

The statement of scope for this rule, SS 017-22 was approved by the Governor on February 24, 2022, published in Register No. 795A1 on March 7, 2022, and approved by the Natural Resources Board on April 13, 2022. This rule was approved by the Governor on December 22, 2022.

ORDER OF THE STATE OF WISCONSIN NATURAL RESOURCES BOARD
CREATING AND AMENDING RULES

The Wisconsin Natural Resources Board adopts an order to **create** NR 500.08 (3m) and **amend** NR 500.08 (3) (a) and 520 Table 3 Footnote (6) relating to disposal of material dredged from the Great Lakes.

WA-17-21(E)

Analysis Prepared by the Department of Natural Resources

- 1. Statute Interpreted:** Sections 289.05, 289.06, 289.43 (8) (d) 1., and 292.31, Wis. Stats.
- 2. Statutory Authority:** Sections 227.24, 289.05, 289.06, 289.43 (8) (d) 1., and 292.31, Wis. Stats.
- 3. Explanation of Agency Authority:**
The department is authorized to promulgate rules under s. 289.43 (8) (d) 1., Wis. Stats.:

The department may not regulate under s. 289.30 or 289.31, Wis. Stats., 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, among other criteria provided for in the statute, the department determines that the facility is in compliance with performance standards established by the department by rule (s. 289.43 (8) (d) 1. c., Wis. Stats.) and that the application and proposed facility are in compliance with any other conditions established by the department by rule (s. 289.43 (8) (d) 1. h., Wis. Stats.).

Statutory authority to promulgate rules is also granted under s. 289.05, Wis. Stats., to establish minimum standards for the location, design, construction, sanitation, operation, monitoring and maintenance of solid waste facilities.

Under s. 289.06, Wis. Stats., the department is granted authority to promulgate rules implementing and consistent with ch. 289, Wis. Stats., Solid Waste Facilities, and s. 292.31, Wis. Stats., addressing environmental repair.

4. Related Statutes or Rules:

Dredged material, or sediment, meets the definition of a solid waste when it is removed from a water body. 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. Dredge 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.

5. Plain Language Analysis:

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. The Act states that the department “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. . . . 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.”

This proposed rule, which is intended to be largely self-implementing, incorporates requirements in Act 93, provides sediment sampling and analysis requirements, and outlines additional information to guide streamlined applications for dredged material disposal facility proposals.

Section 289.43 (8) (d), Wis. Stats., provides a new exemption from certain solid waste facility licensing requirements for the disposal of dredged material that is conducted by municipalities and counties and is from Lake Michigan or Lake Superior. Under Act 93, dredged material – already defined in s. NR 500.03 (71), Wis. Adm. Code, as any solid waste removed from the bed of any surface water – can be disposed of in a solid waste facility that has not obtained an operator’s license or approved plan of operation if the department determines that all of the following requirements are satisfied:

- The material is dredged by a municipality or county, or a contractor of a municipality or county.
- The material is dredged from Lake Michigan, Lake Superior, or bays or harbors of those lakes.
- The dredging and disposal will have a demonstrable economic public benefit, defined under s. 281.36 (1) (am), Wis. Stats., to mean an economic benefit to the community or region that is measurable, such as 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, or result in material injury to the rights of any riparian owner.
- The disposal facility is in compliance with performance standards established by the department by rule.
- The disposal facility will accept dredged material for a period not to exceed 10 years or in an amount not to exceed 35,000 cubic yards in total, whichever occurs first. However, the exemption may be voided if there is a material adverse change in the contamination in 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 disposal facility is not located within 100 feet of any wetland or critical habitat area or within a floodplain, unless 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.
- The disposal facility is not located within 100 feet of any water supply well.
- The disposal facility will confine the disposal area to as limited a geographic area as is practicable.
- The disposal facility and application are in compliance with any other conditions established by the department by rule.

Statutes also require a municipality, county, or contractor to submit an application to the department at least 60 days prior to beginning the disposal and specify that the department may not review the application until the department determines it is complete. An application may address the disposal of

dredged material from a single dredging location at multiple disposal sites. The application is considered approved if the department does not provide a written objection to the application within 30 days of a complete application submittal.

