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*Testimony before the Senate Committee on Labor and Regulatory Reform
State Senator André Jacque
March 10, 2021*

Chairman Nass and Committee Members,

Thank you very much for holding this hearing on Senate Bill 93, 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.

SB 93 removes sand that tests free from environmental contamination and has been naturally deposited on the bed of Lake Michigan or Lake Superior from the list of solid waste, ensuring that dredged naturally deposited sand can be more easily re-used if a sediment sample analysis indicates an average level of contamination below background or below the level of contamination present at the proposed deposit area. This is a common sense adjustment that ensures environmental protections remain in place while saving money for municipalities that otherwise face substantial costs to dispose of a still valuable and reusable 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.

Thank you for your consideration of Senate Bill 93.



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Tallian's sand dredging bill signed by governor

March 14th, 2018

INDIANAPOLIS –Yesterday, Senate Enrolled Act (SEA) 178 was signed into law by the governor, after receiving unanimous support in both chambers of the legislature this session. State Senator Karen Tallian (D-Portage) authored the legislation to address sand erosion on Indiana's beaches along the Lake Michigan shore.

"I'm glad our state is making an effort to provide proper care for our beautiful beaches," Sen. Tallian said. "The beaches of Northwest Indiana are an important asset to our state, and I'm thankful the governor acknowledged that by signing this bill."

"The bill will help protect the ecological diversity of the lakeshore as well as safeguard our beaches for residents and tourists in the Region."

SEA 178 requires that any sand dredged from Lake Michigan under a permit from the Indiana Department of Natural

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Resources may only be deposited on the beach of Lake Michigan. Providing sand to sand-starved beaches is referred to as "beach nourishment," and is required to maintain the natural beach and protective offshore sand bar system. The provisions in the bill will take effect on July 1, 2018.

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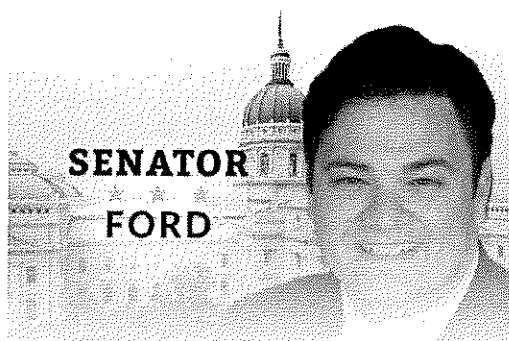
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SHAE SORTWELL

STATE REPRESENTATIVE • 2nd ASSEMBLY DISTRICT

Hearing Testimony
Senate Committee on Labor and Regulatory Reform
March 10, 2021
Senate Bill 93

Thank you Chairman Nass and members of the Senate Committee on Labor and Regulatory Reform.

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, and he relayed the concerns you will hear today.

SB 93 seeks to fix an issue that lakefront municipalities encounter when they need to dredge harbors and rivers. Currently, sediment and sand are, for the most part, considered “solid waste.” This makes the removal and relocation process for dredging very costly to small municipalities.

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. Sand and sediment should not be considered in the same class of pollutants as sludge from waste treatment plants.

SB 93 removes sand and sediment from the statutory definition of “solid waste.” Further, the bill requires a sediment sample analysis to ensure pollutants and contamination are kept in check.

I look forward to working with the committee and DNR on this issue.



Senate Committee on Labor and Regulatory Reform

2021 Senate Bill 93

Sediment removed from Lake Michigan or Lake Superior

March 10, 2021

Good morning Chair Nass and members of the Committee. My name is Sean Kennedy, Legislative Liaison for the Wisconsin Department of Natural Resources. I am joined by Recycling and Solid Waste Section Chief Kate Strom-Hiorns, and DNR Legal Services attorney Mike Kowalkowski, who are available to address any questions you may have. Thank you for the opportunity to testify, for informational purposes, on Senate Bill 93 (SB 93) related to sediment removed from Lake Michigan or Lake Superior.

SB 93 creates a new section in ch. 30, Wis. Stats., that requires the department to issue an individual permit to an applicant proposing to remove sediment deposited on the bed of Lake Michigan or Lake Superior by currents, storms, or other natural activity if a sediment sample analysis indicates that the sediment has a level of contamination at or below the level of contamination present at the area where the sediment is proposed to be deposited. The bill also removes from the definition of solid waste in ch. 289 any sediment deposited on the bed of Lake Michigan or Lake Superior that is removed and for which a sediment sample analysis indicates a level of contamination at or below the level of contamination at the proposed deposit area.

