

FINAL ENVIRONMENTAL IMPACT STATEMENT

Wisconsin Statewide General Permit for the removal of material from the bed of a navigable lake or navigable stream from which material was historically removed.

Prepared by Wisconsin Department of Natural Resources, Bureau of Watershed Management
July 7, 2015

NOTE TO REVIEWERS: This document is a Department of Natural Resources Environmental Analysis that evaluates probable environmental effects. The attached analysis includes a description of the action and the affected environment. The DNR has reviewed the attachments and accepts responsibility for their scope and content to fulfill requirements in s. NR 150.30, Wisconsin Administrative Code.

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Bureau of Watershed Management
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DESCRIPTION

Statewide General Permit Process

General Permit Issuance

If a regulated project or activity is not exempt in statute from the requirement to obtain a permit, it must be authorized by either a general permit or an individual permit. General permits are written to cover any number of projects or activities that can meet a standardized set of criteria, whereas an individual permit is written specifically for that project.

The procedures for establishing a general permit and the DNR's authority to issue general permits for activities that affect navigable waters may be found in section 30.206, Wis. Stats. These procedures exempt general permits from the definition of "rule" (eliminating the procedural requirements for promulgating general permits by adopting administrative rules to create a General Permit), and establishes a procedure with a public comment period and a legislative committee review process. The legislative review process provides for temporary suspension of general permits by certain legislative committees.

To ensure that the cumulative adverse environmental impact of the activities authorized by a general permit cause only minimal adverse environmental impacts and that the issuance of the general permit 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, section s. 30.206 (1) (ag), Stats., allows the department to impose any of the following conditions on the permit:

- Construction and design requirements that are consistent with the purpose of the activity authorized under the permit.
- Location requirements that ensure that the activity will not materially interfere with navigation or have an adverse impact on the riparian property rights of adjacent riparian owners.
- Restrictions to protect areas of special natural resource interest.

General Permit Coverage

Individuals may apply for coverage under a statewide general permit to perform work in accordance with the terms and conditions of the general permit. Coverage under a general permit will be valid for a period of five years from the date of issuance. Regardless of the expiration date of a general permit, an activity authorized under a general permit remains authorized for five years from the date of coverage or until it is complete, whichever occurs first. The Department continues to have authority to establish requirements, conditions and exceptions for statewide general permits to ensure that the authorized activity will cause only minimal adverse environmental effects. The DNR is authorized to renew, modify and revoke general permits following the same procedures used to issue the general permit. The Department will make a determination to either issue coverage under the general permit to the applicant or require an individual permit. The Department determination will depend on whether the project complies with the eligibility requirements and standard conditions outlined in the general permit.

Statewide General Permit for Maintenance Dredging of Previously Dredged Areas.

Authorized Activities

WDNR-GP13-2015 would provide authorization for a person to conduct maintenance dredging and remove material from the bed of a navigable lake or navigable stream from which material was historically removed. Projects would be required to meet all eligibility standards, terms and conditions of the general permit to be eligible for coverage.

Excluded Activities

Projects that are not exempt from permitting requirements, and do not meet all the terms and conditions of WDNR-GP13-2015 would not be eligible and would be excluded from coverage. Projects that are not eligible for this general permit may be reviewed under the individual permit review process. The department has authority under s. 30.206 (3r), Stats., to require an individual permit in lieu of a general permit, if the department has conducted an investigation, visited the site and has determined that conditions specific to the site require restrictions on the activity in order to prevent: significant adverse impacts to the public rights and interest, environmental pollution as defined in s. 299.01 (4), Stats., or material injury to the riparian rights of any riparian owner.

Permit Changes

The department could modify or revoke coverage of the general permit if the dredging project was not carried out in compliance with the terms and conditions of the permit, or if the Department determines the project would be detrimental to the public interest. Furthermore, the Department would have the authority to reevaluate the effectiveness of WDNR-GP13-2015 and could suspend, modify or revoke it if determined necessary.

PURPOSE AND NEED

The purpose of issuing a statewide general permit is to establish a stable, relatively simple permit program that is specifically designed to effectively and efficiently regulate the public and private needs for minor environmental impacts. The legislative intent of Section 30.206, Wis. Stats., was to establish clear criteria, conditions and timelines to ensure more predictable permit review process and decisions. 2003 Wisconsin Act 118 directed the department to create a general permit for dredging of waterways that have been previously dredged under s. 30.20(1t). The Department created the general permit for previously dredged areas on April 15, 2005 when it amended NR 345, Wis Adm. Code. Then in April of 2012 the legislature passed 2011 WI Act 167, that created the statewide general permit process and directed the Department to create a statewide general permit for previously dredged areas under s. 30.206(1)(a), Wis. Stats. Therefore, this general permit is meant to fulfill the requirement in s. 30.206(1)(a), Wis. Stats. and while similar to the standard in NR 345.04(2)(c) and (g), Wis. Adm. Code the Department has updated some of the standards to create more flexibility.

ALTERNATIVES

2003 Wisconsin Act 118 directed the department to create a general permit for dredging of waterways that have been previously dredged under s. 30.20(1t). The Department created the general permit for previously dredged areas on April 15, 2005 when it amended NR 345, Wis Adm. Code. Consequently, if the Department did not issue this statewide general permit, applicants or property owners would still

be able to apply for a general permit to dredge a waterway or portions of a waterway that were previously dredged under NR 345, Wis. Adm. Code. Projects would have to meet all of the standards for the general permits in NR 345.04(2)(c) and (g), Wis. Adm. Code, or apply for an individual permit.

Coverage under WDNR-GP13-2015 could be granted for projects meeting all applicable purpose, design, construction and location requirements, terms and conditions. The Department would have 30 days to review the application, notify the applicant of any further required information or missing application items, and make a determination regarding the applicants' eligibility for coverage. When Department review of the proposed project indicates that terms and conditions of the general permit were not sufficient to ensure only minimal adverse environmental effects (for example an unusually large project area for placement of structures, or placement of structures in an environmentally sensitive area) the Department could require an individual permit to allow a more detailed review and possible acceptance of the project. The Department also retains authority under 30.206 (3r), Stats., to require an individual permit in lieu of a general permit.

Projects requiring individual permits would be those that do not fit the pre-approved designs, terms and conditions necessary to be eligible for coverage under the statewide general permit. Individual permit procedures require a more detailed permit application and Department review. Through the individual permit process Department staff may advise applicants on project modifications needed to reduce impacts and ensure that the project would not result in any significant adverse environmental consequences. Additionally, individual permits require a public notice, public comment period and an opportunity for an informational hearing. Individual permit decisions are subject to appeal for review by an administrative law judge within 30-days of the decision.

The Department has the authority to establish requirements, conditions and exceptions for statewide general permits and WDNR-GP13-2015 has been designed to produce and achieve the same regulatory results as an individual permit review for projects with minor impacts. Furthermore, individual permit reviews for all projects is beyond the ability of the Department's limited resources. Individual permit review would be required of proposed projects not meeting the terms and conditions of WDNR-GP13-2015 or on a case-by-case determination of specific site conditions that necessitate additional restrictions in order to provide reasonable assurance that no significant adverse impacts to the environment would occur.

AUTHORITIES AND APPROVALS

General permit authorizations are provisional and require that the applicant obtain any other federal, state, local or tribal permits or approvals that may be required for the project or activity involving alterations to public waters and before any work is authorized. For example, under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (USACE) may require permits for placement of structures below the ordinary high water mark in federal navigable waters and for the discharge of dredged or fill material into waters and wetlands. This federal permit is in addition to a state permit. If federal permits are needed, the type of permit and the length of the USACE review of a proposal would depend on the extent of the alteration proposed. More information about federal requirements can be found at: <http://www.mvp.usace.army.mil/regulatory>.

Furthermore, while the state permit program governs the determination of whether the placement of structures, dredging and similar activities in or adjacent to navigable waters is in compliance with state Water Quality Standards, it does not affect the authority of the Department to otherwise regulate the

discharge of dredged or fill material into a wetland. For example, several types of activities related to collecting, storing, transporting, treating, and disposing of solid waste, require permits or licenses from the Department. Additionally, local governments use floodplain and shore-land zoning to control development along lake shores and streams. Local zoning officials administer permit programs for buildings, land disturbance and other activities in shore-land and floodplain areas.

ENVIRONMENTAL IMPACTS

This analysis briefly describes potential effects that would be attributable to activities authorized by WDNR-GP13-2015 for the maintenance dredging and removal of material from the bed of a navigable lake or navigable stream from which material was historically removed. This analysis further addresses any expected difference in environmental effects and impacts between the issuance of a statewide general permit versus the alternative of issuing an individual permit.

Affected Environment

WDNR-GP13-2015 would authorize a person to conduct maintenance dredging and remove material from the bed of a navigable lake or navigable stream from which material was historically removed.

