
Wisconsin Legislative Council

AMENDMENT MEMO



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2021 Assembly Bill 99

**Assembly Substitute
Amendment 1 and Assembly
Amendment 1 to the Substitute
Amendment**

BACKGROUND

Current Wisconsin law contains extensive licensing requirements and other regulations governing solid waste disposal facilities. [See, generally, ch. 289, Stats., and chs. NR 500 to 538, Wis. Adm. Code.] In general, disposal of any “solid waste,” broadly defined, must be disposed of in a facility that has obtained a solid waste facility license and an approved plan of operation, among other requirements. However, the statutes provide exemptions from the general licensing and regulatory requirements for specified categories of waste. [s. 289.43, Stats.]

In addition, the Department of Natural Resources (DNR) may exempt low-hazard waste by rule. [s. 289.43 (8), Stats.] Pursuant to this statutory authority, DNR promulgated s. NR 500.08, Wis. Adm. Code, which exempts specified categories of low-hazard waste from certain requirements relating to solid waste management. Although current DNR rules exempt some facilities for the disposal of dredged material, the current exemptions for dredged materials apply only to non-hazardous waste. With respect to material dredged from the Great Lakes, the current exemption also limits the exemption to less than 3,000 cubic yards of dredged material. [See s. NR 500.08 (3), Wis. Adm. Code.]

ASSEMBLY SUBSTITUTE AMENDMENT 1

As summarized below, Assembly Substitute Amendment 1 authorizes a new exemption from certain state solid waste facility licensing and regulations for dredging conducted by municipalities in Lake Michigan or Lake Superior. The substitute amendment also makes two additional changes to current law relating to solid waste facilities.

New Exemption for Municipal Dredging in the Great Lakes

The substitute amendment requires DNR to promulgate a rule that exempts facilities for the disposal of dredged material from general requirements to obtain an operator’s license and approved plan of operation, if all of the following requirements are satisfied:

- The material is dredged by a municipality or its contractors.
- 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.
- 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 facility is in compliance with conditions established by DNR by rule.

The substitute amendment specifies that an exemption granted under the substitute amendment is generally valid for a period not to exceed 10 years or in an amount not to exceed 25,000 cubic yards, whichever occurs first. However, it specifies that an exemption shall expire if there is a material 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.

To implement those statutory changes, the substitute amendment also directly amends DNR's administrative rules to establish the conditions that apply to facilities granted an exemption. Specifically, the substitute amendment specifies that a facility is exempt if it satisfies the statutory requirements set forth under the substitute amendment, satisfies certain existing conditions in DNR's rules, and satisfies all of the following conditions:

- 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, unless there is a material 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 disposal facility may not be located within 100 feet of any wetland or critical habitat area or within a floodplain. This subdivision does not apply if 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 may not be located less than 100 feet from any water supply well.
- The facility shall confine the disposal area to as limited a geographic area as is practicable.
- At least 60 days prior to beginning disposal under this paragraph, a municipality must submit certain information to the department.

Tipping Fee Exemption

The substitute amendment provides a general exemption from landfill tipping fees for soils and dredged sediments. Under current law, tipping fees are typically based on the weight or volume of waste disposed.

Procedural Change Relating to Certain Dredged Materials

Under current law, DNR must hold a hearing in the town, village, or city where a solid waste facility is located before approving a request to accept dredged materials in a concentration of less than 50 parts per million that contain polychlorinated biphenyls (PCBs) or heavy metals. [s. 289.54 (2), Stats.] The substitute amendment amends that requirement to require that a hearing be held in the relevant county, rather than the relevant city, village, or town. The substitute amendment also makes the public hearing requirement applicable to disposals of dredged material with any concentration of PCBs or heavy metals, rather than only those with concentrations of 50 parts per million.

ASSEMBLY AMENDMENT 1 TO THE SUBSTITUTE AMENDMENT

Assembly Amendment 1 to the substitute amendment makes the exemption for municipal Great Lakes dredging statutory rather than requiring DNR to provide the exemption by rule. Related to that shift in approach, the amendment removes the provisions of the substitute amendment that directly amend

DNR's administrative rules and instead incorporates the conditions from those provisions in the statutes.

The amendment retains DNR's authority to establish additional conditions for the dredging exemption by rule. The amendment directs DNR to promulgate emergency rules to do so within six months after the legislation takes effect, and it authorizes such emergency rules to remain in effect for up to three years or until permanent rules take effect, whichever occurs first.

Finally, the amendment modifies the timeframe during which an exemption granted under the substitute amendment remains in effect. Specifically, under Assembly Amendment 1, a facility may accept exempted dredged material for up to 10 years or in an amount not to exceed 35,000 cubic yards, whichever occurs first, rather than 10 years or 25,000 cubic yards under the substitute amendment.

BILL HISTORY

Representatives Sortwell and Kitchens offered Assembly Substitute Amendment 1 on June 16, 2021. Following a public hearing on the bill, Representative Sortwell offered Assembly Amendment 1 to the substitute amendment on September 21, 2021. On October 6, 2021, the Assembly Committee on Environment voted to recommend adoption of Assembly Amendment 1 and Assembly Substitute Amendment 1, as amended, both on votes of Ayes, 6; Noes, 2. The committee then voted to recommend passage of the bill, as amended, on a vote of Ayes, 7, Noes, 3.

AH:ksm