

BEFORE THE STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

**FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
DECISION ON FLAMBEAU MINING COMPANY
PETITION FOR ISSUANCE OF FINAL CERTIFICATE OF
COMPLETION OF RECLAMATION**

Findings of Fact

1. Flambeau Mining Company is a wholly owned subsidiary of Rio Tinto whose principal address is 4700 Daybreak Parkway, South Jordan, Utah 84095.
2. Flambeau Mining Company owns, and is responsible for, the 181-acre Flambeau Mine property, located on State Highway 27, Ladysmith Wisconsin 54848 (“mining site”).
3. On January 14, 1991, the Wisconsin Department of Natural Resources (“Department”) issued a Mining Permit (IH-89-14) to Flambeau Mining Company. As part of its mining permit application, Flambeau Mining Company submitted a reclamation plan. The Mining Permit (IH-89-14) included a Reclamation Plan Approval.
4. On January 8, 1998, Flambeau Mining Company requested a modification of the Mining Permit and Reclamation Plan. Under the requested modification, the final land use for a 32-acre portion of the mining site would be modified to allow for an alternate use of the on-site buildings and other facilities for use by the Ladysmith Community Industrial Development Corporation.
5. The Department approved the modification on July 30, 1998, (“1998 Modification Approval”) and required that the parcel, termed the Industrial Outlot, be put to an acceptable use by the end of 2004.
6. By correspondence dated February 18, 2005, and July 28, 2005, the Department determined that the Industrial Outlot portion of the mining site had been put to acceptable alternate uses, including wildlife habitat; light recreation including, but not limited to, hiking and equestrian trails; an equestrian trailhead; limited-use access roads and parking areas; and occupancy and use of the existing buildings, and that no further reclamation activities were required.

7. On September 4, 2001, Flambeau Mining Company submitted a Notice of Completion of Reclamation to the Department for the Flambeau Mine site in accordance with s. 293.63(1) (2001), Wis. Stats., s. NR 132.13(1) (2001), Wis. Adm. Code, and Condition #17 of the Reclamation Plan Approval.
8. The Department concurred with the Notice of Completion of Reclamation on March 8, 2002, and set November 1, 2001, as the effective date of the notice.
9. On January 9, 2007, Flambeau Mining Company petitioned the Department for a Certificate of Completion of Reclamation for the entire mining site in accordance with s. 293.63, Wis. Stats., and s. NR 132.13, Wis. Adm. Code.
10. A contested case hearing was conducted pursuant to s. 293.43, Wis. Stats., on May 30 and 31, 2007. The parties to the hearing entered a stipulated agreement by which a partial Certificate of Completion of Reclamation would be granted to Flambeau Mining Company.
11. The Stipulation and Order entered in Case No. IH-07-05, issued on May 31, 2007, (“Stipulation and Order”) approved issuance of a Certificate of Completion of Reclamation for 149 acres of the 181-acre Flambeau Mine site. The Industrial Outlot was excluded from the Certificate of Completion of Reclamation.
12. Condition no. 6 of the Stipulation and Order required Flambeau Mining Company to conduct specific monitoring after issuance of the certificate of completion. Flambeau Mining Company conducted the required monitoring and has satisfied condition no. 6 of the Stipulation and Order.
13. The Department sent a letter dated August 10, 2007, to Flambeau Mining Company which confirmed that the May 31, 2007, Order (Case No. IH-07-05) had granted a Certificate of Completion to Flambeau Mining Company for 149 acres of the Flambeau Mine site and listed required follow up actions for Flambeau Mining Company related to maintenance of the reduced reclamation bond and long-term care activities.
14. Flambeau Mining Company has met all the requirements specified in the *Follow-up Actions* section of the August 10, 2007, letter from the Department summarizing issues related to the Certificate of Completion issued in 2007 for 149 acres of the mining site that excludes the Industrial Outlot.
15. In accordance with the requirements of the August 10, 2007, letter, and s. 293.63(2), Wis. Stats., Flambeau Mining Company submitted a reclamation bond in the amount of \$2,200,000.
16. The Stipulation and Order provides that Flambeau Mining Company would not request a Certificate of Completion of Reclamation for the Industrial Outlot for at least three years from the date of the Stipulation and Order. Further, the

Stipulation and Order specifies that Flambeau Mining Company need not file a separate notice of completion of reclamation for the Industrial Outlot, finding that the notice of completion of reclamation submitted by Flambeau Mining Company in 2001 covered the Industrial Outlot.

