

CHAPTER 107

MINING AND SMELTING

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107.01 Rules governing mining rights.

Where there is no contract between the parties or terms established by the landlord to the contrary the following rules and regulations shall be applied to mining contracts and leases for the digging of ores and minerals, viz.:

(1) No license or lease, verbal or written, made to a miner shall be revocable by the maker thereof after a valuable discovery or prospect has been struck unless the miner shall forfeit his right by negligence such as establishes a forfeiture according to mining usages.

(2) The discovery of a crevice or range containing ores or minerals shall entitle the discoverer to the ores or minerals pertaining thereto, subject to the rent due his landlord, before as well as after the ores or minerals are separated from the freehold; but such miner shall not be entitled to recover any ores or minerals or the value thereof from the person digging on his range in good faith and known to be mining thereon until he shall have given notice of his claim; and he shall be entitled to the ores or minerals dug after such notice.

(3) Usages and customs among miners may be proved in explanation of mining contracts to the same extent as usage may be proved in other branches of business.

107.02 Mining statement; penalty. When there shall be no agreement between the parties to any mining lease, license or permit, to mine or remove ore from any lands in this state, regulating the method of reporting the amount of ore taken, it shall be the duty of the person, firm or corporation mining and removing such ore or ores, to keep proper and correct books, and therefrom to make and deliver by or before the fifteenth day of each month to the lessor, owner or person entitled thereto, a detailed statement covering the operations of the preceding month. Such statement shall show the total amount of tons or pounds of each kind of ore produced; if sold, then to whom sold, giving the date of sale, date of delivery to any railroad company, naming such company, and the sta-

tion where delivered or billed for shipment; the name and address of the purchaser; the price per ton at which sold and the total value of each kind of ore so sold. Such books shall be always open to any owner, lessor, licensor or stockholder, if such owner, lessor, or licensor is a corporation, and to any person or stockholder interested in any such mining operations, for the purpose of inspection and taking copies thereof or abstracts therefrom. Any person, firm, joint stock company or corporation, and every officer, agent or employe of any thereof, who shall violate any of the provisions of this act, or who shall make any false or incomplete entries on any such books or statements, shall, upon conviction, thereof, be punished by a fine of not less than one hundred dollars, or by imprisonment in the county jail for not more than three months, or by both such fine and imprisonment.

107.03 Conflicting claims. In case of conflicting claims to a crevice or range bearing ores or minerals the court may continue any action to enforce a claim or grant any necessary time for the purpose of allowing parties to prove up their mines or diggings if it shall be made satisfactorily to appear necessary to the ends of justice; and in such case the court or judge in term or vacation may appoint a receiver and provide that the mines or diggings shall be worked under the receiver's direction, subject to the order of the court, in such manner as will best tend to ascertain the respective rights of the parties; and the ores or minerals raised by either party pending the dispute shall be delivered to the receiver, who may, by order of the court or judge, pay any rent or other necessary expenses therefrom.

107.04 Lessee's fraud; failure to work mine. Any miner who conceals or disposes of any ores or minerals or mines or diggings for the purpose of defrauding his lessor of his rent or who neglects to pay any rent on ores or minerals raised by him for 3 days after the notice thereof and claim of such rent, shall forfeit all

right to his mines, diggings or range; and his landlord after such concealment or after 3 days have expired from the time of demanding rent, may proceed against him to recover possession of the mines or diggings in county court as in the case of a tenant holding over after the termination of his lease. If a miner neglects to work his mines or diggings according to the usages of miners, without reasonable excuse, he shall likewise forfeit his mines or diggings and his landlord may proceed against him in like manner to recover possession of the same.

107.05 Water may be conducted across land; water diversion. (1) Every person engaged in mining may, when it is necessary in order to prosecute his work in mining, upon complying with the provisions of this chapter, conduct or convey the water away from his shafts, levels or land upon, over or below the surface of the land of any adjoining owner in pipes, ditches, races or tunnels, doing as little damage as the case will admit of.

(2) When surface streams or lakes are involved, the person engaged in or preparing to engage in mining or processing ore, shall apply to the department of natural resources for a permit to conduct or convey, to the same or another watershed, waters from the lands upon which it is engaged in mining operations. The application shall be in the form contemplated by s. 30.18 (3)(a) for applications under that section, but the provisions thereof relating to the time for completion of structures shall not apply to applications under this section. Public hearing on the application shall be set by the department and notice of such hearing shall be given in accordance with those provisions of s. 30.18 (4) which shall be specified by the department. The provisions of s. 30.18 which relate to approval of plans for structures by the department and to the entry of lands for making surveys shall apply to applications under this section. In addition to the notice requirements of s. 30.18 (4) specified by the department, the applicant also shall cause notice of the hearing on the application to be published as a class 3 notice, under ch. 985. After due publication of such notice in the official state paper, no permit issued at the conclusion of such hearing shall be held invalid upon the ground that any other provisions relating to the giving of notice have not been complied with and no person shall bring any action or maintain any proceeding to attack the permit or for damages except an action for inverse condemnation for damages suffered as a result of the exercise of the permit. The person engaged in or preparing to engage in mining or processing ore may include in such application, or in a separate ap-

plication, a request for a permit to divert waters from any surface water upon which he is riparian or to use and consume said waters and underground waters in his ore processing operations on any land owned or leased by him on the same procedure and subject to the same conditions including without limitation the right to control, store, dam or impound said waters in connection therewith.

