

State of Wisconsin



2021 Assembly Bill 99

Date of enactment: **December 3, 2021**

Date of publication*: **December 4, 2021**

2021 WISCONSIN ACT 93

AN ACT *to amend* 289.43 (8) (title) and 289.54 (2); and *to create* 289.43 (8) (d), 289.63 (6) (e), 289.64 (4) (e), 289.645 (4) (i) and 289.67 (1) (fp) of the statutes; **relating to:** requirements and exemptions relating to materials dredged from Great Lakes, extending the time limit for emergency rule procedures, and providing an exemption from emergency rule procedures.

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

SECTION 1m. 289.43 (8) (title) of the statutes is amended to read:

289.43 (8) (title) EXEMPTION FROM REGULATION; LOW-HAZARD WASTE AND MATERIAL DREDGED FROM GREAT LAKES.

SECTION 1p. 289.43 (8) (d) of the statutes is created to read:

289.43 (8) (d) 1. The department may not regulate under s. 289.30 or 289.31 any facility for the disposal of material dredged by a municipality or county or a contractor for a municipality or county from Lake Michigan, Lake Superior, or bays or harbors adjacent to Lake Michigan or Lake Superior, if all of the following apply:

a. The department determines that the dredging and disposal will have a demonstrable economic public benefit, as defined under s. 281.36 (1) (am).

b. The department determines that the cumulative adverse environmental impact of the dredging and disposal is insignificant and will not injure public rights or interests, cause environmental pollution, as defined in s. 299.01 (4), or result in material injury to the rights of any riparian owner.

c. The department determines that the facility is in compliance with performance standards established by the department by rule.

d. The facility accepts dredged material for not more than 10 years or in an amount not to exceed 35,000 cubic yards, whichever occurs first, unless there is a material adverse change in the contamination of the dredged material that would be disposed of at the facility or if there is a material change in the intended use of the dredged material.

e. The disposal facility is located at least 100 feet from any wetland or critical habitat area and is outside a floodplain. This subd. 1. e. does not apply if the project is for beach nourishment above the ordinary high water mark on a public beach that has already been noticeably disturbed by human activities such as the construction of a parking lot, public swimming area, or other improvement and that has no unique ecological value.

f. The disposal facility is located at least 100 feet from any water supply well.

g. The facility confines the disposal area to as limited a geographic area as is practicable.

h. The department determines that the application and proposed facility are in compliance with any other conditions established by the department by rule.

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

i. At least 60 days prior to beginning disposal under this paragraph, the municipality or county or the contractor for the municipality or county submits to the department the address or location of the disposal site, the name of the person or entity accepting the dredged material, a map or aerial image showing the disposal location, the coordinates for the center of the disposal location, the dates when dredged material is to be received at the disposal location, the approximate volume of material to be disposed, the intended uses of the dredged material, and the available laboratory analytical data for samples collected from the dredged material to determine environmental impact.

j. The department determines that a received application is complete and does not provide a written objection to the application within 30 days of receipt by the department. An application may not be reviewed until the department has determined the application is complete. One application may authorize disposal of dredged material from one dredging location at multiple disposal sites.

2. An exemption granted by the department under this paragraph shall be valid for a period not to exceed 10 years and shall expire if the amount of dredged material deposited at the facility exceeds 35,000 cubic yards, there is a material adverse change in the contamination of the dredged material that would be disposed of at the facility, or if there is a material change in the intended use of the dredged material.

SECTION 2. 289.54 (2) of the statutes is amended to read:

289.54 (2) The department may not approve a request by the operator of a solid waste disposal facility to accept dredged materials that contain PCBs or heavy metals in a concentration of less than 50 parts per million for disposal in the solid waste disposal facility until after the department holds a public meeting in the city, village or town county in which the solid waste disposal facility is located. At the public meeting, the department shall describe the nature of the requested disposal and shall solicit public comment.

SECTION 3. 289.63 (6) (e) of the statutes is created to read:

289.63 (6) (e) Soils and dredged sediments are not subject to the groundwater and well compensation fees imposed under sub. (1).

SECTION 4. 289.64 (4) (e) of the statutes is created to read:

289.64 (4) (e) Soils and dredged sediments are not subject to the solid waste facility siting board fee imposed under sub. (1).

SECTION 5. 289.645 (4) (i) of the statutes is created to read:

289.645 (4) (i) Soils and dredged sediments are not subject to the recycling fee imposed under sub. (1).

SECTION 6. 289.67 (1) (fp) of the statutes is created to read:

289.67 (1) (fp) *Exemption from environmental repair fee; soils and dredged sediments.* Soils and dredged sediments are not subject to the environmental repair fee imposed under par. (a).

SECTION 7m. Nonstatutory provisions.

(1) The department of natural resources shall use the procedure under s. 227.24 to promulgate rules under s. 289.43 (8) (d) 1. no later than the first day of the 7th month beginning after the effective date of this subsection. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated under this subsection remain in effect until the first day of the 36th month beginning after the effective date of the emergency rules or the date on which permanent rules take effect, whichever is earlier. Emergency rules promulgated under this subsection shall be limited to rules pertaining to sediment sample analysis, the number of samples to be collected, and other items determined to be necessary by the department of natural resources. Notwithstanding s. 227.24 (1) (a) and (3), the department of natural resources is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

SECTION 8. Effective date.

(1) This act takes effect on the first day of the 7th month beginning after publication.