This proposed emergency rule also:

- Specifies that a disposal facility boundary must be determined at the time of application. This boundary is used when determining distance from wetlands, floodplains, water supply wells, separation to groundwater, or other locational and performance standards.
- Specifies that the disposal facility waste boundary must be separated from seasonal high groundwater by a minimum depth of 3 feet. This is the same minimum distance used for projects involving the beneficial use of high-volume industrial materials under ch. NR 538, Wis. Adm. Code.
- Identifies disposal facility performance standards as those listed in s. NR 504.04 (4), Wis. Adm. Code, and prevents disposal facilities created under this exemption from accepting hazardous waste, contaminated waste from a remediation site, or polychlorinated biphenyl (PCB) waste that would already be regulated under federal rules.
- Describes how to determine the maximum 10-year exemption period for the dredge disposal facility and associated tracking and notification procedures.
- Describes requirements for tracking dredge disposal amounts at a facility in order to prevent disposing of more than 35,000 cubic yards at that site.
- Defines requirements for covering and seeding the disposal facility after dredge disposal activity is complete.
- References requirements regarding storm water run-off pollution prevention control requirements at the disposal facility.
- Identifies the information required to make an application complete.
- Describes recordkeeping and reporting requirements for the disposal facility.
- Describes requirements when a project is for beach nourishment above the ordinary high water mark on a public beach that has already been noticeably disturbed by human activities.
- Identifies dredged material sampling and analysis requirements prior to disposal to determine environmental impact, using as a guide the existing ch. NR 347, Wis. Adm. Code, "Sediment Sampling and Analysis, Monitoring Protocol and Disposal Criteria for Dredging Projects."

6. Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations:

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.

7. If Held, Summary of Comments Received During Preliminary Comment Period and at Public Hearing on the Statement of Scope:

The department did not hold a preliminary public hearing on the scope statement.

8. Comparison with Similar Rules in Adjacent States:

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. This “unregulated” status means that dredge material is allowed to be placed in open waters of Lake Michigan, assuming placement location meets certain requirements (depth, bed material similarity). 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 the 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 must pass the paint filter test (no free liquids) before they could be considered a solid waste and subject to regulatory oversight.

9. Summary of Factual Data and Analytical Methodologies Used and How Any Related Findings Support the Regulatory Approach Chosen:

Dredging projects primarily consist of three steps. The first is to remove sediment from a waterbody using either mechanical or hydraulic methods. The second step is to process the dredged material, including dewatering and transportation from the removal site to a location for use or disposal. The third step is placement of the dredged material. Permits or regulatory approvals from the department may be required at each of these three steps. In order to conduct a successful dredging project, while minimizing the impact of dredging on the environment, the quality and quantity of sediment to be removed needs to be assessed to ensure that all dredging activities meet permit or regulatory requirements.

Contamination is caused by a chemical substance or substances, either organic or inorganic, which are present in sediments or surface waters above levels that naturally occur in the environment. To evaluate contamination, it is necessary to understand the normal or background levels in sediment for the project area. Background for inorganics (metals) is the concentration of metals that originate from the natural soil types and the geochemical components of the watershed. Background for natural organic compounds would generally be those compounds that originate from vegetative or animal matter that are deposited on the bottoms of lakes, streams, and wetlands. Organic chemicals manufactured by humans and released to the environment generally do not have counterparts found in nature and therefore any levels found in environmental media would be considered potential contamination. Many manufactured organic compounds may be found universally at low levels in sediments, especially in urban areas.

Contaminants at elevated levels in sediment have the potential to cause adverse environmental impacts during and after a dredging operation. Chapter NR 347, Wis. Adm. Code, related to dredged material sampling and analysis requirements, provides a guide for collection of sampling and analytical information. The code requirements are premised on the need to obtain adequate information to characterize the quality of sediments within the proposed project area. These data are used to identify if there are any potential environmental concerns that may arise during the dredging, processing, and disposal of those sediments. Additionally, ch. NR 347, Wis. Adm. Code, allows the department to increase, decrease or waive sampling requirements as appropriate to the project conditions.

For a non-exempt project involving the disposal of dredged material at an upland non-landfill disposal facility, the department may require samples be taken from the proposed disposal site and analyzed for parameters found elevated in samples from sediments in the project area. (s. NR 347.06 (3) (c), Wis. Adm. Code) Great Lakes beach nourishment disposal sites have additional sampling and analytical requirements, as well as grain-size analysis between dredge material and the beach. (ss. NR 347.06 (3) (d) and 347.07 (4), Wis. Adm. Code)

Most dredge projects meet the solid waste codified exemption criteria in s. NR 500.08 (3), Wis. Adm. Code. In these cases – similar to the projects to which this rulemaking would apply – material disposal is not subject to licensing and plan review by the department’s Waste and Materials Management Program. However, there are waterway restrictions, volume restrictions, and performance standards outlined in s. NR 504.04 (4), Wis. Adm. Code, that must be met. The applicant must determine compliance with the exemption criteria and provide that information to the department. If exempt, the ch. 30, Wis. Stats., dredging permit will include a finding that the exemption criteria have been met.