Wisconsin has 15,000 lakes and over 43,750 miles of river systems. The physical, biological and cultural resources of each of our lakes and rivers vary widely. This general permit could affect any of our lakes and rivers if there is some proof of previous or historical dredging. Consequently, a general overview of Wisconsin's Lakes and Rivers is necessary to understand the potential impacts of this general permit.

Lakes

Most of Wisconsin's Lakes are remnants of the last Ice Age. Under natural conditions lakes go through a succession through time where lakes become more shallow and eventually become a wetland. While it would take thousands of years for a lake to move this timeline, human activities within a watershed can accelerate this process. Lakes are generally classified into three (3) trophic states along this timeline, Oligotrophic, Mesotrophic and Eutrophic.

Oligotrophic lakes have low inputs of nutrients, organic matter and sediments and are often cold water lakes. They tend to have clear water, but due to the lack of nutrients some of these lakes have limited fish populations and plant growth and are less likely to support high numbers of wildlife and waterfowl. Lake Superior for example is an oligotrophic lake. These lakes tend to have small watersheds, are minimally developed or are undisturbed by intensive human activities.

Mesotrophic lakes are slightly nutrient enriched lakes and often support a rich and diverse community of native aquatic plants and a healthy population of fish, wildlife and waterfowl. These lakes tend to be in small to medium watersheds with organic soils and moderate development or land disturbing activities in the watershed and a few point sources of pollution.

Finally, Eutrophic lakes are very productive and have high levels of nutrients, organic matter and sediments. These lakes support sizable fish populations and attract waterfowl and wildlife. However the high nutrient content in these lakes may result in excessive plant growth and dissolved oxygen levels that are too low to support some fish species and these lakes could experience fish kills. These lakes tend to be

in large watersheds, are shallow, with a substantial amount of land disturbing activity or development in the watershed.

Rivers

Wisconsin's river systems also highly variable depending on the physical, biological and cultural characteristics of the river and range from wild rivers, such as the Pine and the Wolf, to more urbanized rivers, such as the Milwaukee River. River systems can also be classified as coolwater and warmwater streams, which indicate the rivers primary source of water whether it is ground water or surface water runoff. Coolwater systems that receive groundwater as a primary source of water tend to have a steady flow during most times of the year and keep a fairly constant temperature. On the other hand warmwater systems tend to be flashy, carrying large amounts of water after a snow melt or precipitation events and may experience dry spells during certain times of the year.

The water quality and habitat for fish and wildlife species varies in each river system and for larger river systems, such as the Wisconsin or Mississippi Rivers, the biological characteristics change depending geographic location in the state. What is consistent is that activities that occur upstream or in the upper reaches of a river's watershed can have an impact on the water quality, fish and wildlife populations and habitat downstream.

Sensitive Waterbodies

This general permit would be available for any lake or river in the State of Wisconsin as long as the project is not within public rights features as described in ch. NR 1.06, Wis. Adm. Code, and is not located in Area of Special Natural Resource Interest (ASNRI) as described in ch. NR 1.05, Wis. Adm. Code. Consequently, areas of sensitive habitat, exceptional or outstanding resource waters, wild rice waters and trout streams would be ineligible for this general permit.

However, a lake or river that is listed as ASNRI for the sole reason that the lake or river, or a portion of the lake or river, contain endangered or threatened species or aquatic elements as defined and identified in the Wisconsin Natural Heritage Inventory, or that the water flows through a wetland area identified in a Special Area Management Plan (SAMP), or a Special Wetland Inventory Study (SWIS), could be eligible for this general permit if the applicant receives written documentation from the Department that the project will not impact the habitat of an endangered or threated species or impair the SAMP or SWIS wetlands.

General Impacts Due to Dredging Activities

According to state law, any material removed below the ordinary high water mark of a navigable waterway is considered to be dredging. Dredging, particularly maintenance dredging, is typically conducted for navigational or recreational purposes or to reestablish flow or drainage and is typically conducted with mechanical equipment, such as a backhoe, bulldozer, or clam shell bucket, or a hydraulic cutter head, but it can also include manual removal. The potential impacts from this projects is highly variable and will depend upon the amount of material to be removed, the method of removal, the waterway to be impacted and quality of the sediment and the proposed disposal location. The statewide general permit will have safeguards in place to minimize the impacts and places limitations on the amount of lake or stream bed material removed and excludes certain sensitive waterbodies from the general permit. However there are general considerations with any type of dredging project.

Water Quality

Water quality variables that can be affected by dredging operations include turbidity, suspended solids, and other variables that affect light transmittance, dissolved oxygen, nutrients, temperature, pH, and

concentrations of trace metals and organic contaminants if they are present in the sediments (U.S. Navy 1990). Depending on the dredging method used, dissolved oxygen (DO) concentrations in the water column can be substantially reduced during dredging if the suspended dredged material contains high concentrations of oxygen demanding substances (e.g., hydrogen sulfide). Most aquatic organisms are capable of tolerating low DO conditions for such short periods. Reduced DO concentrations would be expected to be localized and short term, with minimal impacts (U.S. Navy 1990).

Biological Resources

The impacts of dredging on biological resources can be short term or long term. There can be short-term impacts from the dredging, and long-term impacts associated with habitat modification. Short term impacts could include local changes in species abundance or community diversity during or immediately after dredging. Long-term impacts could include permanent species abundance or community diversity changes caused by changes in hydrodynamics or sediment type (U.S. Navy 1990). Communities inhabiting highly variable and easily disrupted environments, such as those found in shallow water, recovered more quickly from dredging operations than communities in less variable environments such as in deep or offshore waters. Seasonal changes in the environment were considered most important in shallower water where the organisms are more likely to be affected by the changing seasons (Reilly et al. 1992) The suspension of sediments during dredging will generally result in localized, temporary increases in turbidity that are dispersed by wind-waves or otherwise dissipate within a few days, depending on hydrodynamics and sediment characteristics. Where dredging occurs in relatively polluted areas, contaminants in the sediments are likely to be dispersed into the water column, resulting in localized, temporary increases in contaminant concentrations that may affect fish and invertebrates.

Dredge Spoil Disposal

Dredge spoils can be disposed of either in-water or on land. The impacts are different depending on where the disposal site is located. For upland disposal sites, if the site is located near a waterway or a wetland, the dumping dredge spoils near these environments can result in runoff, if not properly controlled, that could impact the bathymetry or morphology of the lake or stream bed. It can also have impact existing sediment quality and water quality in terms of total suspended solids, dissolved oxygen, and contaminants. With relationship to aquatic flora and fauna, runoff from dredging spoil can result in habitat loss and loss of the benthic community and the shell fish and finfish and invertebrates that rely on it.

Runoff from dredge spoil near a wetland can eliminate or reduce the wetland functions which have a direct impact on plant species diversity and wildlife. It should be noted that this General Permit has a condition that requires dredge spoil disposal sites to be located in upland areas. Beach nourishment disposal is only allowed in the Great Lakes. NR 347, Adm. Code, specifies the number of samples to be collected at the proposed beach nourishment site, for use in particle size (grain-size) and color matching of the proposed dredged material and the beach substrates. NR 347.06 (3)(d), Adm. Code, requires a sample to be collected every 250 linear feet of the beach nourishment disposal area, with a minimum of two samples. The code does not specify the number of sediment samples from the proposed dredging site.

Disposal of dredged material may be eligible for codified exemptions in NR 500.08(3), Adm. Code, if disposal site and operations would comply with performance standards in NR 504.04(4), Adm. Code, i.e., no significant adverse effects on wetlands or critical habitat areas or detrimental effects on surface water quality or groundwater quality. Small projects seldom produce quantitative support to document acceptability of disposal options, so judgments have to be made by Waste Management program staff. Generally, if a project does not raise qualitative concerns and is eligible for a codified exemption,

Waste Management staff can be consulted for advice but disposal details should be handled within the Chapter 30 dredging permit.

If the dredging project exceeds 3,000 cubic yards and is located in the Great Lakes, in certain rivers listed in NR 500.08(3)(b), Adm. Code, or in a lake which has been treated with arsenicals, then the disposal site must go through the licensed landfill siting process or seek a statutory exemption under s. 289.43(8), Stats.

Contaminated sediment dredged from a river or lake is a solid waste. In certain cases, if PCB concentrations in sediment are 50 mg/kg or greater, dredged material from the project would be subject to waste management regulations under the federal Toxic Substances Control Act (TSCA) in addition to state regulations (NR 500 and NR 157, Adm. Code). Management of this material would require approval by EPA Region 5 as well as the Department.

Impacts to Air Quality

Dredging with vehicles results in emissions of vehicle exhaust. Projects of the scale that would be covered under WDNR-GP13-2015 would result in only minor and temporary air emissions. Impacts to air quality would be the same for these kinds of projects regardless of coverage under WDNR-GP13-2015 or an individual permit.

