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# SHAE SORTWELL

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STATE REPRESENTATIVE • 2<sup>nd</sup> ASSEMBLY DISTRICT

**Hearing Testimony**  
**Assembly Committee on Environment**  
**August 4, 2021**  
**Assembly Bill 99**

Thank you Chairman Kitchens and members of the Assembly Committee on Environment for taking the time to hear testimony on Sub Amendment 1 for Assembly Bill 99 – relating to requirements and exemptions relating to materials dredged from Great Lakes and creating administrative rules relating to dredged materials exemptions.

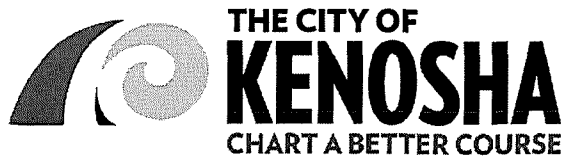
I first heard about the matter before us today when I was campaigning in 2018 for this job in the Assembly. As I was knocking on doors in Two Rivers, I came across City Manager Greg Buckley, who relayed the concerns you will hear from other local officials today about the dredging permit process municipalities face.

AB 99 (Sub Amendment 1) seeks to fix an issue that lakefront municipalities encounter when they need to dredge harbors and rivers. Sediment and sand accumulation is a naturally occurring process in our rivers and harbors. To keep the harbors safe for economic activity and recreational boating, they need to be dredged. Currently, sediment and sand are, for the most part, considered “solid waste.” DNR establishes rules for treatment, storage, and disposal of solid waste in solid waste facilities and prohibits operation of a solid waste facility without a license issued and plan of operation approved by them. This makes the removal and relocation process for dredging time consuming and costly for small municipalities.

This legislation requires DNR to promulgate a rule exempting facilities from their requirements for purposes of disposal material dredged by a municipality or its contractors from Lake Michigan, Lake Superior, or their bays or harbors. DNR is still allowed to determine if the dredging and disposal will have a demonstrable economic public benefit and what will be the cumulative adverse environmental impact. DNR may not approve a request to accept dredged materials that contain PCBs or heavy metals until after a public hearing is held. This bill also exempts tipping fees from the disposal of soils and dredged sediments.

After months of working with the DNR and other legislators on this issue, Substitute Amendment 1 was crafted to create a balance between saving our lakefront municipalities time and money to boost their economy and the health and safety concerns the DNR had on previous versions of this bill.

I appreciate the committee’s time and will answer any questions you may have.



JOHN MORRISSEY  
City Administrator

July 29, 2021

Representative Shae Sortwell  
Room 316 North State Capitol  
PO Box 8953  
Madison, WI 53708

Dear Representative Sortwell:

**RE: ASA1-AB99**

I am writing this letter in support of amendment (ASA1-AB99).

Changing the designation of this safe dredging material from "solid waste" would allow for better disposal options.

The exemption allowing facilities to dispose of materials dredged from Lake Michigan and Lake Superior from their current operating plan requirements will assist municipalities and contractors in the disposal of the dredging. However, we want to make sure that the removal of the fees does not negatively affect the operations of the Department of Natural Resources (DNR).

I support the passage of this amendment to Assembly Bill 99, and I appreciate the opportunity to submit my letter of support. Thank you for working to help municipalities better serve their constituents.

If you have any questions, contact me at 262-653-4000 or email [cityadministrator@kenosha.org](mailto:cityadministrator@kenosha.org)

Sincerely,

John W. Morrissey  
City Administrator

c: Mayor John Antaramian



City of Kewaunee  
401 Fifth Street  
Kewaunee, WI 54216  
T: 920-388-5000  
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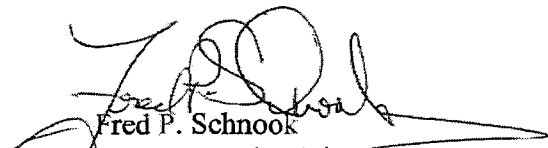
July 26, 2021

Wisconsin State Representative Shae A. Sortwell  
Room 420 North  
State Capitol  
PO Box 8953  
Madison, WI 53708

Dear Representative Sortwell:

As Administrator of the City of Kewaunee and a former Wisconsin representative to The Great Lakes Commission, I want you to add my support to 2021 Assembly Bill 99. The bill provides a reasonable and pragmatic methodology that provides more flexibility and efficiency to municipalities. The Bill, if it becomes law, could save municipalities scarce tax dollars while simultaneously providing for environmental protections. Dredgings, which are tested and proven to be at or below an allowable level of contamination, ought not be required to be landfilled. This seems to me to be a reasonable and cost effective law that will help Wisconsin municipalities save scarce dollars while simultaneously ensuring environmental protection.