17. The Stipulation and Order provides that in order for Flambeau Mining Company to obtain a Certificate of Completion of Reclamation for the Industrial Outlot in the future, Flambeau Mining Company will need to demonstrate the Industrial Outlot has been reclaimed in accordance with the Reclamation Plan, and that Flambeau Mining Company will not be required to prove there will not be groundwater or surface water pollution that arises after the Certificate of Completion of Reclamation is issued for the Industrial Outlot.

18. The Stipulation and Order requires that upon receipt of a petition for issuance of a Certificate of Completion of Reclamation to cover the Industrial Outlot, the Department would provide notice of the petition to the parties to the stipulation.

19. On November 4, 2021, Flambeau Mining Company submitted a petition seeking issuance of a Certificate of Completion of Reclamation for the Industrial Outlot.

20. On November 8, 2021, the Department issued letters to the parties to the Stipulation and Order informing them that Flambeau Mining Company had submitted a petition for issuance of a Certificate of Completion of Reclamation for the Industrial Outlot. The Department also posted the petition on its Internet site on November 10, 2021.

21. The Department issued a public notice on June 6, 2022, announcing that it would conduct a public informational hearing to consider the petition seeking issuance of a Certificate of Completion of Reclamation for the Industrial Outlot and providing for a public comment period before and after the hearing.

22. The Department held an informational hearing on July 6, 2022. The hearing was conducted virtually, and provisions were also made to accept in-person statements at the Ladysmith Service Center. The hearing began at 4:00 p.m. and the link to the virtual hearing remained open, with DNR staff available, until 6:00 p.m.

23. Thirteen people signed into the virtual meeting and three people were in attendance at the Ladysmith Service Center. Four individuals made oral statements during the hearing.

24. The Department kept the hearing record open until July 21, 2022, for receipt of written public comment. The Department received written comments from five individuals and joint comments on behalf of three environmental organizations.

25. The Department has reviewed the public comments, Flambeau Mining Company's petition and the information in the Department's files on the reclaimed Flambeau Mine project as related to whether a Certificate of Completion of Reclamation should be issued for the Industrial Outlot.

26. The Department has determined that Flambeau Mining Company has reclaimed and maintained the Industrial Outlot portion of the mining site as required under the approved Reclamation Plan, as amended by the 1998 Modification Approval, and as provided in the Stipulation and Order, related to issuance of the Certificate of Completion of Reclamation for the Industrial Outlot.

27. The Certification of Completion of Reclamation issued in 2007 signified that Flambeau Mining Company had fulfilled the requirements of reclamation for the mining site, except for the Industrial Outlot. As a result, the Certification of Completion of Reclamation for the Industrial Outlot, considered together with the 2007 Certification of Completion of Reclamation, signifies that Flambeau Mining Company has fulfilled the requirements of reclamation for the entire mining site.

Conclusions of Law

1. Pursuant to ch. 293, Wis. Stats., Flambeau Mining Company holds a valid nonferrous mining permit.

2. Pursuant to s. 293.63(1), Wis. Stats., Flambeau Mining Company has submitted a petition for issuance of a certificate of completion of reclamation covering the Industrial Outlot portion of the mining site.

3. Pursuant to s. 293.63(1), Wis. Stats., the Department is authorized to issue a certificate of completion of reclamation for any portion of a permitted nonferrous mining site if, after conducting a hearing, the Department finds the operator has completed reclamation in accordance with the approved reclamation plan and other requirements of ch. 293, Wis. Stats.

4. Pursuant to s. 293.63(1), Wis. Stats., the Department conducted a public informational hearing concerning Flambeau Mining Company's petition for issuance of a certificate of completion of reclamation for the Industrial Outlot. The hearing was conducted, and public notice was provided, in conformance with the requirements of s. 293.43, Wis. Stats.

5. Pursuant to s. 1.11, Wis. Stats., and s. NR 150.03(8)(e)1. (1990), Wis. Adm. Code, an Environmental Impact Statement (EIS) was prepared prior to the issuance of the Mining Permit (IH-89-14) to Flambeau Mining Company. The EIS considered the environmental impacts of the Reclamation Plan as well as reclamation and final land use alternatives. As part of the 1998 Modification Approval, the Department considered the impacts of the modified final land use of the Industrial Outlot

portion of the mining site and determined it would not result in significant increased environmental impacts.

