

# Exhibit 11

Wis. Admin. Code § NR 182.075, as it existed at the time of the granting  
of the Flambeau Mine Permit in January 1991



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February 23, 2004

Laura Furtman  
27426 County Road H  
Webster, WI 54893

Dear Ms. Furtman:

Enclosed is a copy of Ch. NR 182, Wis. Adm. Code that you requested from me. This version was in effect in December 1990. Also s. NR 182.075 present in this version was in effect back in September 1982.

I have also included s. NR 140.22, as it existed October 1, 1985.

Sincerely,

A handwritten signature in cursive script that reads "Gary L. Poulson".

Gary L. Poulson  
Assistant Revisor of Statutes

Enc.

NR 182.075 Groundwater standards. (1) GROUNDWATER QUALITY. The policy of the state of Wisconsin is to prevent degradation of natural groundwater quality. Recognizing that some human activities have and will impact groundwater, the state management practices must maximize protection of this resource by minimizing those impacts. All land disposal sites have varying soil properties, such as permeability and attenuation capacity, and none can provide the perfect containment, regardless of engineering design and operation standards, which would allow achievement of an absolute nondegradation standard. An important element of groundwater protection is the attenuation capacity and permeability of the soil material between the source of a potential pollutant and underlying aquifers. The attenuation capacity and permeability of the soil material underlying a waste disposal site and of any soil material used as a liner should be determined and utilized in conjunction with the waste characterization requirements of this chapter for protection of groundwater quality. This section sets forth the procedures and criteria by which the specific groundwater quality protection standards and requirements for a mining waste disposal site will be established. The intent is to provide a site specific definition of the policy of minimizing impacts on groundwater quality, in order to assure that deviations from baseline groundwater quality will be limited to deviations which will not violate the groundwater quality standards of this section or render the groundwater unfit for present or future use as determined by this section. The department shall, pursuant to a hearing under s. 144.836, Stats., establish the groundwater quality standards that site must meet; establish a compliance boundary for meeting such standards; establish an intervention boundary; and determine the adequacy of the contingency plan relating to achieving such compliance. This "intervention" in accordance with the contingency plan is intended to ensure that appropriate actions are taken by the operator to maintain the required groundwater quality at the compliance boundary.

(a) A mining waste site shall be located, designed, constructed, operated, reclaimed and maintained under long-term care requirements under s. 144.441, Stats., in a manner which complies with the requirements of this chapter, including the consideration of alternatives under s. NR 182.08 (2) (k). A waste site shall not cause concentrations of substances in groundwater at or beyond the compliance boundary in excess by a statistically significant amount of the groundwater quality standards provided for in this section.

1. Not less than 180 days prior to the hearing, the department shall propose a single compliance boundary for the site, and except as provided in subd. 3; the groundwater quality standard at the compliance boundary for each substance reasonably expected to have an adverse impact on the groundwater quality as a result of the mining waste disposal operations. If the proposed compliance boundary is less than the maximum compliance boundary under par. (b) 1. or the groundwater standards include a more stringent standard under par. 2. a. 2) or a standard determined under par. (a) 2. d., the department shall, at the hearing, present evidence supporting its proposals. The applicant or any other party may present evidence in support of or in opposition to the department's proposed groundwater quality standards or compliance boundary. Any party may propose alternative groundwater quality standards or an alternative compliance boundary by filing such proposal with the department no later than 90 days prior to the hearing.

2. The department shall apply the following criteria in establishing the groundwater quality standards at the compliance boundary:

a. For substances for which primary or secondary maximum contaminant levels (MCLs) have been promulgated in the state or national drinking water standards, 40 C.F.R. ss. 141 and 143, or ch. NR 109 the groundwater quality standards shall be:

1) The MCL, unless an exemption is granted pursuant to s. NR 182.19; but in no case shall such exemption authorize concentrations which exceed the level required to protect public health, safety and welfare; or

2) A more stringent standard based on the following:

a) That the more stringent standard is achievable based upon performance predictions and other information available to the department relating to the applicant's proposed facility site and design for which approval is sought. In establishing the more stringent standard the department shall allow an appropriate factor for margin of error above the level predicted to be achievable; and

b) That circumstances of the site or the characteristics of the substance make the more stringent standard necessary to protect public health, safety and welfare.

b. Where the baseline concentration of a substance subject to a state or national drinking water standard exceeds the MCL set by state or national drinking water standards, the groundwater quality standard shall be the baseline concentration of that substance unless an exemption is granted pursuant to s. NR 182.19; but in no case shall such exemption authorize concentrations which exceed the level required to protect public health, safety and welfare.

c. For substances toxic to humans for which a groundwater quality standard is to be established and for which no MCL has been promulgated, it shall be a concentration sufficient to protect public health, safety and welfare.

d. For other substances for which a groundwater quality standard is to be established, it shall be based on the following:

1) That the standard is achievable based upon performance predictions and other information available to the department relating to the applicant's proposed facility site and design for which approval is sought. In establishing the standard the department shall allow an appropriate factor for margin of error above the level predicted to be achievable; and

2) That the standard is required to protect the public health, safety and welfare.