Impacts Due to Permit Processes

To this point the Department has issued 420 general permits for these types of dredging projects. However, the current general permit is only available for projects that are located outside of an Area of Special Natural Resource Interest. The proposed WDNR-GP13-2015 could now be available for projects in a lake or river that are listed as ASNRI if that lake or river is listed only because it contains endangered or threatened species or aquatic elements as defined and identified in the Wisconsin Natural Heritage Inventory or that the water flows through a wetland area identified in a Special Area Management Plan (SAMP) or a Special Wetland Inventory Study (SWIS), if the applicant receives written documentation from the department that the project will not impact the habitat of an endangered or threatened species or impair the SAMP or SWIS wetlands.

The Department anticipates that the issuance of WDNR-GP13-2015 may result in more general activity authorization beyond what has historically been authorized under the current general permit. Given the expanded locational coverage allowed in WDNR-GP13-2015, a number of permits that were previously reviewed through the individual permit process would potentially become eligible for the new statewide general permit. While this could represent a large increase in the number of applications that could be eligible for coverage for this general permit and review of these general permits is streamlined, the impact of these projects would be low if proper standards are followed.

Both WDNR-GP13-2015 and individual permits provide terms and conditions that address cumulative impacts to surface waters. Permit requirements to decrease impacts include construction measures to minimize sediment movement into surface waters, avoidance of the spread of invasive species, and prevention of potential pollutants from entering a water body. Both permitting processes prevent adverse impacts to historical and cultural resources, state and federal designated threatened or endangered species, fishery spawning habitat, and ecologically significant coastal wetlands. Neither the general permit nor individual permit authorizations would be contrary to wetland water quality standards or result in adverse impacts to adjacent landowners. Both general and individual permitted projects would be required to be maintained in good condition to ensure that there would be no additional impacts.

Evaluating the overall extent of secondary and cumulative impacts of dredging activities can be difficult since individual removal events may seem minor when considered in isolation, but may become major if considered collectively over time and space, especially if maintenance dredging occurs more frequently over time. Individual permit review requires a more intensive analysis that will minimize the impacts on lake and stream bed morphology, and will provide that the project will not result in any other significant adverse environmental consequences. The Department considers direct impacts, cumulative impacts and potential secondary impacts of proposed projects in determining that each permitted project represents the least environmentally damaging alternative.

Differences in the ecology of lakes and streams, especially between inland waters and outlying waters, variations in land use throughout the state, economic trends, and potential impacts of future climate changes provide uncertainties in predicting the environmental effects of future dredging activities that would be authorized under either WDNR-GP13-2015 or individual permits. Both general and individual wetland permits could be revoked if the Department determines that the applicant failed to comply with the terms and conditions of the permit or if the information provided by the applicant proves to be false, incomplete or inaccurate. Either permit could also be revoked if new information indicates that the project would cause significant environmental impacts.

The establishment of this general permit as a streamlined permit process for activities of minimal impact would have the advantage of allowing more Department resources to be allocated to the review of individual permits of greater complexity and greater potential for significant adverse impacts.

RISK

Reliance on Applicants Data

Department staff would review all general permit applications to determine that projects meet all permit terms and conditions, and are eligible for coverage. In making these determinations, the Department would rely on the information provided by applicants, and any other required information. The Department would have authority for site access to investigate the project construction, operation, maintenance or permit compliance. The Department could deny coverage or reevaluate its decision on any authorization under this GP at any time circumstances warrant. Circumstances would include, but would not be limited to, failure to comply with the terms and conditions of the general permit; information provided by the applicant proves to have been false, incomplete, or inaccurate; or significant new information surfaces which was not considered in reaching the original determination. Any act of noncompliance would constitute a permit violation and would be grounds for enforcement action.

Presumptive Approval

Under WDNR-GP13-2015, if the Department failed to make a determination regarding coverage under the general permit within 30 days, the project would be presumed to be authorized under s. 30.206 (3), Wis. Stats., and the applicant could proceed. According to recent permitting data, the average general permit decision issued by the Department has been within this 30 day timeframe. The Department cannot guarantee that statutory presumptive approval would never occur, however. Any presumptively approved project would still have to adhere to the terms and conditions of the general permit with any act of noncompliance constituting a permit violation that would be grounds for enforcement action.

Degree of Controversy

The authority and requirement of the Department to issue statewide general permits was legislatively established. The process involves public notice of the Department's intent to issue, modify or revoke a statewide general permit, and allows for public input to address potential concerns. The issuance is not expected to be controversial. Once a statewide general permit is issued, the authorization of coverage for permit activities would provide no public comment opportunity, nor would it require notification to adjacent landowners of any proposed activity. However, this is no change from prior general permit procedures promulgated under rule and is not expected to be controversial.

Degree of Precedence

While this is one of the early statewide general permit to be issued under the new process established by 2011 Act 167, historically the Department has promulgated many general permits (albeit by rule). This new process for creating statewide general permits administratively instead of through rule promulgation continues the Department's practice of consistently providing conditions and standards for low-risk projects in navigable waters.

ADDENDUM

GENERAL PERMIT PROCESS SEQUENCE

- Anyone wishing to proceed with an activity that may be authorized under a statewide general permit is required to submit an application for coverage at least 30 days before beginning the activity.
- The applicant needs to provide sufficient information describing the proposed activity in order for the Department to make a determination whether the activity can be authorized by the general permit.
- The applicant will allow the Department consent to enter and inspect the site if needed.
- General permits are valid for five years and may be renewed, modified, or revoked. It also specifies that projects authorized under a general permit remain authorized for five years from the date the DNR determines the project may proceed under the general permit, even if the underlying general permit expires during this time period.
- The application will be reviewed by the Department to ensure that the proposed project complies with all general permit requirements.
- Applications providing all required project information and found to comply with all general permit requirements will be issued a “Letter of Coverage” authorizing the activity.
- If sufficient information is not received with the proposed project application, the Department can make one request for additional information deemed necessary for the Department to verify compliance with the terms and conditions of the general permit.
- If the Department fails to make a determination regarding coverage under the general permit within 30 days, the project is considered to be authorized and the applicant may proceed as long as the project is carried out in compliance with all conditions of the general permit.
- The Department may determine that the proposed project is not eligible for coverage under the general permit and require that the project be reviewed through the individual permit process as outlined in Ch. 30.12(3m) Wisconsin Statutes.
- Authorization of coverage under a general permit is valid for 5 years after the date of issuance or until the project is completed, whichever occurs first.

DOCUMENTS USED IN ANALYSIS:

Ch. 120 Dredging, Waterway and Wetland Handbook. Department of Natural Resources

Guidance for Applying the Sediment Sampling and Analysis Requirements of Chapter NR 347, Wisconsin Administrative Code. Department of Natural Resources. Publ. WT-778 2003.
December 2003

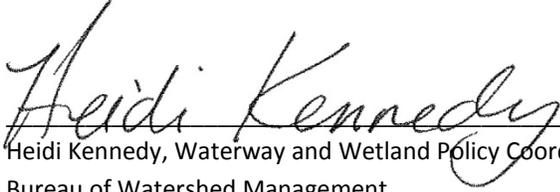
**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
DETERMINATION OF WEPA COMPLIANCE
FOR WISCONSIN STATEWIDE GENERAL PERMIT FOR THE REMOVAL OF MATERIAL
FROM THE BED OF A NAVIGABLE LAKE OR NAVIGABLE STREAM FROM WHICH
MATERIAL WAS HISTORICALLY REMOVED - WDNR-GP13-2015**

FINDINGS OF FACT

1. 2003 Wisconsin Act 118 directed the Department to create a general permit (GP) for dredging of waterways that have been previously dredged under s. 30.20(1t), Stats.
2. The Department created the GP for previously dredged areas on April 15, 2005 when it amended NR 345, Wis. Adm. Code.
3. In April of 2012 the Legislature passed 2011 WI Act 167 that created the statewide general permit process and directed the Department to create a statewide general permit for previously dredged areas under s. 30.206 (1)(a), Wis. Stats.
4. WDNR-GP13-2015 was drafted April 22, 2015 as an update to the existing GP to provide authorization for a person to conduct maintenance dredging and remove material from the bed of a navigable lake or navigable stream from which material was historically removed. Projects would be required to meet all eligibility standards, terms and conditions of the GP to be eligible for coverage. Projects that are not exempt from permitting requirements, and do not meet all the terms and conditions of WDNR-GP13-2015 would not be eligible and would be excluded from coverage.
5. Under NR 150.20 (4) (a), Wis. Adm. Code, issuance of this GP required the environmental impact statement (EIS) process under NR 150.30.
6. The Department prepared a draft EIS in compliance with NR 150.30 (2), Wis. Adm. Code.
7. The Department announced the availability of the draft EIS and GP for public review on May 26, 2015, and made the draft EIS available on the Department's web site at the following address: <http://dnr.wi.gov/topic/waterways>.
8. The public comment period closed on June 29, 2015.
9. Two informational hearings were held on June 19, 2015 in Waukesha and on June 26, 2015 in Wausau.
10. Seven people attended the hearings and five people provided oral testimony.
11. During the public comment period, the department received comments, both written and oral, from individuals and organizations.
12. On July 3, 2015 the Department prepared a response to comments document to address the public comments received.
13. In compliance with NR 150.35, and 150.50, the Department prepared and published a final EIS on the Department's web page at the following address: <http://dnr.wi.gov/topic/EIA/ArchiveTitle.html>.