The department appreciates efforts to simplify procedures related to dredging projects. We would like to highlight for the bill author and committee's consideration several conflicting definitions and potential implementation challenges associated with the bill as currently written.

Conflicting Definitions

- SB 93 creates a new definition of "sediment" in ch. 289 that differs from an existing definition of sediment in ch. 292. Using the existing definition would serve the same purpose and eliminate confusion.
- The removal of sediment deposited on the bed of Lake Michigan or Lake Superior from the definition of solid waste would exclude that specific sediment and dredged material from regulation related to solid waste authorized by ch. 289. However, sediment removed from other waterbodies would still be considered a solid waste. This creates different regulations for similar material simply based on its source location and may add confusion among entities wanting to conduct dredging projects.
- It is unclear if sediment, as defined by the bill, when dredged from Lake Michigan or Lake Superior, would become "dredged material," which is regulated under ch. 30, Wis. Stats., and defined in NR 345, Wis. Adm. Code. It is unclear if current requirements for testing and disposal in NR 345 and related codes would be applicable in the individual permit.
- It is unclear if SB 93 would exclude an applicant from the public notice and hearing requirement for disposal of "dredged materials."

The department would prefer that materials intended for specific purposes, such as dredged materials used for beach nourishment or in municipal projects, be treated separately in statutes or code rather than removing them from the definition of solid waste.

To minimize the potential for unintended consequences, the department recommends that materials intended for specific purposes, such as beach nourishment or municipal projects, be treated as specifically as possible in statutes or code rather than broadly removing them from the definition of solid waste.

Implementation Challenges

- The bill does not specify the type of sediment sample analysis that should be conducted and on what substances. It is unclear whether the DNR would have authority under the bill to direct the type of analysis that is needed to demonstrate the sediment contaminant content and physical properties. Currently, NR 347, Wis. Adm. Code, provides for sediment sampling and analysis, monitoring protocol and disposal criteria for dredging projects. If this bill is interpreted to bypass the provisions of NR 347, important considerations for the public interest may be omitted.
- It is common to take multiple samples of dredged material to ensure they are representative of the entire project. As written, the bill refers to “a sediment sample” indicating a level of contamination at or below the level of contamination at the proposed deposit area as being adequate for the exemption from the definition of solid waste. If more than one sediment sample is analyzed, requiring that only one of the samples tests below the level of contamination in the proposed deposition area may not be sufficient.
- The area where dredged material is placed above the ordinary high water mark is typically not sampled for contaminants. Depending on the location, it may be checked for depth to groundwater or types and thicknesses of soils. For beach nourishment projects it is important to consider existing habitat and uses, as well as the ratio of sand and fines within the sediment being deposited. The new requirement in the bill to determine contaminant levels where the sediment will be deposited would need direction for applicants as to what to sample, such as soil or groundwater; what contaminants to sample for; and number of samples based on the size of the placement area.
- Removal from solid waste regulation under ch. 289 does not remove a dredging project or the generated dredge material from multiple other state statutes and code authority. The bill is unclear on how an individual permit should be issued for plan approval. For example, it does not address placing material below the ordinary high water mark, which is a separate permitted activity in ch. 30. In addition, the Army Corps of Engineers also has permitting authority over all dredging projects on the Great Lakes. If not covered under Army Corps Nationwide Permits and Regional General Permits, an individual permit from the Army Corps would also be required.
- Current department permitting and approval procedures are in place because of many years of working with and meeting the needs of dredge project stakeholders and entities neighboring these projects. The bill seems to mandate that the department issue a permit based on a singular requirement, without consideration of many other important factors that would routinely be considered when reviewing a permit application to determine if the project is in the public interest in navigable waters. Among these considerations are potential impacts to fish and wildlife habitat, water quality, threatened and endangered species, and public recreation. There also appears to be no consideration of private riparian rights that may be impacted by the placement of dredged material.

