

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original   <input type="checkbox"/> Updated   <input type="checkbox"/> Corrected</p>	<p>2. Date 10/20/22</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) NR 500 - General Solid Waste Management Requirements NR 520 - Solid Waste Management Fees And Financial Responsibility Requirements</p>	
<p>4. Subject Revisions to chs. NR 500 and 520 related to disposal of material dredged from the Great Lakes (WA-17-21(E))</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR   <input type="checkbox"/> FED   <input type="checkbox"/> PRO   <input type="checkbox"/> PRS   <input type="checkbox"/> SEG   <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected N/A</p>
<p>7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect   <input type="checkbox"/> Increase Existing Revenues   <input type="checkbox"/> Increase Costs   <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate   <input type="checkbox"/> Decrease Existing Revenues   <input type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy   <input type="checkbox"/> Specific Businesses/Sectors <input checked="" type="checkbox"/> Local Government Units   <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b></p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). Approximate savings per dredged material disposal project = \$3,500. Costs are similar to using existing low-hazard waste exemption procedures for requesting dredged material disposal that also does not require a disposal site to be licensed. However, savings are expected under this rule because the application materials and requirements for disposal are outlined in the rule rather than a municipality or county determining its own application materials. This should allow for a more streamlined, efficient submittal and review process.</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes   <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule 2021 Wisconsin Act 93 (Act 93), effective July 1, 2022, established requirements and exemptions in s. 289.43 (8) (d), Wis. Stats., relating to materials dredged from Great Lakes and directed the department to promulgate emergency rules. This rule would provide a new exemption for disposal of dredged materials from Lake Michigan and Lake Superior in a location that cannot be regulated under s. 289.30 or 289.31, Wis. Stats. (does not require department licensing or plan of operation approval). <u>The rule defines requirements for a more efficient submittal and review process.</u></p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The department held a public meeting on September 26, 2022, for this emergency rule to request feedback on emergency rule concepts. Eight people from outside the department attended and were not required to provide their affiliation. One question was asked about the existing low-hazard waste exemption process. The department clarified that this rule would not replace the existing low-hazard waste exemption process, but rather is another avenue for disposing of dredged material generated by certain projects in the Great Lakes. No other comments were provided. The rule is not expected to have an impact on small businesses because the entities affected are municipalities and counties.</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. During the permanent rule process, the department will solicit comments on the economic impact of the rule and any local governmental unit will be able to participate in the development of the EIA. The department notified the WI Counties Association, League of WI Municipalities, and WI Towns Association about the public meeting held September 26, 2022.</p>	

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14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

No economic and fiscal impact is expected from the rulemaking on businesses, business sectors, or public utility rate payers, or on the state's economy as a whole.

Many rule elements match statutory language. The rule adds clarifications and additional requirements that have an economic impact on the municipalities and counties that border Lake Michigan and Lake Superior. The proposed rule would likely have a minimal, positive economic impact for municipalities and counties. It is intended to be largely self-implementing. The rule incorporates all requirements for the dredge disposal process, making steps transparent for municipalities that need to dispose of dredged material. This transparency should reduce costs and time for municipalities, counties, or their contractors when preparing and submitting documents for department review. There are no expected implementation costs under this rule.

Compliance costs for utilizing the exemption in this rule are approximately the following:

- Cost for licensing or plan review fees: No change in licensing or plan review fees compared to the existing low-hazard waste exemption approval process that is used for similar disposal of dredged material projects. The same \$550 fee is charged by the department for plan review of disposal under the low-hazard waste exemption process.
- Cost for consultant to prepare application materials: \$2,500-4,500, compared to approximately \$6,000-8,000 for an average low-hazard exemption application. Cost savings of approximately \$3,500 per dredged material disposal project.
- Sampling cost: Varies depending on the amount of dredged material, but could range from \$2,000-\$8,000. Cost would likely be the same or slightly less than without the exemption in this rulemaking. The advantage for applicants is knowing the disposal sampling requirements in advance and incorporating those into overall project planning.
- Recordkeeping costs: Minimal to none
- Cost for transporting dredged material to upland disposal facility and costs for facility cover and seeding: Varies greatly depending on distance and amount of material. Cost would be the same without the exemption in this rulemaking.

