security to an amount equal to the estimated cost of reclamation of the portion of the prospecting site for which a certificate of completion has not been issued.

(b) In issuing a certificate of completion of reclamation the department may require the operator to continue regular maintenance of the reclaimed portion of the site and to continue regular reclamation monitoring and reporting. If needed to ensure long term environmental integrity of any portion of the site, the department, as part of a certificate of completion, may require an operator to develop a land use restriction to limit incompatible uses and development of specified portions of the prospecting site. Such land use restriction shall be recorded in the office of the register of deeds in each county in which the portion of the prospecting site affected by the restriction is located.

(c) Issuance of a certificate of completion under this subsection does not release an operator of any ongoing obligations or requirements imposed under other licenses, permits, or approvals issued by the department or other requirements of applicable laws and rules of the department.

(6) Upon issuance of any certificate of completion under sub. (5) for any portion of the prospecting site, but not for the entire prospecting site, the department shall allow the operator to reduce the amount of the bond to an amount which shall equal the estimated cost of reclamation of the portion of the prospecting site which is disturbed or for which reclamation has been completed but no certificate of completion has been issued. The bond may not be reduced to an amount that is less than the minimum amount specified in sub. (7).

(7) (a) Upon issuance of a certificate or certificates of completion of reclamation for the entire prospecting site, the department shall require the operator to maintain a bond equal to at least 10 percent of the cost to the state of reclamation of the entire prospecting site. In the event the operator fails to take appropriate and timely action as directed in an order issued by the department under s. 293.83 (1), Stats., the department may access the remaining bond to complete any necessary maintenance or stabilization activities that are needed to ensure stability of the prospecting site.

(b) Upon issuance of a certificate or certificates of completion of reclamation for the entire prospecting site, the department shall issue a revised prospecting permit to the operator that covers the period from issuance of the certificate of completion until the full reclamation bond is released. The revised prospecting permit shall specify acceptable uses of the reclaimed prospecting site consistent with the reclamation plan, approved maintenance activities, monitoring and reporting requirements, and other conditions necessary to ensure compliance with the applicable minimum standards of s. 293.13 (2) (c), Stats. Subsequent modifications to the

prospecting permit shall be processed in accordance with the provisions of s. NR 131.120 and s. 293.53, Stats.

(8) Five years after the issuance of a certificate or certificates of completion for the entire prospecting site, the department shall terminate the prospecting permit and release the financial security required under s. NR 131.116 (1) and s. 293.51 (1), Stats., if the department finds that the operator has complied with the approved reclamation plan. If the remaining financial security is not released, the department shall specify the reasons for retaining the financial security and shall include a schedule for reconsidering release of the financial security.

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22; correction in (3), (4), (7) (b) made under s. 35.17, Stats., Register December 2021 No. 792.

NR 131.122 Enforcement. (1) The department may cancel a prospecting permit as provided in ss. 293.83 (3) and 293.85, Stats.

(2) Any person who makes a statement, known to the person to be false or misleading in any material respect or causes, such a statement to be made in an application or report required under this chapter, who refuses to file any report required under this chapter, or who refuses to submit information required by the prospecting permit may be fined not less than $1,000 nor more than $5,000. If the false or misleading statement is material to the issuance of the permit, the permit may be revoked. If any violation under this subsection is repeated the permit may be revoked.

(3) Penalties for violations may be imposed in accordance with s. 293.87, Stats. Penalties may include revocation of a permit as set forth in s. 293.87, Stats.

(4) Six or more citizens may file a complaint relating to alleged or potential environmental pollution caused by a prospecting operation. The department shall process verified complaints related to alleged or potential environmental pollution as provided under s. 299.91, Stats.

History: CR 20–043: cr. Register December 2021 No. 792, eff. 1–1–22.