(3) The legislature hereby declares that the development of the iron ore resources of the state and the diversion or consumptive use of the waters of the state in connection therewith is in the public interest, for the public welfare and fulfills a public purpose. As the mining and processing of such iron ore will require considerable quantities of water, it is necessary that persons engaged in or about to engage in the mining and processing of such ores be assured of an adequate and continuing supply of water for such operations before the large capital expenditures required for mills, plants and other improvements are made. In passing upon any application for a permit for the diversion or consumptive use of water under this section, the department shall weigh the public rights in the stream which may be adversely affected against the public benefits which will result from the iron ore mining and processing operation in the form of increased opportunities for employment and industrial development and increased income to local agencies of government and to the state treasury. If the public benefits which will result from the proposed operation outweigh the public rights in the stream which will be impaired or eliminated, the permit shall issue.

(4) If a permit is granted pursuant to a final decision of the department or as affirmed or modified pursuant to judicial review under ch. 227, the department shall specify the duration of such permit which shall be for such time as is necessary to permit the mining to exhaustion and the processing of all iron ore which is referred to in the application, provided that the duration of such permit may be extended by the department for good cause shown on application of the permittee.

(5) Upon the initial filing of the application the department shall determine whether rights of downstream riparians may be injured by the exercise of the permit applied for. If the department determines that such rights may be so injured, it shall fix a point on the stream below which riparian rights are not likely to be injured. When the department has made such a determination, the applicant shall insofar as reasonably possible give individual notice by mail to all riparian owners on the stream between the point

of proposed diversion and the downstream point fixed by the department. When such notice has been served, the person so served shall bring no action nor maintain any proceeding to attack the permit or for damages other than by appearance at the hearing or by an action of inverse condemnation commenced not more than 3 years after the date of the first exercise of the permit.

(6) The department shall retain jurisdiction and shall suspend or cancel the permit if it finds upon complaint of any person or state agency that:

(a) The terms or conditions of the permit have been breached; or

(b) Any law pertaining to the permit has been violated.

(6a) No permit issued pursuant to this section shall be revoked for breach or violation of the terms or conditions thereof or any law pertaining thereto unless and until the permittee has been given an opportunity to be heard thereon after 30 days' written notice to the permittee stating the specific grounds for the proposed revocation; but no permit shall be revoked by the department unless and until the permittee has been given an opportunity to correct or remedy the alleged breach or violation within such reasonable time as may be prescribed by the department and has failed to do so.

(7) Subject only to any modifications or amendments entered in judicial proceedings under ch. 227, the findings of the department, entered at the hearing on the application as the basis for a grant or denial of a permit, on the effect of the permit on public or private rights, shall be final and conclusive on all persons and their successors in interest. Subject to such conditions as the department prescribes therein including any condition as to the time of commencement of construction and conditions for the protection of public health, safety and welfare, and notwithstanding any other provisions of law, every permit issued under this section shall give the permittee the right to divert or use the waters specified in said permit as set forth therein, and the permittee may prevent by injunction or otherwise interference with such right by any person.

(8) In addition to the remedies provided in this chapter, if the department finds that any private rights will be adversely affected by the exercise of the permit or permits granted hereunder, the applicant is empowered to acquire

such rights by purchase or condemnation under ch. 32.

(9) The department shall impose such conditions in the permit as it finds are reasonably necessary in the public interest for the restoration of waters after the completion of the mining operations or cancellation of the permit, for the orderly disposal of waste or tailings, and for leaving the lands in a neat and orderly condition, and may require the permittee to furnish security to the state for compliance with such conditions. Such security, if required, shall be in such form and amount as the department deems necessary.

(10) Penalties for violations of this section shall be the same as for violations of s. 30.18.

107.06 Damage to adjoining land. Whenever such person cannot agree with the adjoining owner upon the damages for the right of so conducting or conveying the water across his land such person may proceed as provided in s. 32.06 to acquire the rights provided by s. 107.05.

107.11 Account of ore received. Every smelter and every purchaser of ores and minerals shall keep a substantially bound book, ruled into suitable columns, in which shall be entered from day to day, as ores or minerals are received, the following items: the day, month and year when received; the name of the person from whom purchased; the name of the person by whom hauled and delivered; name of the owner of the land from which the ores or minerals were obtained, or if not known, the name of the diggings or some distinct description of the land. Said book shall be kept at the furnace or at the usual place of business of such smelter or purchaser or his agent in this state, and shall be open to all persons at reasonable times for inspection and taking extracts.

107.12 Penalty. If any such smelter or purchaser or the agent of any such smelter or purchaser doing his business shall fail to keep such a book or to make such entries, or shall unreasonably refuse to show the same for inspection or taking extracts or shall make false entries therein he shall forfeit ten dollars for each offense, one-half to the use of the prosecutor; and each day such failure or refusal shall continue shall be deemed a distinct and separate offense.