CONCLUSIONS OF LAW AND DETERMINATION

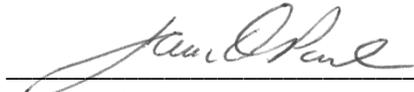
14. The Department has complied with ch. NR 150, Wis. Adm. Code, and with s. 1.11, Stats., for issuance of WDNR-GP13-2015.



Heidi Kennedy, Waterway and Wetland Policy Coordinator
Bureau of Watershed Management

07/07/2015

Date



James Pardee, Wisconsin Environmental Policy Act Coordinator
Bureau of Environmental Analysis and Sustainability

07/07/2015

Date

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES



GENERAL PERMIT FOR MAINTENANCE DREDGING OF
PREVIOUSLY DREDGED AREAS

PERMITTEE: The General Public in Wisconsin

PERMIT NO.: GP13-2015-WI (WDNR-GP13-2015)

ISSUING OFFICE: Waterways & Wetland Protection Section, Bureau of Watershed
Management, Water Division, Wisconsin Department of Natural Resources (DNR
or Department)

ISSUANCE DATE: 07/08/2015

EXPIRATION DATE: 07/08/2020

GENERAL PERMIT AUTHORIZATIONS:

In compliance with the provision(s) of Wis. Stats. s. 30.20(1)(b), no person may remove any material from the bed of a navigable lake or navigable stream unless an individual or a general permit has been issued under s. 30.20 or authorization has been granted by the legislature.

Wis. Stats. s. 30.20(1t)(a) requires and authorizes the Department to issue a statewide general permit under Wis. Stats. s. 30.206 authorizing a person to conduct maintenance dredging and remove material from the bed of a navigable lake or navigable stream from which material has been previously removed. Further, s. 30.20(1t)(am) requires a person to demonstrate that material has been previously removed from the area for which the person has requested authorization to remove materials from the bed.

Wis. Stats. s. 30.206(1)(a) requires and authorizes the Department to issue general permits that authorize any person in the State of Wisconsin to perform work in accordance with the terms and conditions of the general permit specified below after satisfying all applicable permit terms and conditions. Please refer to the following sections of this permit for the specific eligibility standards, application requirements, certification requirements and responsibilities, conditions, findings of fact, conclusions of law, and definitions required by WDNR-GP13-2015.

Note: Projects involving the removal and lease or sale of any material from the bed of any natural navigable lake or any outlying waters are not eligible for this general permit and must obtain a contract from the Department under Wis. Stats. s. 30.20(2)(a) and (b).

OTHER AUTHORIZATIONS NECESSARY: WDNR-GP13-2015 authorizations are subject to all applicable terms and conditions specified in this permit. However, **WDNR-GP13-2015 authorizations are provisional and require that project proponents obtain any other local, state or federal permits before any work may proceed.** The U.S. Army Corps of Engineers may require permits for dredging projects that affect Section 10 Navigable Waters under the Rivers and Harbor Act of 1899 or projects that will result in a discharge under the Clean Water Act.

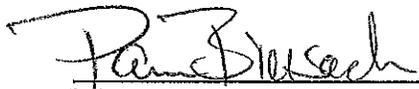
PROJECT DESCRIPTION AND LOCATION: WDNR-GP13-2015 applies to maintenance dredging of previously dredged areas. Previously dredged areas are areas

where material was previously removed from the bed of navigable lakes and rivers. The previous dredging may have been authorized by the Department or applicants may demonstrate with historical information or documentation that previous dredging, not authorized by the Department, occurred at the project site.

The removal of material from the beds of navigable waters is regulated under Wis. Stats. s. 30.20 (1), (1g), (1m), (1t) and (2). Any person that intends to remove material from the bed of a navigable lake or navigable stream must obtain a permit or contact from the Department.

GENERAL PERMIT COVERAGE: Unless notified by the Department to the contrary, the effective date of coverage under this general permit is 30 calendar days after a complete notification package has been received by the designated DNR office. A list of offices and addresses to send your complete notification package (based on the county where the project is located) can be found at http://dnr.wi.gov/waterways/about_us/county_contacts.html. **WDNR-GP13-2015 permit coverage is valid for a period of 5 years from the date the Department determines the activity is authorized by this general permit or until the authorized activity has been completed, whichever occurs first.** Thereafter, permit coverage terminates unless another complete notification package is submitted to retain coverage under this permit or a reissued version of this permit.

State of Wisconsin Department of Natural Resources
For the Secretary


Watershed Bureau Director

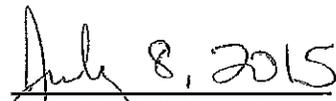

Date Permit Signed

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WDNR-GP13-2015 TERMS AND CONDITIONS

The following sections describe the general permit authorization procedures implemented by the DNR in WDNR-GP13-2015. Projects must meet all the terms and conditions of this permit to be eligible for coverage under WDNR-GP13-2015.

NOTE: As used in this general permit, the term "you" and its derivatives means the person who submitted and signed the complete notification package for coverage under the General Permit or the person who removes material from the bed of a navigable lake or stream under coverage of this General Permit. The term "the Department" or "this office" refers to the appropriate Wisconsin Department of Natural Resources (DNR) Service Center, DNR Region or Central Office headquarters of the Wisconsin DNR having jurisdiction over the authorized activity or the appropriate official of that office acting under the authority of the Secretary of the Department.

SECTION 1 – WDNR-GP13-2015 ELIGIBILITY STANDARDS AUTHORIZATION

Any person who conducts maintenance dredging of material from a navigable lake or navigable stream, in an area that was previously dredged, is required to obtain a permit under Wis. Stats. s. 30.20(1t)(a), and must meet all of the following standards to be eligible for coverage and authorization under this general permit and Wis. Stats. s. 30.20(1t)(a).

NOTE: Projects that do not meet all standards are not eligible for this general permit and are therefore excluded from coverage under WDNR-GP13-2015. For projects that do not qualify for WDNR-GP13-2015, you may apply for an Individual Permit as outlined in Wis. Stats. s. 30.208(2). Further, Wis Stats. s. 30.206(3r), Wis. Stats. allows the Department to require an individual permit in lieu of a general permit if the Department determines that the proposed activity is not authorized under WDNR-GP13-2015 or has conducted an investigation and visited the site and determined that conditions specific to the site require restrictions on the activity in order to prevent significant adverse impacts to the public rights and interest, environmental pollution, as defined in Wis. Stats. s. 299.01 (4), or material injury to the riparian rights of any riparian owner.

ELIGIBILITY STANDARDS FOR MAINTENANCE DREDGING OF PREVIOUSLY DREDGED AREAS

1. Projects involving the removal and then the lease or sale of any material from the bed of any navigable lake or of any outlying waters are not eligible for this general permit. The lease or sale of dredged material from a navigable lake or outlying water requires a dredging contract from the Department under Wis. Stats. s. 30.20(2)(a).
2. The project purpose is maintenance dredging of material from an area from which material has previously been removed.
3. The applicant has provided information that the area meets the definition of "previously dredged area" in Section 7 of this permit by demonstrating that previous removal of material was authorized by the Department or demonstrating the previous removal of material by submitting historical documentation or information that estimates the approximate date or timeframe of the removal, the amount of material removed and the location of the material disposal. The applicant may submit any additional information documenting prior removal of material for consideration by the Department.
4. The dredging may not exceed the volume or extend beyond the dimensions of the previous dredge project.
5. The total amount of material removed from the area shall be less than 3000 cubic yards, unless the dredging project is for the removal of material associated with the maintenance of a municipal harbor, a municipal or commercial marina, or an access channel that is located on an Outlying Water or the Mississippi River. The total amount of material removed from a municipal harbor, a municipal or commercial marina or an access channel shall be less than 50,000 cubic yards.
6. If the project is located within the riparian zone, the applicant must own the adjacent riparian land or have permission of the riparian owner to dredge the bottom material.
7. Unless the Department previously authorized the project under Wis. Stats. s. 30.20, the dredging may not be located where there are public rights features as described in Wis. Admin. Code s. NR 1.06, or in an area of special natural resource interest as described in Wis. Admin. Code s. NR 1.05.