3. The department may, in lieu of establishing a specific groundwater quality standard, require that the applicant monitor for that substance and report any significant deviations from the concentrations projected in the assessment prepared pursuant to s. NR 182.08 (2) (e) 9. On the basis of such deviations, the department may require the applicant to prepare an additional assessment of those substances and may, on the basis of that assessment, and pursuant to s. NR 182.19 (5), establish a

specific groundwater quality standard for that substance based upon the following:

a. That the standard is achievable based upon performance predictions and other information available to the department relating to the applicant's proposed facility site and design for which approval is sought. In establishing the standard the department shall allow an appropriate factor for margin of error above the level predicted to be achievable; and

b. That the standard is required to protect public health, safety and welfare.

c. If such a monitoring requirement is established for a substance, and if an MCL has been promulgated for such substance, the waste site shall not cause concentrations of such substance in the groundwater at the compliance boundary which exceed by a statistically significant amount the MCL or the baseline concentration, whichever is higher, unless an exemption is granted under s. NR 182.19; but in no case shall such exemption authorize concentrations which exceed the level required to protect public health, safety and welfare. If no MCL has been promulgated for such substance, the waste site shall not cause concentrations of such substance at the compliance boundary in excess of the level required to protect the public health, safety and welfare.

4. For any substance for which the department does not specify a groundwater quality standard pursuant to subd. 2. the waste site shall not cause concentrations which have a substantial deleterious impact on a current beneficial use or on a significant future beneficial use, such as drinking, irrigation, aquaculture, maintenance of livestock, or maintenance of aquatic and terrestrial ecosystems, as designated at a hearing held pursuant to s. 144.836, Stats. This section shall not be construed to require the department to designate uses of groundwater in order to act pursuant to subd. 2. or 3.

(b) Compliance boundary. 1. Maximum compliance boundary. The maximum compliance is 1,200 feet from the outer perimeter of the mining waste site or at the boundary of the property owned or leased by the operator, whichever distance is less. For purposes of this section, highways as defined in s. 340.01 (22), Stats., shall not be considered in determining the property boundary. The applicant or operator may seek a variance, modification or exemption to enlarge the maximum compliance boundary pursuant to s. NR 182.19, but in no event shall such a variance, modification or exemption authorize a boundary which exceeds the distance necessary to protect public health, safety and welfare.

2. Reduced compliance boundary. The department may establish a compliance boundary which is smaller than the maximum compliance boundary if it determines at the hearing conducted under s. 144.836, Stats., that the maximum compliance boundary is not adequate to protect other existing and designated potential groundwater users. In determining if the maximum compliance boundary is adequate and, if not, what smaller compliance boundary is required, the department shall consider all of the following factors:

a. The hydrogeological characteristics of the waste site and the surrounding land.

b. The volume and physical and chemical characteristics of the leachate.

c. The quantity, quality and directions of flow of the groundwater.

d. The proximity and withdrawal rates of groundwater users.

e. The availability of alternative drinking water supplies.

f. The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater.

g. Public health, safety and welfare effects.

(c) Contingency plan; intervention. 1. Contingency plan. At the hearing conducted under s. 144.836, Stats. the department shall require the applicant to submit a contingency plan which specifies the remedial action and intervention which will be taken if an analysis of groundwater samples indicates with a reasonable probability that a violation of par. (a) will occur.

2. Intervention. The operator shall intervene if analyses of groundwater quality samples indicate that a violation of par. (a) will occur without intervention.

3. Intervention boundary. At the hearing conducted under s. 144.836, Stats. the department shall establish an intervention boundary between the outer perimeter of the mining waste site and the compliance boundary.

(d) The following requirements are to be applied in conjunction with those of ss. NR 132.11 and 182.13. The department shall specify the parameters for groundwater analysis and may include those considered indicator parameters, those important parameters identified from the waste characterization studies, and others which might be appropriate under the specific conditions.

1. The operator of a waste site shall monitor groundwater quality at locations approved by the department along the compliance boundary.

2. The operator of a waste site shall monitor groundwater quality at locations approved by the department within the compliance boundary.

3. Intervention by the operator in accordance with the provisions of the contingency plan developed in accordance with s. NR 182.09 (2) (d) and approved in accordance with ss. NR 182.08 (2) and 182.09 (1) shall be required, regardless of the holding of any hearing pursuant to par. (c), when analyses of samples from intermediate monitoring points show a reasonable probability that, without intervention, there may be a violation of the established groundwater quality standards at the compliance boundary. Criteria against which "reasonable probability" shall be measured are the results of the predictive modeling submitted by the applicant as part of the feasibility report and other information available to the department.