If the project is not eligible for exemption under s. NR 500.08 (3), Wis. Adm. Code, the material must be disposed of in a department approved disposal facility such as a landfill or dredged material disposal facility. The Waste and Materials Management Program may approve of a dredged material disposal facility or other non-landfill disposal of select dredged material through a low-hazard grant of exemption in accordance with s. 289.43 (8) (b), Wis. Stats. Unlike projects that would meet the exemption in this rulemaking, a low-hazard grant of exemption requires a more detailed review of proposed plans for the disposal site, a public meeting, and usually contains conditions of approval.

10. Analysis and Supporting Documents Used to Determine the Effect on Small Business or in Preparation of an Economic Impact Report:

The proposed rule is not expected to have an impact on small businesses because the entities affected are municipalities and counties.

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 would incorporate 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.

Rulemaking is required under 2021 Wisconsin Act 93. The department currently has existing 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 a low-hazard waste exemption authorized under s. 289.43 (8) (b), Wis. Stats.

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 from the Great Lakes. No other comments were provided.

11. Effect on Small Business (initial regulatory flexibility analysis):

The proposed rule is not expected to have an impact on small businesses because the entities affected are municipalities and counties.

12. Agency Contact Person: Kate Strom Hiorns, Solid Waste Section Chief, Bureau of Waste & Materials Management; PO Box 7921, Madison, WI 53707-7921; Phone: 608-294-8663
kathrynm.stromhiorns@wisconsin.gov

13. Place where comments are to be submitted and deadline for submission:

Written comments may be submitted at the public hearings, by regular mail, or email to:

Kate Strom Hiorns – WA/5
Department of Natural Resources
PO Box 7921
Madison, WI 53707-7921
Phone: 608-294-8663
kathrynm.stromhiorns@wisconsin.gov

Comments may be submitted to the department contact person listed above or to DNRAAdministrativeRulesComments@wisconsin.gov until the deadline given in the upcoming notice of public hearing. The notice of public hearing and deadline for submitting comments will be published in the Wisconsin Administrative Register and on the department’s website, at <https://dnr.wi.gov/calendar/hearings/>. Comments may also be submitted through the Wisconsin Administrative Rules Website at <https://docs.legis.wisconsin.gov/code/chr/active>.

RULE TEXT

SECTION 1. NR 500.08 (3) (a) is amended to read:

NR 500.08 (3) (a) Facilities ~~Facilities~~ Except as provided under s. NR 500.08 (3m), facilities for the disposal of nonhazardous dredged material consisting of less than 3000 cubic yards from Lake Michigan, Lake Superior, the Wisconsin river, the Sheboygan river, the Milwaukee river, the Brule and Menominee rivers, the Fox river, the Mississippi river, or from any inland lakes or

ponds treated with arsenicals provided the facility complies with the performance standards specified in s. NR 504.04 (4).

SECTION 2. NR 500.08 (3m) is created to read:

NR 500.08 (3m) EXEMPTION FOR MATERIAL DREDGED FROM THE GREAT LAKES. A facility for the exclusive 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 is exempt from the licensing and plan review requirements under chs. NR 500 to 538, except for appropriate fees under ch. NR 520, Table 3, if established and operated in accordance with all of the following requirements:

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

(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 under s. 299.01 (4), Stats., or result in material injury to the rights of any riparian owner. To make this determination, the disposal facility shall comply with the performance standards under s. NR 504.04 (4) and may not accept hazardous waste, contaminated sediment from a site regulated under chs. NR 700 through 799, or sediment with polychlorinated biphenyls regulated under 40 CFR 761.

(c) Except for a disposal facility created for the purpose of beach nourishment to add, replenish, or prevent erosion of beach material, the disposal facility is located at least 100 feet from any wetland or critical habitat area and is outside a floodplain.

(d) The disposal facility is located at least 100 feet from any water supply well.

(e) The owner of the disposal facility accepts dredged material for not more than 10 years or in an amount not to exceed 35,000 cubic yards, whichever occurs first, in accordance with all of the following:

1. The start of the 10-year maximum active period of the disposal facility begins upon initial disposal of dredged material onsite.

2. The owner of the disposal facility shall submit the dates of initial and all subsequent disposal of dredged material in the disposal facility, sample analytical data collected for each source location under par. (n), and the volume of dredged material during each disposal event to the department within 30 days of each disposal event.