If the area in which the project is located is identified as an area of special natural resource interest only because the water or portions of the water contain endangered or threatened species or aquatic elements as defined and identified in the Wisconsin Natural Heritage Inventory or because the water flows through a wetland area identified in a Special Area Management Plan (SAMP) or a Special Wetland Inventory Study (SWIS), then the project is eligible for this general permit even if the previous dredging was not authorized by the Department, if the applicant obtains written documentation from the Department that the project will not impact the habitat or continued existence of the endangered or threatened species or that the dredging project will not adversely impact the wetlands identified in the SAMP or SWIS.

8. The applicant shall provide information that the dredged material does not contain any hazardous substance as follows:
 - a) Through the collection and laboratory analysis of the dredged material in compliance with Wis. Admin. Code ch. NR 347; or
 - b) Through the review of historical dredge material information from the vicinity of the proposed project that was collected and analyzed in accordance with Wis. Admin. Code ch. NR 347; or
 - c) By assessing the potential for hazardous substances to be present based upon the characteristic of the watershed, industrial and municipal discharges to the waterbody and dredge material data from similar waterways.
9. Projects involving the removal of material where a sediment cap, cover, installed barrier or where other engineering controls have been installed as part of a federal or state environmental remediation to manage contaminated sediment are ineligible for this general permit. Examples of environmental remediation programs are the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund), the Resource Conservation and Recovery Act (RCRA), Great Lakes Legacy, and a Spill Response under Wis. Stats. Ch. 292 or Wis. Admin. Code Ch. NR 700 or both.
10. Projects that involve the removal of material from waters that were ammunition fall areas for gun ranges or projects that involve the removal of hazardous substances are ineligible for this general permit.
11. Fish Spawning. To minimize adverse impacts on fish movement, fish spawning, and egg incubation periods, the removal of material may not occur during the following time periods.
 - a) September 15th through May 15th for all trout streams; and upstream to the first dam or barrier on the Root River (Racine County), Kewaunee River (Kewaunee County), and Strawberry Creek (Door County). To determine if a waterway is a trout stream, you may use the WDNR website trout maps at <http://dnr.wi.gov/topic/fishing/trout/streammaps.html>
 - b) November 1st through June 15th for Lake Michigan in Door County
 - c) March 1st through June 15th for ALL OTHER waters.
 - d) The regional Department Fisheries Biologist may waive or modify these timing restrictions in writing. To request in writing a waiver or modification of fish spawning timing restrictions for your project please use the checklist listed as Appendix 1 and the WDNR website at: <http://dnr.wi.gov/topic/Waterways/contacts.html> to find the county contact for your project to send the requested information.
12. The project shall be conducted in a manner that prevents the dispersal of sediment away from the project site. Temporary control measures such as silt curtains shall be used as needed, and shall be installed before dredging and removed from the waterbody no more than 24 hours after dredging is complete. Any temporary control measures shall follow all state lighting requirements and may not obstruct navigation.
13. Erosion control measures must meet or exceed the technical standards for erosion control approved by the Department under Wis. Admin. Code subch. V of ch. NR 151. Any area where topsoil is exposed during construction must be immediately seeded and mulched to stabilize disturbed areas and prevent soils from being

eroded and washed into the waterway. **Note:** These standards can be found at the following website: <http://dnr.wi.gov/topic/stormwater/standards/>.

14. Dredging shall be conducted to minimize the re-suspension of sediment to the maximum extent practicable in accordance with the following:
 - a) For trout streams identified under Wis. Admin. Code s. NR 1.02(7) and perennial tributaries to those trout streams, the total suspended solid concentrations may not exceed 40 mg/L immediately downstream of the project site.
 - b) For all waters not identified in subd. 12.a), the total suspended solid concentrations may not exceed 80 mg/L immediately downstream of the project site.
15. Dredged material may not be permanently or temporarily placed within a wetland, floodway, or re-deposited below the ordinary high water mark of a navigable waterway unless a plan is submitted and approved by the Department. The plan shall identify the duration of placement, potential impacts to flood flows, and erosion control measures utilized to protect the wetland or navigable waterway. Permanent or temporary placement of dredged material into a wetland will require a wetland permit from the Department and potentially from the U.S. Army Corps of Engineers. Re-deposition of dredged material below the ordinary high water mark of a navigable waterway, shall meet the standards in Wis. Admin. Code s. NR 347.07(4) and a separate permit shall be obtained from the Department under Wis. Stats. s. 30.12.

SECTION 2 – WDNR-GP13-2015 APPLICATION REQUIREMENTS FOR COVERAGE

You are required to comply with the following application requirements:

1. Prior to submission of an application, the applicants shall provide the following preliminary dredging information to the Department to comply with the requirements in Wis. Admin. Code ch. NR 347.
 - a) Name of waterbody and location of project;
 - b) Volume of material to be dredged;
 - c) Brief description of dredging method and equipment, including any containment BMPs to be used.
 - d) Brief description of proposed disposal method and location and, if a disposal facility is to be used, size of the disposal facility;
 - e) Any previous sediment sampling (including field observations) and analysis data from the area to be dredged or from the proposed disposal site;
 - f) Copy of a map showing the area to be dredged, the depth of cut, the specific location of the proposed sediment sampling sites and the bathymetry of the area to be dredged; and
 - g) Anticipated starting and completion dates of the proposed project.

Utilizing the factors established in Wis. Admin. Code s. NR 347.05(2), the Department shall then determine within 30 business days if there is reason to believe that the material proposed to be dredged is contaminated. This initial evaluation by the Department shall be used in specifying sediment sampling and analysis required under Wis. Admin. Code s. NR 347.06. The Department shall also identify the appropriate staff person to contact to obtain documentation that the applicant can meet the eligibility standard 7. for waters or portions of waters that listed as areas of

special natural resource interest for the exclusive reason that endangered and threatened species may be present.

2. After you have carefully confirmed that your project(s) meet(s) the purpose and all the terms and conditions of this permit, submit a *complete application package*, outlined in item 6. below, to the Department. The complete application package should be received a minimum of 30 calendar days before the desired project start date.

NOTE: The Department will forward a copy of your application package to the U.S. Army Corps of Engineers for their review and determination regarding federal permit requirements and coverage.

3. Unless notified by the Department to the contrary, the effective date of coverage under this permit is 30 calendar days after the designated Department office receives a complete application package.
4. The Department may request that you provide additional information necessary to verify compliance with the terms and conditions of this permit. The Department may make a request for additional information one time during the 30-day period. If the Department makes a request for additional information, the 30-day period is paused on the date the person applying for authorization receives the request for additional information. The clock remains paused until the date on which the Department receives the information, at which point the clock resumes from the point it was initially stopped.
5. The Department may determine the project is not eligible for this general permit and require that the project be reviewed through the individual permit process outlined in Wis. Stats ch. 30.
6. Submit the application electronically using the Internet-based application process or if Internet access is unavailable submit three (3) copies of the application on forms supplied by the Department. A complete application package must include all of the following information:
 - a) A Complete Application form certifying that the project meets the terms and conditions of WDNR-GP13-2015. This form can be found at <http://dnr.wi.gov/Permits/Water/> .
 - b) The appropriate application fee.
 - c) A copy of the deed or similar proof of ownership of the site where the activity will occur. If you do not own the site, also include proof of any notice(s) and permission(s) required by Section I, standard 6 of this General Permit.
 - d) A project diagram that shows all of the following:
 - i. Project location relative to the Ordinary High Water Mark (OHWM)
 - ii. Length, width and depth of the proposed dredging.
 - iii. The location of erosion control measures to be utilized during the dredging operation and disposal of the material.
 - b. Narrative describing the project including information such as method of dredging, dewatering, transportation of the dredged material, location of the equipment during the dredging operations, approximate duration of the project.
 - e) A copy of the results from any sediment sampling, required under Wis. Admin. Code ch. NR 347.

- f) Maps of the project site that show and identify the location of all the following:
 - i. The riparian lines on both sides of the property extending from the OHWM to the line of navigation, and the riparian zone area from the OHWM to the line of navigation.
 - ii. The proposed disposal location.
- g) Photographs that represent existing project site conditions at the disposal site and the site where the dredging will take place.
- h) Documentation as described in i) below or a waiver from the Department if the dredging is to take place in an area of special natural resource interest, as described in eligibility standard 7.
- i) Documentation showing Endangered Resources (ER) under s. 29.604 will not be impacted. Please note, documents associated with Endangered Resources are valid one year from the date they are prepared. Options include:
 - i. An ER Preliminary Assessment from the NHI Public Portal. The NHI Public Portal is located here: <http://dnr.wi.gov/topic/ERReview/PublicPortal.html>. If the ER Preliminary Assessment from the NHI Public Portal shows that "Further actions are required" then submit one of the following:
 - ii. A DNR ER Review letter. The request form for an ER Review letter is located here: <http://dnr.wi.gov/files/PDF/forms/1700/1700-047fillable.pdf>.
 - iii. A Certified ER Review letter. The list of Certified Reviewers is available here: <http://dnr.wi.gov/topic/ERReview/Documents/CertifiedReviewers.pdf>.

