



October 31, 2019

Testimony on Assembly Bill 347

Thank you for the opportunity to provide comments on Assembly Bill 347. My name is John Robinson and I am here today representing Wisconsin's Green Fire, an organization committed to bringing science to public policy discussions.

Today I am speaking for informational purposes. Section 2 of AB 347 proposes an exemption from classification as a solid waste for: "Sand deposited on the bed of Lake Michigan or Lake Superior by currents, or other natural activity that is removed and for which a sediment sample analysis indicates an average level of contamination below background or below the level of contamination present at the proposed deposit area."

While the proposed change seems simple it raises a number of concerns:

What is the definition of sand? Sediments are comprised of sand as well as fine particles, which are silts and clay, both of which are moved by currents and "other events". It is common for sand and fines to be intermingled on the bed of lakes and rivers. There does not appear to be a statutory definition of sand therefore how will sand be defined for the purpose of implementation of this section? Will it include a percentage of fine particles?

Under current law sediment becomes a solid waste once it is dredged. As a solid waste it is regulated under s. 289 Wis. Stats. I note that this Assembly Bill has the same number as the chapter of the Wisconsin Administrative Code, which governs Sediment Sampling and Analysis, Monitoring Protocol and Disposal Criteria for Dredging Projects, NR 347.

The stated purpose of NR 347 "is to protect the public rights and interest in the waters of the state by specifying definitions, sediment sampling and analysis requirements, disposal criteria and monitoring requirements for dredging projects regulated under one or more of the following statutes: s. [30.20](#), Stats., which requires a contract or permit for the removal of material from the beds of waterways; s. [281.41](#), Stats., which establishes a wastewater treatment facility plan approval program; ch. [289](#), Stats., which establishes the solid waste management program; ch. [291](#), Stats., which establishes the hazardous waste program; and ch. [283](#), Stats., which establishes the Wisconsin pollutant discharge elimination system (WPDES) program."

NR 347 lays out the process that is to be used to evaluate how that proposed dredge site is to be sampled, what parameters are to be analyzed after factoring in previous tests conducted in the area and the probability that past activities or natural deposits may have impacted the sediment. If available information is not sufficient or there is the possibility of sediment contamination, NR 347.06 Wis. Admin. Code gives to the Department, in consultation with the applicant for a dredging permit, the



authority to require sufficient samples. The Department will need to factor in existing information, the possibility for contamination, the volume and area to be dredged, depth of the cut, and proposed method of dredging.

The proposed legislation creates an exemption for the classification of the sand/sediment removed from the bed of Lake Michigan and Lake Superior as a solid waste if the average level of contamination is below background without specifying how many samples are to be collected and/or what parameters should be sampled. The language "average level of contamination below background" is also vague. Averages of heterogeneous sediment areas can be easily manipulated by where samples are taken skewing the results. It is not clear if NR 347 would apply under the proposed legislation therefore the lack of clarification of the sampling and analysis process in the proposed changes to the statutes is a concern.

A final concern is where will the material be deposited. Is it to be beneficially reused, used for beach nourishment, placed elsewhere on the lakebed or deposited on land? Each option has issues which need to be evaluated. This proposal appears to allow placing contaminated sediment on top of other contaminated sediment (capping) without the safeguards currently in place to ensure proper management or disposal of contaminated sediment. It also allows the disposal of the dredged material in an area where the dredged material is below the level of contamination present at the proposed deposit site. If the dredged material is contaminated, even though it is below the level of contamination at the accepting site, there is not an exemption from liability associated with the clean-up of that material under the Spills Law Ch. 292 Wis Stats. The party dredging and/or transporting the material to the receiving site may have liability for the cleanup of that site if there are impacts to groundwater, surface water or soil standards.

Currently if dredged sediment is beneficially reused - i.e. as clean fill in construction sites, the Department evaluates contaminant levels and issues a Low Hazard Grant of Exemption if appropriate. Will sand dredged under this legislation be covered?

The cost of managing contaminated sediment is high. Without additional clarification this bill appears to make it much easier to deposit contaminated sediment in places that are already contaminated (brownfields, for example), instead of properly managing and addressing the contamination.

Thank you for your time and I would be happy to answer any questions.

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