Sincerely,

  
Fred P. Schnook  
Kewaunee City Administrator

Mayor.....834-7717  
Administrator.....834-7711  
Pub Works  
Superintendent.....834-7725  
Parks & Rec Director...834-7706  
Building  
Inspector.....835-6016



Assessor.....846-4250  
Street and Utility Dept..834-7779  
Laboratory.....834-7721  
Water Dept.....834-7719

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CITY OF OCONTO  
1210 Main Street, Oconto, WI 54153

July 30, 2021

Wisconsin State Representative Shae A. Sortwell  
Room 420 North  
State Capitol  
PO Box 8953  
Madison, WI 53708

Dear Representative Sortwell:

As City Administrator for the City of Oconto, I am writing to show my support for 2021 Assembly Bill 99. This bill includes a reasonable and practical definition of the term "Solid Waste". If adopted, the bill could result in savings of tax dollars for numerous municipalities while still providing protection for our environment.

It is reasonable that dredgings that test below an allowable level of contamination would no longer be required to be placed in a landfill. This bill is a reasonable solution that will both save tax dollars as well as provide environmental protections.

Sincerely,

*Sara J. Perrizo*

Sara J. Perrizo, CPA  
City Administrator



Wisconsin State Legislature  
2 East Main St  
Madison WI

Dear Representatives of the Wisconsin Legislature,

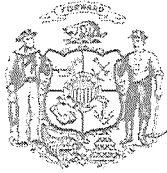
I wanted to reach out and offer my support for Assembly Bill 99. As a local lakefront municipality, Sheboygan is always striving to improve our water resources. Like many other Wisconsin cities along Lake Michigan, we have a marina that is utilized by many locals as well as tourists from all over. Moving and managing lake sediment is always a big task that local municipals take on to ensure that their marinas are accessible and navigable. Assembly Bill 99 helps provide efficiencies in how local municipalities can manage their lakefronts. Additionally, this bill will help provide flexibility and better budget planning to help cut costs when working on projects related to removing sediment from the lake. Local municipalities run on tight budgets already, and any added flexibility that can be provided goes a long way. I would ask for your support and affirmative vote on this piece of legislation. Thank you.

Ryan Sorenson  
Mayor  
City of Sheboygan  
[Ryan.sorenson@sheboyganwi.gov](mailto:Ryan.sorenson@sheboyganwi.gov)

OFFICE OF MAYOR

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828 CENTER AVE.  
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# ANDRÉ JACQUE

STATE SENATOR • 1<sup>ST</sup> SENATE DISTRICT

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Sen.Jacque@legis.wi.gov

State Capitol • P.O. Box 7882

Madison, WI 53707-7882

*Testimony before the Assembly Committee on Environment  
State Senator André Jacque  
August 5, 2021*

Chairman Kitchens and Committee Members,

Thank you very much for holding this hearing on Assembly Bill 99, relating to beneficial reuse of sand removed from our Great Lakes- legislation that is as common sense of a regulatory reform as anything I have seen introduced in the legislature.

Sediment and sand accumulation is a naturally occurring process in our rivers and harbors. To keep harbors safe for economic activity and recreational boating, they need to be dredged. Additionally, higher water levels across the Great Lakes continue to impact coastal communities and reduce the size of beaches.

One best practice to promote coastal resiliency is “beach nourishment”- allowing replenished/recycled beach sand dredged from offshore to maintain the natural beach area and protective offshore sand bar system. The US Army Corps of Engineers employs this practice, but it is unfortunately a different story when the DNR controls the process. While in theory there could be a rather complicated request for re-using sand through a DNR permit, it has proved to be a practically unworkable.