SECTION 3 – WDNR-GP13-2015 CERTIFICATION AND RESPONSIBILITIES

The applicant certifies and agrees to the following:

1. You agree to be the responsible party that supervises and oversees all aspects of the project to ensure compliance with the terms and conditions of WDNR-GP13-2015.
2. Upon submittal of a complete application package to DNR, you have certified that the project will be conducted in compliance with all the terms and conditions of WDNR-GP13-2015.
3. You certify that pursuant to Wis. Stats. s. 30.206(1)(ag) and (3r)(a)2., the maintenance dredging of material from the bed of a navigable water from which material has previously been removed will not materially interfere with navigation, cause environmental pollution as defined in Wis. Stats. s. 299.01(4), or result in significant cumulative adverse environmental impacts, injury or significant adverse impacts to the public rights and interests in the waterway, material injury to the rights or riparian rights of any riparian owner, or adverse impacts to the riparian property rights of adjacent riparian owners.

SECTION 4 – WDNR-GP13-2015 GENERAL PERMIT CONDITIONS

The applicant agrees to comply with the following conditions:

1. **Application.** You must submit a complete application package to the Department as outlined in Section 2 of this general permit. If requested, you must furnish to the Department within a reasonable timeframe any information the Department needs to verify compliance with the terms and conditions of this permit.
2. **Certification.** Acceptance of general permit WDNR-GP13-2015 and efforts to begin work on the activities authorized by this general permit signifies that you have certified the project meets all eligibility standards outlined in Section 1 of this permit and that you have read, understood and agreed to follow all terms and conditions of this general permit.
3. **Project Plans.** This permit does not authorize any work other than the work that is specifically described in the notification package and plans submitted to the Department and that you certified is in compliance with the terms and conditions of WDNR-GP13-2015
4. **Expiration.** This WDNR-GP13-2015 is valid for a period of 5 years from the date of issuance. Any activity that the Department determines is authorized by WDNR-GP13-2015 remains authorized under WDNR-GP13-2015 for a period of 5 years from the date of the Department's determination or until the activity is completed, whichever occurs first, regardless of whether WDNR-GP13-2015 expired before the activity is completed.
5. **Other Permit Requirements.** You are responsible for obtaining any other state permits for the dewatering or disposal of the dredged material and any other permits or approvals that may be required for your project by local zoning ordinances and the U.S. Army Corps of Engineers (USACE) before starting your project. To locate the USACE staff responsible for review projects in Wisconsin please visit <http://www.mvp.usace.army.mil/Missions/Regulatory.aspx>
6. **Project Start.** You must notify the Department using the information provided on the confirmation of coverage letter you receive before starting any activity and again not more than 5 days after the activity is completed.
7. **Permit Posting.** You must post a copy of this permit at a conspicuous location on the project site for at least 5 days prior to the project starting, and the copy must remain posted on the project site at least five days after the project is complete. You must also have a copy of the permit and approved plan available at the project site at all times until the project is complete.
8. **Permit Compliance.** The Department may modify or revoke coverage of this permit if dredging is not carried out in compliance with the terms and conditions of this permit or if the Department determines the project will be detrimental to the public interest. Any act of noncompliance with this permit constitutes a permit violation and is grounds for enforcement action. Additionally, if any conditions of this permit are found to be invalid or unenforceable, authorization for all activities to which that condition applies is denied.

9. **Project Completion.** *Within one week* of project completion you must submit to the Department a statement certifying that the project is in compliance with all the terms and conditions of this permit and photographs of the work authorized by this permit.
10. **Site Access.** Upon reasonable notice, you must allow access to the site to any Department employee who is investigating the project's construction, operation, maintenance or compliance with the terms and conditions of WDNR-GP13-2015 and applicable laws.
11. **Erosion and Sediment Control Practices.** The project site must implement erosion and sediment control measures that adequately control or prevent erosion, and prevent damage to waterways and wetlands as outlined in Wis. Admin. Code s. NR 151.11(6m). These standards can be found at the following website: http://dnr.wi.gov/topic/Stormwater/standards/const_standards.html. Any area where topsoil is exposed during the project should be immediately seeded and mulched to stabilize disturbed areas and prevent soils from being eroded and washed into the waterway. Unless part of a permanent stormwater management system, all temporary erosion and sediment control practices shall be removed upon final stabilization. Areas disturbed during removal shall be restored.
12. **Invasive Species.** To stop the spread of invasive species and viruses from one navigable waterway to another navigable waterway, all equipment or portions of equipment used for constructing, operating, or maintaining the project, including tracked vehicles, barges, boats, silt or turbidity curtains, hoses, sheet piles, and pumps, must be decontaminated for invasive species and viruses before and after use or prior to use within another navigable waterway. Follow the most recent Department approved washing and disinfection protocols and Department approved best management practices to avoid the spread of invasive species as outlined in Wis. Admin. Code Ch. NR 40. These protocols and practices can be found on the Department website at <http://dnr.wi.gov/topic/Invasives/bmp.html> Keyword: "equipment operator" or "invasive bmp" and at <http://dnr.wi.gov/topic/Invasives/documents/EquipOper.pdf>
13. **Federal and State Threatened and Endangered Species.** WDNR-GP13-2015 does not affect the DNR's responsibility to ensure that all authorizations comply with Section 7 of the Federal Endangered Species Act, Wis. Stats. s. 29.604, and applicable State Laws. The project must either avoid impacts to endangered or threatened species in accordance with Wis. Stats. s. 29.604 or receive an incidental take authorization under Wis. Stats. s. 29.604. No Department authorization under this permit will be granted for projects found not to comply with these laws. No activity is authorized that is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation as identified under the Federal Endangered Species Act or State law or both, or that is likely to destroy or adversely modify the critical habitat of a species as identified under the Federal Endangered Species Act.
14. **Historic Properties and Cultural Resources.** WDNR-GP13-2015 does not affect the DNR's responsibility to ensure that all authorizations comply with Section 106 of the National Historic Preservation Act and Wis. Stats. s. 44.40. No Department authorization under this permit will be granted for projects found not to comply with

these laws. The project must avoid impacts to archaeological sites or historic structures and is subject to Departmental and Wisconsin Historical Society review and approval before authorization under this general permit is valid. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places. If cultural, archaeological, or historical resources are unearthed **during** activities authorized under this permit, work must be stopped immediately and the State Historic Preservation Officer must be contacted for further instruction.

15. **Preventive Measures.** Measures must be adopted to prevent potential pollutants from entering a wetland or water body. Construction materials and debris, including fuels, oil, and other liquid substances, may not be stored in the construction work area in a manner that would allow them to enter a wetland or water body as a result of spillage, natural runoff, or flooding. In addition, biodegradable hydraulic fluid should be used in equipment that is operated below the Ordinary High Water Mark. If a spill of any potential pollutant should occur, it is the responsibility of the permittee to remove such material, minimize any contamination resulting from this spill, and immediately notify the State Duty Officer at **1-800-943-0003**.
16. **Property Rights.** This permit does not convey any property rights or interests of any sort or any exclusive privilege. The permit does not authorize any injury or damage to private property, any invasion of personal rights, or any infringement of federal, state or local laws or regulations.
17. **Limits of State Liability.** In authorizing work, the State Government does not assume any liability, including for any of the following:
 - a) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
 - b) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the State in the public interest.
 - c) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
 - d) Design or construction deficiencies associated with the permitted work.
 - e) Damage claims associated with any future modification, suspension, or revocation of this WDNR-GP13-2015.
18. **Reevaluation of Decision.** This office may reevaluate its decision on any authorization under WDNR-GP13-2015 at any time the circumstances warrant and may suspend, modify or revoke any previously authorized activity. Suspension, modification or revocation may result in enforcement action. Circumstances that could require a reevaluation include, but are not limited to, the following:
 - a) The applicant fails to comply with the terms and conditions of WDNR-GP13-2015.
 - b) The information provided by the applicant in support of the permit application proves to have been false, incomplete, inaccurate, or false
 - c) Significant new information surfaces which the Department did not consider in reaching the original public interest decision.

SECTION 5 – WDNR-GP13-2015 FINDINGS OF FACT

1. The Department has determined that the project site and project plans meet the standards in WDNR-GP13-2015 to qualify for this General Permit.
2. The maintenance dredging of previously dredged areas will not materially interfere with navigation, cause environmental pollution as defined in Wis. Stats. s. 299.01(4), or result in significant cumulative adverse environmental impacts, injury or significant adverse impacts to the public rights and interests in the waterway, material injury to the rights or riparian rights of any riparian owner, or adverse impacts to the riparian property rights of adjacent riparian owners, pursuant to Wis. Stats. s. 30.206(1)(ag) and (3r)(a)2.
3. The Department and the applicant have completed all procedural requirements, and the project as permitted will comply with all applicable requirements of WDNR-GP13-2015 and Wis. Admin. Code chs. NR 102, 103, 150, 299, and 310.