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15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The primary benefit of implementing this proposed rule is that it defines requirements for a more efficient submittal and approval process for municipalities and counties to dispose of dredged material from the Great Lakes.

Rulemaking is required under Act 93. If this rule is not implemented, the department has existing alternative review processes for these types of projects that also do not require licensing of a facility. Existing administrative rules, s. NR 500.08 (3)(a), Wis. Adm. Code, currently provide a limited exemption for the disposal of non-hazardous dredged material from Lake Michigan and Lake Superior. Under s. NR 500.08(3)(a), a disposal facility/location is exempt from licensing and plan review requirements if the total disposed is less than 3,000 cubic yards of dredged material and complies with the performance standards specified in s. NR 504.04 (4), Wis. Adm. Code. Dredged material disposal from the Great Lakes that exceeds the 3,000 cubic yard limit is often regulated under the "low-hazard waste exemption" authorized under s. 289.43 (8) (b), Wis. Stats.

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16. Long Range Implications of Implementing the Rule

Because statutes (s. 289.43 (8) (d), Wis. Stats.) allow for disposal of dredged material under the exemption for up to 10 years and up to 35,000 cubic yards of dredged material to be disposed at an unlicensed location, the long range

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

implications include the need to track and document these disposal facility sites. Record keeping by both the disposal facility owner and the department will be necessary for the facilities to maintain compliance with the statutory exemption.

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### 17. Compare With Approaches Being Used by Federal Government

In general, disposal of solid waste in Wisconsin must be as protective as federal land disposal requirements in the Resource Conservation and Recovery Act (RCRA), contained in title 40 of the Code of Federal Regulations. 40 CFR Part 257 Subpart A of RCRA includes criteria for classification of solid waste disposal facilities and practices. The proposed rule would comply with the federal criteria.

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### 18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Michigan regulates dredging action within the Great Lakes and inland lakes and streams. Permits are required for dredging, and sediment testing may be required under certain circumstances as part of the permit application review. Sediment testing results are used as one avenue to determine whether a proposed project will result in an unacceptable negative impact on aquatic resources, related either to the mobilization of contaminants to a new location or by exposing wildlife (including fish and other aquatic life) to contaminants previously buried.

Under Michigan rules, “dredgings” are exempt from regulation as solid wastes if they are approved by the department for disposal under issuance of a permit authorizing the disposal and dredgings of more than 300 cubic yards that are removed from an area of concern, are evaluated for contamination, and are managed. To evaluate dredgings for contamination, the material is analyzed for PCB’s, polynuclear aromatic hydrocarbons, and other metals, or, instead of analyses, there is a demonstration that the particle sizes of the dredgings are such that 95% or more of the particles will be retained on a No. 200 sieve.

Minnesota may require a State Disposal System (SDS) permit for storing, treating, disposing of, or reusing dredged materials on land in Minnesota if the material was dredged from navigational channels, harbors, docks and marinas, and similar projects in certain areas and for volumes greater than 3,000 cubic yards that will be stored or reused. Dredged material is assigned a “management level” based on sediment characterization (analyzing the type and level of pollutants), which dictates its appropriate disposition.

Illinois has determined that dredged material is classified as clean construction or demolition debris per Section 3.160(b) of the Illinois Environmental Protection Act. Therefore, if the material does not exceed the Maximum Allowable Concentration (MAC) Table on its website, which is based on risk-based data on human health and the environment, it is unregulated. If the material sampling exceeds the MAC table, it is considered a special waste and must either be disposed of at a permitted site, such as a landfill or confined disposal facility, or possibly reused for fill at a clean-up site or beneficially reused depending on level of contamination and reuse type. The U.S. Army Corps of Engineers conducts most deep water disposal for dredging on Lake Michigan.

Iowa does not border the Great Lakes, but is an adjacent state that does have inland and Mississippi River dredging projects. Iowa cannot require any testing of dredged material if there is no reason to believe that it is contaminated, but the end user(s) may ask for testing to substantiate non-contamination claims. The dredgings would also need to pass the paint filter test (no free liquids) before they could be considered a solid waste and subject to regulatory oversight.

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