***It is important that sand and sediment that tests clean not be considered in the same class of pollutants as refuse or sludge from waste treatment plants. This model practice also makes good fiscal sense, allowing something beneficial to be reused in close proximity to where it was removed while avoiding Wisconsin’s current practice of trucking it several miles inland and landfilling it a great expense that together can be more than half of coastal communities’ budgets for dredging projects.***

I am pleased to join Chariman Kitchens, my co-author Rep. Sortwell, and Sen. Cowles in bringing forward the substitute amendment for this bill that was previously introduced. The core of the bill and the sub are the same: to facilitate disposal of material dredged from Lake Michigan or Lake Superior. However, they accomplish this in different ways:

- The bill requires the DNR to issue an individual permit for the disposal of dredged materials. The bill also excludes these dredged materials from the definition of solid waste, thus making solid waste regulations inapplicable.
- The substitute amendment requires the DNR to, by rule, exempt facilities from various solid waste facilities standards as they would pertain to disposal of dredged material.

The sub also adds two new concepts:

- The sub prohibits the DNR from approving a request by a facility to accept dredged materials that contain PCBs or heavy metals until after a public hearing is held in the county where the facility is located. This is a tweak to current law.
- The sub also exempts disposal of dredged materials from the various tipping fees.

These are common sense adjustments that ensure environmental protections remain in place while saving money for local governments that otherwise face substantial costs to dispose of a still valuable and reusable



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material, allowing coastal communities to shore up and reclaim beach areas. The idea for this legislation originated with the city of Two Rivers, and numerous local elected and appointed officials along the lakeshore have indicated their support for this proposal. I am pleased that Two Rivers officials are present to testify today to provide further explanation.

Similar legislation was enacted in Indiana in 2018 and championed by both parties, with unanimous bi-partisan support in both chambers. Beach nourishment whenever possible has been considered a best practice by the Great Lakes Legislative Caucus, on whose executive board I have the pleasure of serving.

Thank you for your consideration of Assembly Bill 99.





## Assembly Committee on Environment

### 2021 Assembly Bill 99

### *Requirements and exemptions relating to materials dredged from Great Lakes* August 5, 2021

Good morning Chair Kitchens and members of the Committee. My name is Kate Strom Hiorns, and I am the Recycling and Solid Waste Section Chief for the Wisconsin Department of Natural Resources. With me today to assist with any questions is DNR Legal Services Attorney Mike Kowalkowski. Thank you for the opportunity to testify, for informational purposes, on Assembly Bill 99 (AB 99), relating to requirements and exemptions for materials dredged from the Great Lakes.

The department supports the changes made to the bill in Assembly Substitute Amendment 1 to AB 99, which streamlines the method for municipalities to dispose of dredged sediment from Lake Michigan and Lake Superior. We greatly appreciate the opportunity we were given to provide feedback to the bill authors during the development of the bill.

Similar to an existing exemption in administrative code for disposing of less than 3,000 cubic yards of dredged material, AB 99 would exempt larger dredged material disposal sites from licensing and operating plan review requirements if the material is disposed of by municipalities in accordance with all the following requirements:

- the dredging and disposal will have a demonstrable economic public benefit, meaning increased access to natural resources, local spending by the proposed project, employment, or community investment;
- the cumulative adverse environmental impact of the dredging 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; and
- other conditions established by the department by rule.

The exemption in the bill would allow land disposal of dredged material at the disposal site for up to 10 years unless there is an 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. The bill makes no changes to chapter 30 permitting requirements for dredge projects, maintaining the department's existing process to ensure protection of the public interest in navigable waters.

We suggest that "and disposal" be added to the requirement related to cumulative adverse environmental impact that currently only references whether the dredging is an insignificant impact. (...the cumulative adverse environmental impact of the dredging *and disposal* is insignificant...)

We also note that the bill is unclear whether rulemaking would be required in advance of allowing this exemption because conditions must be met as established by rulemaking. If this is the case, the bill should authorize the department to conduct emergency rulemaking without a finding of emergency to be ready when the bill takes effect on the seventh month after publication.



The bill also creates, without following the agency rulemaking process, requirements in the department's administrative code for exemption of a dredged material disposal site when the criteria above are met along with all of the following:

- the facility complies with the performance standards specified in s. NR 504.04(4), Wis. Adm. Code, which means not causing impacts on wetlands, taking of endangered or threatened species, detrimental effects on surface water or groundwater, or emitting hazardous air contaminants;
- the facility may accept dredged material for not more than 10 years or in an amount not to exceed 25,000 cubic yards, whichever occurs first;
- the facility may not be located within 100 feet of any wetland or critical habitat area or within a floodplain or within 100 feet of any water supply well;
- the facility confines the disposal area to as limited an area as is practicable;
- the municipality submits information to assess site conditions and available laboratory data to determine environmental impact; and
- the department determines the submittal is complete and does not object within 30 days of the submittal.