6. Pursuant to s. NR 150.03(8)(e)(2) (2007), Wis. Adm. Code, when Flambeau Mining Company filed a petition for a certificate of completion for the entire mining site in 2007, the Department concluded that petition for a certificate of completion of reclamation was appropriately a Type IV action and did not require an environmental analysis review under s. 1.11, Wis. Stats., because certification of completion or partial completion of the reclamation plan and the release of reclamation bonds under s. 293.63, Wis. Stats., was listed as a Type IV action in ch. NR 150, Wis. Adm. Code. A Type IV action did not require the environmental assessment or EIS process, did not require a press release, and was otherwise exempt from the procedural requirements of the rest of ch. NR 150, Wis. Adm. Code.

7. Pursuant to s. NR 150.20(3), Wis. Adm. Code, a prior compliance action does not require additional environmental analysis under ch. NR 150, Wis. Adm. Code, because one or more environmental analysis documents exist for prior actions that are similar to the proposed action in kind, scale, and environmental setting.

8. Pursuant to ss. NR 150.20(1m)(k) and (3)(b), Wis. Adm. Code, the Department concludes that Flambeau Mining Company's petition for a Certificate of Completion of Reclamation for the Industrial Outlot is appropriately a minor action as an approval associated with a permit and a prior compliance action as the environmental impacts of the Reclamation Plan have already been considered by the Department as part of the Mining Permit approval and the 1998 Modification Approval, and the approval of the certificate of completion of reclamation is meant to confirm that the Reclamation Plan has been fully complied with. As such, this action does not require additional environmental analysis review under s. 1.11, Wis. Stats.

9. Pursuant to s. 293.51(1), Wis. Stats., Flambeau Mining Company has submitted a reclamation bond in the amount specified by the Department and satisfying all other requirements of s. 293.51(1), Wis. Stats.

10. Pursuant to s. 293.63(3), Wis. Stats., the Department is authorized, upon issuance of a certificate of completion of reclamation for the entire mining site, to require the permit holder to maintain a bond equal to at least 20 percent of the cost to the state of reclamation of the entire mining site.

11. Pursuant to s. NR 132.122(7)(a), Wis. Adm. Code, in the event Flambeau Mining Company fails to take appropriate and timely action as directed in an order issued by the Department, the Department is authorized to access the reclamation bond posted under s. 293.63(3), Wis. Stats., to complete any necessary maintenance or stabilization activities that are needed to ensure stability of the mining site.

12. Pursuant to s. 293.63(4), Wis. Stats., the Department is authorized to release the remaining reclamation bond 20 years after issuance of the certificate of completion of reclamation for the entire nonferrous mining site.

13. Pursuant to s. NR 132.122(7)(b), Wis. Adm. Code, upon issuance of this Certificate of Completion of Reclamation, when considered together with the 2007 Certification of Completion of Reclamation, signifies that Flambeau Mining Company has fulfilled the requirements of reclamation for the entire mining site, the Department shall issue a Revised Mining Permit to Flambeau Mining Company.

Decision

1. Pursuant to s. 293.63(1), Wis. Stats., Flambeau Mining Company is hereby issued a Certificate of Completion of Reclamation for the portion of the permitted mining site referred to as the Industrial Outlot, thereby effecting certification of reclamation for the entire permitted mining site.

2. Pursuant to s. NR 132.122(7)(b), Wis. Adm. Code, activities on the mining site shall continue to be subject to regulation under the Revised Mining Permit, issued on December 20, 2022, which shall remain in effect until the full reclamation bond has been released by the Department pursuant to s. 293.63(4), Wis. Stats., unless the permit is revoked, cancelled, or modified in accordance with the provisions of ch. 293, Wis. Stats..

3. Flambeau Mining Company shall maintain the reclamation bond required under s. 293.51(1), Wis. Stats., until the bond has been released by the Department, which may not occur until at least 20 years after the date of this decision.

Greg Pils

12/20/2022

Gregory Pils, Director
Bureau of Environmental Analysis & Sustainability

Date

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions must be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court

and serve the petition on the Department. Such a petition for judicial review must name the Department of Natural Resources as the respondent.

To request a contested case hearing pursuant to section 227.42, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources. All requests for contested case hearings must be made in accordance with section NR 2.05(5), Wis. Adm. Code, and served on the Secretary in accordance with section NR 2.03, Wis. Adm. Code. The filing of a request for a contested case hearing does not extend the 30 day period for filing a petition for judicial review.