3. The owner of the disposal facility shall submit a new application prior to any changes in facility location, boundaries, or design, or changes in the intended use of the dredged material.

(f) The owner of the disposal facility shall confine the disposal area to as limited a geographic area as is practicable and maintain a minimum separation distance of 1,300 feet from any other disposal facility approved under this subsection.

(g) The owner of the disposal facility shall maintain records of the description and volume of all material disposed of at the facility and dates of all disposal events. These records shall be maintained and made accessible to department staff upon request for 15 years after the initial disposal of dredged material in the facility.

(h) The owner of the disposal facility shall determine the contaminant characteristics of the dredged material prior to disposal by conducting sampling and analysis as required under par. (n).

(i) Except for a disposal facility created for the purpose of beach nourishment to add, replenish, or prevent erosion of beach material, the owner of the disposal facility shall maintain a minimum separation distance of 3 feet between the dredged material and the seasonal high groundwater table at the time of placement.

(j) Except for a disposal facility created for the purpose of beach nourishment to add, replenish, or prevent erosion of beach material or unless the dredged material is used as fill underneath an impermeable structure or surface, the owner of the disposal facility shall place final cover over the waste within 90 days after the 10-year period under par. (e) or attainment of 35,000 cubic yards in volume, whichever is first, in accordance with all of the following:

1. The cover shall consist of a minimum of one foot of native soil that includes a minimum of 6 inches of topsoil to support vegetation. The proposed vegetation shall be appropriate for the type and quality of topsoil, compatible with both native vegetation and the final use, and be capable of providing stability and preventing erosion of the cover soils and dredged material.

2. Final vegetated slopes may not be steeper than a 3:1 horizontal to vertical incline.

(k) Except for a disposal facility created for the purpose of beach nourishment to add, replenish, or prevent erosion of beach material, the disposal facility shall be operated and maintained to minimize dust, minimize off-site tracking of soil or dredged material, and manage storm water runoff as required under chs. NR 151 and 216. An interim cover capable of preventing erosion, windblown dust, and direct contact with the dredged material shall be placed over the dredged material in any areas that do not have final cover and are anticipated to be inactive for more than 90 days.

(L) At least 60 days prior to beginning disposal under this exemption the municipality or county or the contractor for the municipality or county shall submit an application on a form provided by the department requesting an exemption under this section. At a minimum, the form shall include all of the following information:

1. Address or location by quarter – quarter section of the disposal site or sites.
2. Name, address, and contact information of the primary contacts including the proposed disposal facility owner and any consultants.
3. Name of the person accepting the dredged material.
4. Map or aerial image showing the disposal location or locations.
5. Coordinates for the center of the disposal location or locations.
6. Dates when dredged material is first to be received at the disposal location or locations.

7. Approximate total volume of material to be disposed, description of the dredged material, and description of source location.

8. Intended uses of the dredged material.

9. Documentation of all other local, state, or federal approvals received for the dredging and disposal.

10. The available laboratory analytical data for samples collected from the dredged material to determine environmental impact in accordance with par. (n).

11. An explanation of how each of the requirements in pars. (a) to (k) and (o) will be met.

12. Submittal of the appropriate fees under ch. NR 520, Table 3.

(m) If the application under par. (L) is not complete or any of the requirements are not met, the department shall issue a written objection to the application with an explanation. If the department does not provide a written objection to the application within 30 days of receipt of application and fees by the department, the applicant may proceed under this exemption. After an objection, an applicant may resubmit a revised application that addresses the explanation for objection by the department.

(n) The applicant shall take samples and analyze the dredged material prior to disposal in accordance with all of the following:

1. Sampling, sample handling, and sample analysis to demonstrate compliance with this section shall be performed in accordance with methods from applicable sources enumerated under ch. NR 149.

2. Sampling shall be performed as specified under s. NR 347.06 (4) and (5).

3. If previous sampling data or other available information indicate the possibility of contamination by chemicals not listed in Table 3, the department may require analysis for those chemicals.

4. The laboratory analytical data for samples collected from the dredged material shall include tables summarizing the analytical data and copies of the laboratory analytical data sheets for all analyses, a map of the project area showing the specific locations of sediment sampling sites, and the name and address of the laboratory that performed the tests. All testing and quality control procedures shall be described and analytical methods, detection limits, and quantification limits shall be identified.