SECTION 6 – WDNR-GP13-2015 CONCLUSIONS OF LAW

1. The Department has authority under Wis. Stats. ch. 30 to issue a permit for the completion of this project.
2. The Department has complied with Wis. Stats. s. 1.11.

SECTION 7 – WDNR-GP13-2015 DEFINITION OF TERMS

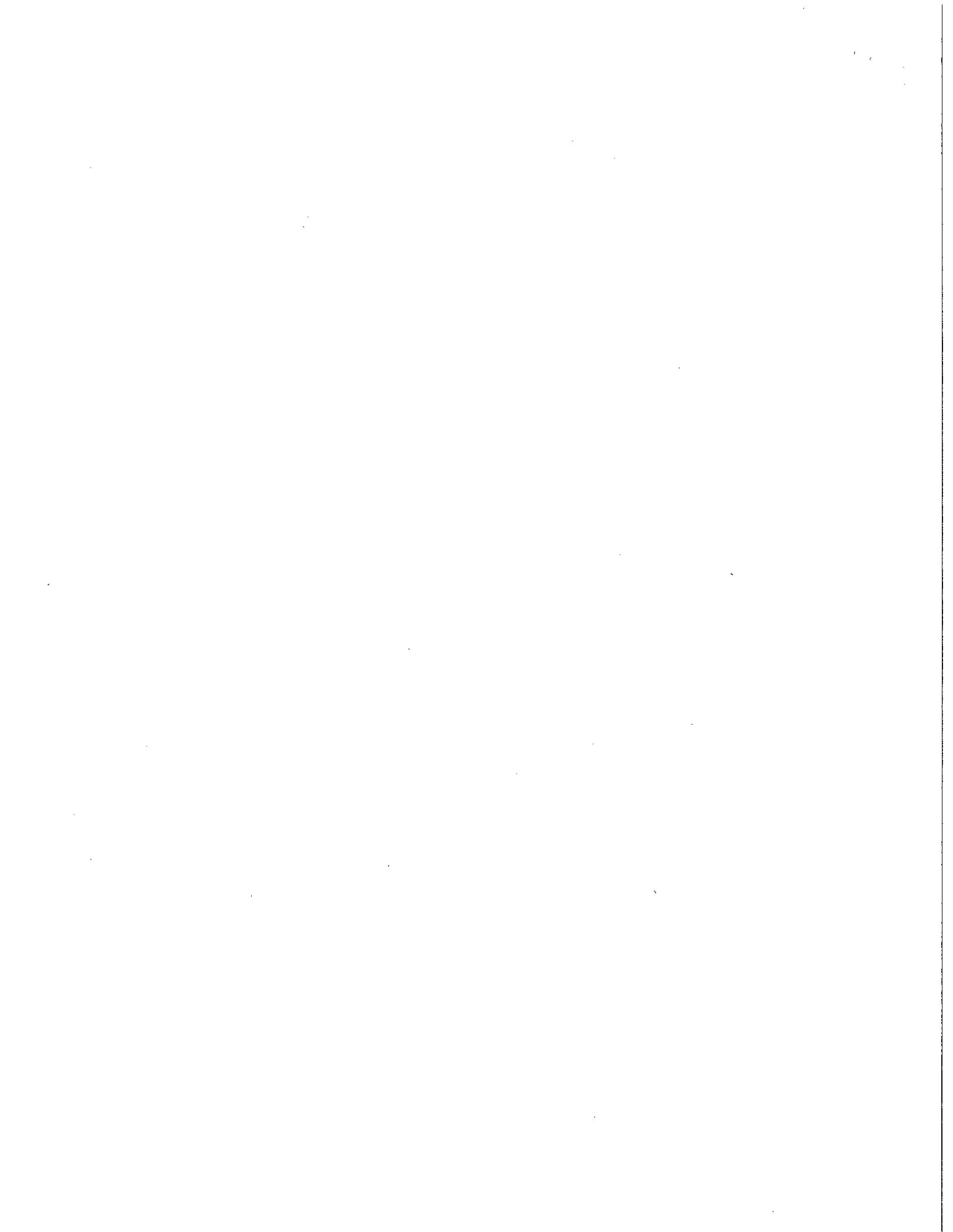
You accept the following definitions for use with this general permit:

1. "Access channel" means an area that is deeper than the surrounding areas that provides access to a municipal harbor, municipal or commercial marina or other area that provides access to Outlying Waters as defined in Section 7 of this General Permit.
2. "Area of special natural resource interest" has the meaning in Wis. Stats. s. 30.01 (1am) and as identified by the Department in Wis. Admin. Code s. NR 1.05.
Note: "Area of special natural resource interest" means any of the following:
 - a) A state natural area designated or dedicated under Wis. Stats. ss. 23.27 to 23.29.
 - b) A surface water identified as a trout stream by the Department in Wis. Admin. Code s. NR 1.02(7).
 - c) A surface water identified as an outstanding or exceptional resource water under Wis. Stats. s. 281.15.
 - d) An area that possesses significant scientific value, as identified by the Department in Wis. Admin. Code s. NR 1.05. Areas possessing significant scientific value are identified in Wis. Admin. Code s. NR 1.05 as:
 - i. Waters or portions of waters that contain endangered or threatened species or aquatic elements as defined and identified in the Wisconsin Natural Heritage Inventory.

- ii. Wild rice waters as identified in a written agreement between the Department and the Great Lakes Indian Fish and Wildlife Commission.
 - iii. Waters in areas identified in a special area management plan (SAMP), approved by the U.S. Army Corps of Engineers, or special wetland inventory study (SWIS) identified under Wis. Admin. Code s. NR 103.04.
3. "Commercial marina" means a facility containing piers, wharves and other mooring spaces, where the riparian property is not owned by a municipality, but is open to the general public, and where the primary purpose of the facility is to provide boats or boat slips either for rental or for free.
 4. "Department" means the Department of Natural Resources.
 5. "Dredged material" means any material removed below the Ordinary High Water Mark (OHWM) or from the bed of a navigable waterway by dredging. The bed of a navigable waterway extends landward to the OHWM.
 6. "Dredging" means any part of the process of the removal or disturbance of material from below the OHWM or from the bed of a navigable waterway, transport of the material to a disposal, rehandling or treatment facility; treatment of the material; discharge of carriage or interstitial water; and disposal of the material. For the purpose of Ch. 30, Stats., dredging does not include "de minimus" activities as defined in Wis. Admin. Code s. NR 345.03(2).
 7. "Final stabilization" means that all land disturbing construction activities at the site have been completed and that a uniform perennial vegetative cover has been established with a density of at least 70% of the cover for the unpaved areas and areas not covered by permanent structures or that employ equivalent permanent stabilization measures.
 8. "Hazardous substance" has the meaning given in Wis. Stats. 292.01(5) and means any substance or combination of substances including any waste of a solid, semisolid, liquid or gaseous form which may cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or which may pose a substantial present or potential hazard to human health or the environment because of its quantity, concentration or physical, chemical or infectious characteristics. This term includes, but is not limited to, substances which are toxic, corrosive, flammable, irritants, strong sensitizers or explosives as determined by the Department.
 9. "Line of navigation" means the depth contour where the water is 3 feet deep at its maximum depth based on the normal summertime low levels on the waterway or summer minimum levels where established by Department order. **Note:** Where a municipality has adopted an ordinance establishing a municipal pierhead line authorized under Wis. Stats. s. 30.13, the line of navigation is the municipal pierhead line.
 10. "Municipal harbor" means a port, inlet or area on a body of water where the port, inlet or area is normally sheltered from heavy seas and in which a vessel can navigate and safely moor.