4. Additional monitoring locations and tests may be specified by the department so that the actual effects of the waste site on groundwater quality may be compared with the effects projected in the feasibility report and the plan of operation.

5. Groundwater shall be monitored in the vicinity of the waste site on a monthly basis for at least 12 consecutive months prior to disposing of waste at the site to determine baseline water quality. Parameters analyzed shall include those identified in the state or national primary and secondary drinking water standards, indicator parameters as specified by the department, parameters identified as important in the waste material, and any other parameters deemed appropriate by the department for the specific conditions of the waste site.

6. Monitoring shall also be performed with respect to the quality of groundwater which is not affected by the site but which is in the aquifers near the site.

(e) 1. If the department has reason to believe that a site is not in compliance with the requirements of this section, or if the department has good reason to project with reasonable probability that a site will not achieve such compliance at the compliance boundary, it shall refer the matter to the department of justice pursuant to s. 144.98, Stats., or hold a class 2 contested case hearing pursuant to s. 144.83 (4), Stats., after giving 30 days notice to the persons identified in s. 144.836 (3) (b), Stats. Notice to the operators shall include the specific information on which the department has based its determination. The purpose of the hearing shall be to determine the existence and extent of noncompliance or, if noncompliance does not exist, whether a site will not achieve compliance at the compliance boundary. Pursuant to such hearing, the department:

a. Shall determine whether the same constitutes an immediate and substantial threat to public health and safety or the environment pursuant to s. 144.91 (4), Stats., and, therefore, requires the issuance of a stop order;

b. Shall determine whether to cancel the mining or prospecting permit if the site is in violation of ss. 144.80 to 144.94, Stats., according to the provisions of s. 144.83 (6), Stats.;

c. Shall determine if the noncompliance constitutes a grievous and continuous failure to comply with the approved plan of operation pursuant to s. 144.44 (3) (e) or (4) (a), Stats., and, therefore, requires license revocation; and

d. Shall determine, if appropriate, if any other sanctions authorized by s. 144.83 (4) (c) or 144.91 (1), Stats., are necessary to assure compliance.

2. A decision shall be issued with respect to a hearing held pursuant to subd. 1. within 30 days of its conclusion, and shall be in writing accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise and separate statement of the ultimate conclusions upon each material issue of fact with recital of evidence.

(2) Groundwater quantity. (a) If the department finds that the proposed waste site will adversely affect or reduce the availability of water to any public utility, as defined in s. 196.01 (1), Stats., in furnishing water to or for the public, it shall either deny the license or grant a license under which it imposes such conditions as to location, depth, construction and ultimate use so that the water supply of any public utility engaged in furnishing water to or for the public will not be impaired.

(b) If the department finds that the waste site would cause unreasonable harm to any person through lowering the water table or reducing

artesian pressure, it shall deny the license or grant a license under which it imposes conditions whereby such unreasonable harm will be precluded.

(c) If the department finds that the waste site will have a direct and substantial effect upon a watercourse or lake, and that such water used by or coming from the site will:

1. Be put to an unreasonable use and will cause harm to an existing use of a watercourse or lake by a riparian proprietor or a nonriparian who holds a grant from a riparian proprietor of the grantor's right to use the water, or

2. Cause harm to a nonriparian exercising a right to use public or private waters created by government authority, permit, or license, or

3. Interfere with the exercise of a public right to use the waters; then the department shall deny the license or grant a license imposing conditions whereby such harm will be precluded.

(d) The department shall not deny the waste site license merely because operation of the site will interfere with or prevent the initiation of a new use of groundwater, or a new use of the water or a watercourse or lake by a riparian proprietor.

(e) For the purpose of par. (c), the determination of the reasonableness of the use of water depends on a consideration of the interests of the user, of any person harmed thereby, and of society. Factors which affect the determination include the following:

1. The purpose of the respective uses;
2. The suitability of the uses of the watercourse, lake or aquifer;
3. The economic value of the uses;
4. The social value of the uses;
5. The extent and amount of the harm caused;
6. The practicality of avoiding the harm by adjusting the use or method of use of one party or the other;
7. The practicality of adjusting the quantity of water used by each party;
8. The protection of existing values of water uses, land, investments and enterprises; and
9. The justice of requiring the user causing harm to bear the loss.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82.

**NR 182.08 Feasibility report.** (1) Any applicant is encouraged to contact the department during the early stages of project planning and development to determine what permits and approvals may be required and to assure that submissions are consistent with department requirements.

(2) No person may establish or construct a waste site or expand an existing waste site not in operation as of May 21, 1978, without first obtaining approval of a feasibility report and a plan of operation from the department. The purpose of the feasibility report is to determine whether the site may be approved for the purpose intended and to identify the department's requirements. Register, October, 1988, No. 394