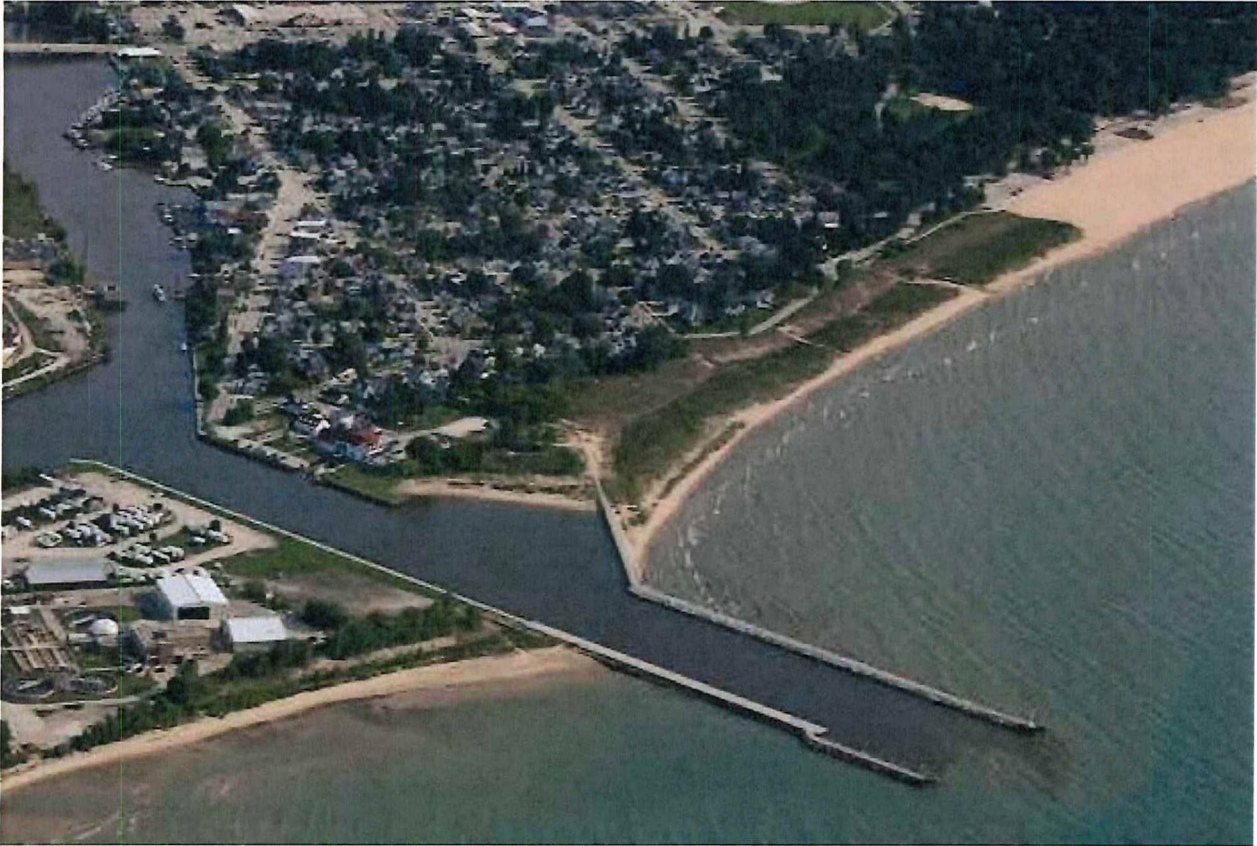
We recommend that AB 99 place this language in a new subsection of s. 289.43, Stats. (Waivers, exemptions), rather than create administrative code. This method of creating code could be confusing to the general public and diverts from the multiple public participation opportunities allowed in the current rule writing process. As required under this bill, additional rulemaking by the department would be conducted to clarify required submittal elements, such as the type of sediment sample analysis and number of samples that should be collected.

Separate from the disposal facility exemptions related to municipal dredging projects, AB 99 also makes a positive update to a section of statutes that currently only requires a public meeting when solid waste disposal facilities want to accept dredged materials that contain low levels (less than 50 ppm) of PCB or heavy metal contaminants. The bill clarifies that a public meeting is required to dispose of dredged materials with any level of PCB or heavy metal contaminants, and the meeting must be held in the county where the disposal facility is located.