5. The applicant shall collect the appropriate number of samples from the dredged material capable of yielding data that accurately represent the contaminant characteristics of the material in accordance with all of the following:

a. Laboratory analytical data from the dredged material source location may not be more than 5 years old from the date of application submittal.

b. At a minimum, the applicant shall follow Table 1 sampling requirements if sampling is conducted prior to removal of the dredged material from its source.

c. At a minimum, the applicant shall follow Table 2 sampling requirements if sampling is conducted after removal of the dredged material from its source.

d. At a minimum, all samples shall be analyzed and reported as total concentration in milligrams/kilogram dry weight for the parameters listed in Table 3. Sample collection and evaluation shall be performed by or under the supervision of an environmental professional.

Note: As defined under s. NR 528.03 (7), "Environmental professional" means a professional engineer registered pursuant to s. 443.04, Stats., or a professional soil scientist, geologist or hydrologist licensed under ch. 470, Stats.

Table 1 SAMPLING REQUIREMENTS WHEN CONDUCTED PRIOR TO REMOVAL OF THE DREDGED MATERIAL FROM ITS SOURCE

TOTAL VOLUME PLANNED FOR DISPOSAL IN CUBIC YARDS	MINIMUM NUMBER OF CORE SAMPLES¹
Less Than 3,000	1
3,000 – 9,999	3
10,000 – 19,999	4
20,000 – 35,000	6

¹ At least one sample from each distinct layer or strata observed in each core of the material to be dredged, or if no strata formation exists, then at least 2 samples from each core shall be analyzed for the required chemicals and characteristics. Distinct layers or strata may be identified by differences in grain size, color, texture and content such as organic matter, sands, and silts along the length of the core.

Table 2 SAMPLING REQUIREMENTS WHEN CONDUCTED AFTER REMOVAL OF THE DREDGED MATERIAL FROM ITS SOURCE

TOTAL VOLUME PLANNED FOR DISPOSAL IN CUBIC YARDS	MINIMUM NUMBER OF SAMPLES
Less Than 600	1 sample/200 cubic yards, Minimum of 2 samples
600 – 2,999	6
3,000 – 14,999	10
15,000 – 35,000	15

Table 3 ANALYSES TO BE PERFORMED ON SAMPLES

ORGANICS	INORGANIC – METALS	OTHER INORGANICS
Oil & Grease	Arsenic	Particle Size Analysis – Sieve and Hydrometer Analysis
Dioxin for Lake Superior Projects	Barium	Ammonia-Nitrogen
Chlordane	Cadmium	Nitrate + Nitrite
Dichloro-diphenyl-trichloroethane (DDT)	Chromium (total)	Total Kjeldahl Nitrogen

Dichlorodiphenyldichloroethane (DDD)	Copper	Total Phosphorus
Dichlorodiphenyldichloroethylene (DDE)	Lead	
Polychlorinated Biphenyls (PCBs) (Total)	Manganese	
Total Organic Carbon	Mercury	
Polycyclic Aromatic Hydrocarbons (PAHs): Acenaphthylene Acenaphthene Anthracene Benzo (a) anthracene Benzo (a) pyrene Benzo (e) pyrene Benzo (b) fluoranthene Benzo (g,h,i) perylene Benzo (k) fluoranthene Chrysene Dibenzo(a,h)anthracene Fluoranthene Fluorene Indeno (1,2,3-cd) pyrene Naphthalene Phenanthrene Pyrene 2-Methylnaphthalene	Nickel	
	Selenium	

(o) The owner of a disposal facility created for the purpose of beach nourishment to add, replenish, or prevent erosion of beach material shall also comply with all of the following:

1. Sampling and analysis requirements under s. NR 347.06 (3) (d).
2. Dredged material grain-size analysis under s. NR 347.07 (4).

SECTION 3. NR 520 TABLE 3 Footnote (6) is amended to read:

NR 520 TABLE 3 Footnote (6) These fees apply to exemptions requested ~~per~~ under s. NR 500.08 (3m), (4) and (5).

SECTION 4. STATEMENT OF EMERGENCY. Under 2021 Wisconsin Act 93 and notwithstanding s. 227.24 (1) (a) and (3), Stats., 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 5. EFFECTIVE DATE. This rule takes effect upon publication in the official state newspaper, as provided in s. 227.24(1)(c), Stats.

SECTION 6. BOARD ADOPTION. This rule was approved and adopted by the State of Wisconsin Natural Resources Board on December 14, 2022.

Dated at Madison, Wisconsin 1/6/2023 | 8:53 AM CST.

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

BY  A7D70DC3770642F...

For Adam N. Payne, Secretary