As written, the language would appear to explicitly allow moving any level of contaminated sediment from one location to another if concentrations are less than or equal to the deposit area. Excluding the Lake Michigan and Lake Superior material from the definition of solid waste would not exclude that material from regulations that require a response action to address impacts of contaminants under NR 700, Wis. Adm. Code. Statutes are in place to prevent the discharge of hazardous substances that adversely impact, or threaten to adversely impact, human health, welfare or the environment. For example, the dewatering and placement of the dredged sediment may still cause an impact to surface water or groundwater and would then trigger the need for a response action.

Without the evaluations included in NR 347, sediment could be placed at cobble beaches (e.g. Schoolhouse Beach in Door County), and non-recreational beaches that provide important habitat. The sediment could have impacts on both nearshore and upland areas.

The department would like to emphasize that there are multiple statutes and code provisions working together to implement projects for beneficial use of dredged material. One example of a successful project using existing regulations and permits is the most recent navigational dredging of Kenosha Harbor. It was dredged in 2019 and the sand was placed in the shoreline waters south of the harbor to nourish neighboring beaches. This sand contained very low but detectable levels of PCB's that were equivalent to or lower in concentration than the sediment at the placement sites, and concentrations were below levels that would pose an ecological risk.

We have confidence in the department's streamlined review procedures already in place that check the level of contaminants in sediments and dredged material, ensure the placement of those sediments are safe for human health and the environment, meet needs of the public for navigation and recreation, and ensure projects do not infringe upon public interests under the Public Trust Doctrine.

Department staff would welcome the opportunity to further discuss these issues and potential statutory language in order to provide certainty and an improved process to those managing dredged materials.

On behalf of the Department of Natural Resources, we would like to thank you for your time today. If there are questions, I will step aside and allow Kate Strom-Hiorns and Mike Kowalkowski to respond.



Aerial View of the Harbor on Lake Michigan at Two Rivers

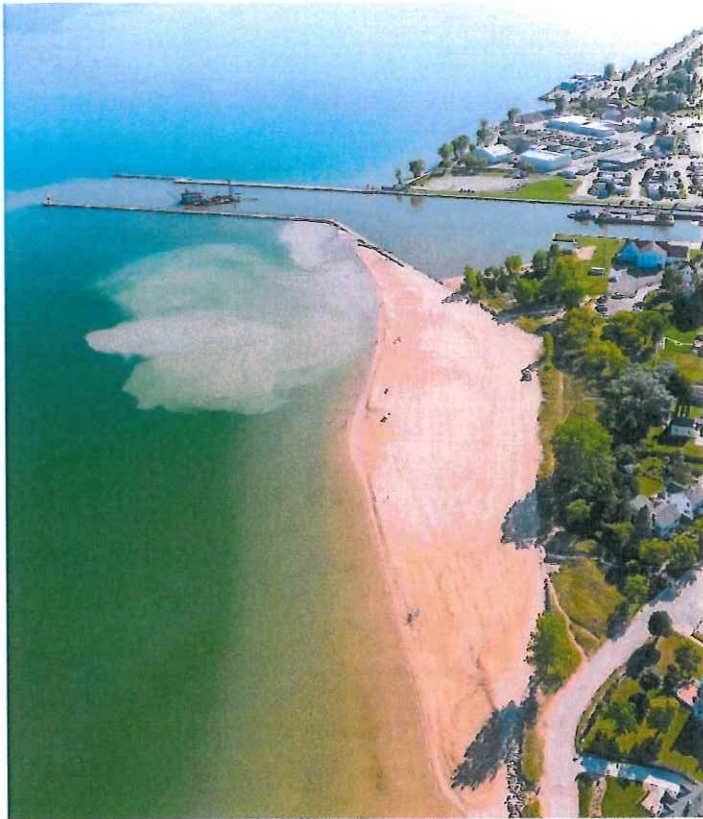
Testimony in Support of SB 93
Relating to Sediment Removed from
Lake Michigan or Lake Superior
Senate Labor and Regulatory Reform Committee
March 10, 2021



TWO
RIVERS
WISCONSIN

Greg Buckley, City Manager
Darla LeClair, Council Member
Bill LeClair, Council Member
City of Two Rivers
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Make Beneficial Re-Use of a Natural Resource?



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

Or Treat It Like Solid Waste?



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 sand “removed from” (or “rearranged on the bottom of”) Lake Michigan or Lake Superior is NOT to be defined nor handled as solid waste.

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 bill, SB 93, 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 a 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.



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



Summer 2020

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

Barge in Lake Michigan off the harbor mouth harbor, 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”