Also separate from the dredge disposal facility exemptions, AB 99 would exempt generators of soils and dredged sediments from paying several statutory fees for disposal of those materials at licensed solid waste facilities. Landfills that decide to take these materials would only be required to charge the landfill licensing fee surcharge of \$0.15 per ton, along with their own disposal fees. There is an existing exemption from statutory fees already in place for treated contaminated soil approved by the department for use as daily cover, berms or other uses within the landfill, and this new exemption would likely not result in a large increase in soils filling up space at landfills.

In closing, we note that Amendment 1 helps to minimize the potential for unintended consequences compared to the original language of AB 99 by treating dredged material specifically in statutes and code rather than broadly removing it from the definition of solid waste. It allows the department to consider important factors when reviewing a project with public benefits to determine if there are potential long term negative environmental effects or potential impacts to fish and wildlife habitat, water quality, private riparian rights and public recreation associated with the project.

On behalf of the Department of Natural Resources, we thank you for your time today. We would be happy to answer any questions you may have.



Aerial View of the Harbor on Lake Michigan at Two Rivers

**Testimony in Support of Assembly Bill 99**  
**Relating to Sediment Removed from**  
**Lake Michigan or Lake Superior**  
**Assembly Committee on Environment**  
**August 5, 2021, 9:00 AM, 328 Northwest**



**TWO**  
**RIVERS**  
WISCONSIN

**Darla LeClair, Council Member**  
**Bill LeClair, Council Member**  
City of Two Rivers  
1717 East Park Street  
Two Rivers, WI 54241  
920-793-5532



Make Beneficial Re-Use of a Natural Resource?

Or Treat It Like Solid Waste?



U.S. Army Corps of Engineers Dredging  
Summer 2020 (photo courtesy MJH Photography)

Dredging Contracted by City of Two Rivers  
Summer 2016

The City of Two Rivers urges support for this legislation, which would make clear that clean sediments “removed from” (or “rearranged on the bottom of”) Lake Michigan or Lake Superior is NOT to be to be defined nor handled as solid waste. We support the bill’s requirement that DNR issue permits to allow the deposit of dredged materials from projects on those Great Lakes on the lake bed, provided the material has a level of contamination at or below the level of contamination at the deposit site.

Two Rivers is a small Lake Michigan coastal city of 11,700 that has seen the loss of much of its traditional manufacturing base over the past quarter century.

But we are bouncing back, and we view our central harbor area, where the East and West Twin Rivers come flowing together before joining the waters of Lake Michigan, as key to that future. We have a great city beach that draws hundreds of thousands of visitors each year, just north of the harbor; we’re a great sport fishing port; and we still have commercial fishermen who go out nearly every day in their stout wooden fishing tugs, to harvest whitefish on the big lake.

Redevelopment of the city’s waterfront is a top priority, and we are making progress. With some funding help from the WEDC, local investors last year opened the doors of a new, \$6.3 million downtown waterfront hotel. There will be more waterfront redevelopment to come.

...We’re “Turning Our Face Back to the Water”...the water that was the reason our community came to be. The water that is so important to our future.

Safe and reliable access through the harbor channel to and from Lake Michigan is fundamental to realizing the full benefits of that waterfront.

But we struggle to keep that harbor channel at an acceptable depth and not filled with dangerous shoals that result from wave action on the big lake piling up sand from the shallow, sandy, near-shore lakebed in our harbor channels.

We have traditionally relied on the Federal government—the U.S. Army Corps of Engineers (USACE)—to do the maintenance dredging that keeps those channels sufficiently deep, safe and usable. But that funding has been less certain for small port cities in recent years, and on occasion we have had to rely on State and local funds to do maintenance dredging.

When it does harbor dredging at Two Rivers, the Corps has almost always done hydraulic dredging—the barge-mounted dredging equipment acts like a giant vacuum cleaner, sucking a sand/water mixture from the surface of the lakebed, pumping that slurry through a pipe to a near-shore location just south of our beach, where it is deposited in the near-shore waters for “beach nourishment.”

In 2015, when shoals were again clogging our harbor entrance, creating a navigation hazard, there was no USACE funding available. Our City was pleased to be able to secure 80 percent funding through WisDOT’s Harbor Assistance Program (HAP) to remove just over 22,000 cubic yards of sand from the channel bottom and harbor entrance.