11. "Municipal marina" means a facility containing piers, wharves and other mooring spaces where the riparian property is owned by a municipality and is open to the general public, and where the primary purpose of the facility is to provide boats or boat slips for rental or for free.
12. "Navigable waterway" means any body of water with a defined bed and banks that is navigable under Wisconsin law. In Wisconsin, a body of water is navigable if it is capable of floating on a regularly recurring basis the lightest boat or skiff used for recreation or any other purpose. This incorporates the definition at Wis. Stats. s. 30.01(4m), and current case law, which requires a watercourse to have a bed and banks, *Hoyt v. City of Hudson*, 27 Wis. 656 (1871), and requires a navigable waterway to float on a regularly recurring basis the lightest boat or skiff, *DeGayner & Co., Inc. v. DNR*, 70 Wis. 2d 936 (1975); *Village of Menomonee Falls v. DNR*, 140 Wis. 2d 579 (Ct. App. 1987).
13. "Ordinary high water mark" (OHWM) means the point on the banks or shore up to which the presence and action of water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognizable characteristic.
14. "Outlying Waters" has the meaning given in ss. 30.01(4r) and 29.001(63) and means Lake Superior, Lake Michigan, Green Bay, Sturgeon Bay, Sawyer's Harbor and the Fox River from its mouth up to the dam at De Pere.
15. "Previously dredged area" means an area below the ordinary high water mark of a navigable waterway from which material was historically removed.
16. "Public Rights Feature" has the meaning in Wis. Admin. Code s. NR 1.06.
Note: "Public Rights Features" means any of the following:
 - a) Fish and wildlife habitat, including specific sites necessary for breeding, nesting, nursery and feeding. **Note:** Physical features constituting fish and wildlife habitat include stands of aquatic plants; riffles and pools in streams; undercut banks with overhanging vegetation or that are vegetated above; areas of lake or streambed where fish nests are visible; large woody cover.
 - b) Physical features of lakes and streams that ensure protection of water quality. **Note:** Physical features that protect water quality include stands of aquatic plants (that protect against erosion and so minimize sedimentation), natural streambed features such as riffles or boulders (that cause turbulent stream flow and so provide aeration).
 - c) Reaches of bank, shore or bed that are predominantly natural in appearance (not man-made or artificial) or that screen man-made or artificial features. **Note:** Reaches include those with stands of vegetation that include intermixed trees, shrubs and grasses; stands of mature pines or other conifer species; bog fringe; bluffs rising from the water's edge; beds of emergent plants such as wild rice, wild celery, reeds, arrowhead.
 - d) Navigation thoroughfares or areas traditionally used for navigation during recreational boating, angling, hunting or enjoyment of natural scenic beauty. **Note:** Physical features indicative of navigation thoroughfares include shallow water areas typically used by wading anglers or areas frequently occupied by regularly repeated public uses such as water shows.

17. "Riparian" means an owner of land adjacent to a navigable waterway.
18. "Riparian zone" means the area from the shore to the line of navigation adjacent to the riparian property.
19. "Stabilize" means the process of making a site steadfast or firm, minimizing soil movement by the use of practices such as mulching and seeding, sodding, landscaping, paving, graveling or other appropriate measures.



Comments sought on proposed statewide general permit for maintenance dredging

By [Central Office](#) May 26, 2015

MADISON -- Maintenance dredging of navigable waterways would undergo a quicker, less expensive review as part of a proposed general permit process now up for public comment.

The Wisconsin Department of Natural Resources is accepting comments on the proposed statewide general permit through June 29, 2015.

Heidi Kennedy, statewide waterway and wetland policy coordinator, said the ability to develop the streamlined general permit process was created by a change in waterway laws in 2012 under 2011 Wisconsin Act 167. The proposed statewide general permit for the removal of previously dredged areas would modify an existing general permit for maintenance dredging that was created in Wis. Admin. Code NR 345.

The proposed statewide general permit also provides more flexibility for property owners to document an area of navigable waters where dredging previously occurred.

The statewide general permit process ensures applicants receive a decision within 30 days. Issued permits are good for five years.

The proposed general permit and environmental impact documents can be reviewed by searching the DNR website, dnr.wi.gov, for "[dredging](#)." Submit written comments by June 29 to Heidi Kennedy, statewide waterway and wetland policy coordinator, GEF II DNR Central Office, 101 S. Webster St., Madison, Wis., 53703 or email: Heidi.Kennedy@Wisconsin.gov.

Two informational hearings will be held.

- **Friday, June 19, Waukesha** - 1 to 3 p.m. at the DNR Service Center, 141 NW Barstow St., Room 151.
- **Friday, June 26, Wausau** - 1 to 3 p.m. at the DNR Satellite Center, 5301 Rib Mountain Dr.

FOR MORE INFORMATION CONTACT: Heidi Kennedy, DNR statewide waterway and wetland policy coordinator, 608-261-6430, Heidi.Kennedy@Wisconsin.gov; Jennifer Sereno, DNR communications, 608-770-8084, Jennifer.Sereno@wisconsin.gov

Last Revised: Tuesday, May 26, 2015

DNR Response to Comments
Proposed Statewide General Permit for Maintenance of Previously Dredged Areas
General Permit GP13-2015-WI (WDNR-GP13-2015)

I. GENERAL SUMMARY

The department scheduled two public hearings and accepted public comment from May 29th until June 29th, 2015. Public Hearings were held in Waukesha and Wausau. A total of 7 people attended the hearings, but only 5 people provided oral testimony. During the public comment period, the department received comments, both written and oral, from individuals and organizations on the proposed statewide general permit. In general the comments were supportive of the proposed general permit.

II. SUGGESTED MODIFICATIONS TO THE PROPOSED RULE LANGUAGE

During the public comment period the department received a number of suggested modifications to the proposed statewide general permit including some suggested modifications from the staff in other programs within the Department of Natural Resources. The department has considered the suggested modifications and has attempted to address those suggested modifications through the addition of eligibility standards or modification of existing eligibility standards. The changes provide clarity and maintain the flexibility offered in the proposed statewide general permit. The suggested modifications are below, including the department's response.

- *COMMENT: The general permit should not be available in areas where there are hazardous substances, which is defined in s. 292, Wis. Stats, in ammunition fall areas for gun ranges, or in areas where there is a sediment cap, cover, installed barrier or other engineering controls as part of a federal or state environmental remediation project.* (DNR Office of the Great Lakes & Contaminated Sediment Section)

Response: Two new eligibility standards were added and the definition of a hazardous substance was added to address the concerns.

- *COMMENT: Number 7 of the Eligibility Standards and number 6 in the Application Requirements section should be modified to reflect current practices of the Natural Heritage Conservation Program for review of potential impacts to endangered and threatened species.* (DNR Natural Heritage Conservation Program)

Response: Changes were made to the eligibility standard and the application material requirements to reflect the suggested language offered by the Natural Heritage Conservation Program.

- *COMMENT: Beach nourishment for dredging projects in the Great Lakes should be allowed by the Maintenance Dredging General Permit.* (WE Energies)

Response: The General Permit did not prohibit beach nourishment, but beach nourishment requires a separate permit from the Department. For dredged spoils to be utilized for beach nourishment it must meet the standards outlined in Wis. Admin. Code s. NR 347.07(4). Eligibility standard 15. was clarified

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that additional permits are necessary for the placement of dredge spoils in wetlands or the use of dredged spoils for beach nourishment. A reference was also made to the standards in Wis. Admin. Code s. NR 347.07(4) for the use of dredged spoils as part of a beach nourishment project.

- *COMMENT: Proposed fish spawning time period restrictions for non-trout waters appear to be overly restrictive and would narrow the applicability of the Maintenance Dredging GP. For regulatory consistency, these restrictions should be restored to the time periods specified in Wis. Admin. Code Ch. NR 345.* (WE Energies)

Response: No change was made. The time restrictions in the general permit for fish spawning reflect the updated information the Waterway and Wetland Section received from the Bureau of Fisheries Management since the creation of Ch. NR 345, back in 2004. The language is also consistent with the other statewide general permits that have been issued by Section in the past 3 years. If the applicant wishes to complete the project during these time period restrictions the applicant may seek a waiver from the local fisheries biologist, who determines if the project has the potential to impact fish spawning.

- *COMMENT: Some application submittal requirements are cumbersome and should be revised because they are cumbersome, such as requiring the OHWM and the riparian lines to be shown on the project plans.* (WE Energies)

Response: No change was made. To issue a dredging permit under Wis. Stats s. 30.20, staff must be reasonably capable of determining where the project is located in relationship to the shoreline and within the riparian's zone of interest and to assess the department's jurisdiction. Although the statute would technically allow an applicant to receive a permit to dredge outside of their riparian zone of interest, this often results in neighbor disputes and complaints to the Department, which is why the Department asks for this information and requires the applicant to obtain some kind of approval or agreement from the other riparian to obtain the general permit. Project plans may show approximate OHWM locations and riparian zone lines and do not necessitate actual determinations by the Department.

- *COMMENT: Could the limit of 3,000 cubic yards be increased?* (Eagle Spring Lake Management District)

Response: No change was made. The current general permit for maintenance of previously dredged areas also limits the eligibility of the general permit to 3,000 cubic yards for inland waterbodies. The purpose of a general permit is allow for smaller more routine projects a more expedited method of approval. While 3,000 cubic yards is still a fairly significant amount of material, (approximately 200-300 dump trucks of material), the department has determined that projects that exceed this threshold should have a more comprehensive review of potential impacts to public rights and interests through the issuance of an individual permit.

- *COMMENT: Why couldn't the general permit allow an applicant to dredge beyond the original depths or dimensions?* (Lauderdale Lakes Lake Management District)

Response: No change was made. The purpose of this general permit is to allow for maintenance dredging of previously dredged areas and the statutory standards require an applicant to demonstrate that an area was previously dredged. Dredging beyond the original depths or dimensions of a previous dredging project means is not maintenance dredging. Also dredging beyond the original depths could involve differences in the sediment quality to be removed and other impacts to public rights and interests.