It was then that we became aware that the City, unlike the USACE, had to secure a DNR permit for the dredging. We also learned that the City, unlike the USACE, would not be allowed to do hydraulic dredging to simply move the clean lake bottom sand from one area of the bed of Lake Michigan to another.

No, due to the State’s interpretation of the statutory definition of “solid waste” as including materials removed from the bottom of our Great Lakes, the City was required to construct an upland disposal site for the placement of the materials being removed from our harbor channel and outer harbor. Materials that we all know as “beach sand,” which we would have much rather pumped onto the area near our beach—at much less cost—instead had to get trucked five miles away to a constructed disposal site designed like a landfill.

This experience caused our city leaders to speak with our State Senator, Andre Jacque, and our State Representative, Shae Sortwell. That resulted in this Assembly Bill 99, being authored and progressing to this hearing today.

In short, our reasons for supporting the bill are:

1. **Economics.** It is substantially less expensive to “move” clean sand from one area of the lakebed to another, nearby area than to load it onto barges, tow them into harbor, offload the material into dump trucks and haul it to an approved disposal site. The USACE is currently estimating an additional unit cost of \$15/CY to dispose of material by mechanical dredging and transport, versus hydraulic dredging.
2. **Sustainability of Our Harbors.** If local communities, maybe with help from the State of Wisconsin, are going to have to take on more harbor maintenance dredging in the future, we need to be able to afford it. State and local resources are being wasted under current regulatory requirements.

3. **Preservation of Natural Resources.** The sand that lies offshore and onshore along our beaches in coastal towns like Two Rivers, Kewaunee, Algoma and others, is a natural resource. Today, with very high Lake Michigan water levels, we would like to have more of that sand on our beaches.
4. **Reduced Carbon Impact.** Loading thousands of thousands of cubic yards of sand into barges, to be brought into an off-loading area, transferred to dump trucks and then hauled for miles to an upland disposal site is a big waste of fossil fuels, and adds to air pollution.

Make no mistake about it—as people who are lucky enough to live on Lake Michigan, to fish and swim in its waters, to drink of its waters—we take a back seat to no one in wanting to protect this precious natural resource. If sediments to be removed by dredging are not as clean or cleaner than background levels in our area of the big lake, then they should be hauled away and placed elsewhere.

But to be required, in the course of maintaining our connecting channels to that big lake, to pick up clean bottom sand, load it onto barges, transfer it to trucks, and haul it to an approved upland disposal site—at double the cost of just moving it few hundred yards on the lakebed—is crazy. It does the lake no good, it wastes a natural resource, and it causes us to squander limited public funds that could be better used elsewhere.

We urge your support for this reasonable, common sense, change in State Law.

Thank you.





## Summer 2020

Hydraulic Dredging contracted by U.S. Army Corps of Engineers,

Barge in Lake Michigan off the harbor mouth, dredging and pumping a slurry of water and clean lake bottom sand onto an area just offshore of the beach, north of the harbor channel



Pipe discharging sand and water slurry into the near-shore area of Lake Michigan—a use allowed under terms of a submerged lands lease with the State of Wisconsin. 67,000 CY of material were removed from the outer harbor and pumped to this area (BTW, that's about 3,350 20-yard dump truck loads)



Bulldozer spreading the sand along the shoreline, creating the “new beach” that was all the buzz in Two Rivers in the Summer of 2020—a real asset in the Summer of COVID, for people in search of a little more space at the beach



The Corps of Engineers calls it “beach nourishment,” we call it “beneficial re-use;” our residents and visitors called it “wonderful”





**September 2016**

Mechanical Dredging, contracted by the City of Two Rivers, funded with WisDOT Harbor Assistance Program grant funds and 20 percent City match. Crane barge and transport barge at the harbor mouth



Transport barge filled with clean lake bottom sand, ready to head into harbor for sand to be unloaded and then loaded into dump trucks for transport to an approved upland disposal site, 5 miles away



Sand being loaded into one of a fleet of dump trucks, for transport to disposal area

Project contract was to dredge 22,500 CY of material (about 1,125 20-yard dump truck loads), at a total cost of \$664,000.

Of that amount, over \$300,000 was for loading and trucking the dredged material and to disposal site-related costs